

**NATIONAL AND INTERNATIONAL
MECHANISMS OF FUNDING
CIVIL SOCIETY**



**INTERNATIONAL PRACTICES
ON CONFIDENCE-BUILDING
MEASURES BETWEEN
THE STATE AND CIVIL SOCIETY**

УДК 347.73:061.2
ББК 67.402
Н35

National and International Mechanisms of Funding Civil Society. International Practices on H35 Confidence-Building Measures between the State and Civil Society. – K.: Phoenix, 2011. – 304 p.
ISBN 978-966-651-917-7

This book contains a compilation of three research studies conducted by the OSCE Project Coordinator in Ukraine (PCU) during 2010-2011 and provides analysis and examples of best practices from the OSCE region on enhancing sustainability of civil society organizations through funding frameworks and improving dialogue between the state and civil society.

The views herein expressed are solely those of the author and contributors and do not necessarily reflect the official position of the OSCE, OSCE institutions, OSCE Project Co-ordinator in Ukraine and the Foreign & Commonwealth Office.

Published by the OSCE Project Co-ordinator in Ukraine
Striletska str., 16
Kyiv, 01034, Ukraine
www.osce.org/ukraine
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ISBN 978-966-651-917-7

This book contains a compilation of three research studies conducted by the OSCE Project Coordinator in Ukraine (PCU) during 2010-2011 and provides analysis and examples of best practices from the OSCE region on enhancing sustainability of civil society organizations through funding frameworks and improving dialogue between the state and civil society. These analyses have been prepared by one national and two international experts engaged by the OSCE PCU for this work. The Institute for Rural Development, an Ukrainian NGO, carried out a research study of the existing practices and legislation of Ukraine in the area of funding of civil society organizations by government bodies, local authorities and the private sector; Ms. Albena Kuyumdzieva studied international practices on confidence building measures between the state and civil society organizations, and Mr. Balazs Sator was the author of the study on international practices on funding civil society organizations. The Secretariat of the Cabinet of Ministers of Ukraine also contributed to the development of this research and provided valuable recommendations and reviews.

In 2010 the OSCE PCU was asked to provide and facilitate capacity-building assistance to Ukraine regarding the implementation of OSCE commitments related to civil society development. In partnership with the Secretariat of the Cabinet of Ministers of Ukraine, the OSCE PCU developed and launched two separate but related projects, “Civil Society – International Best Practice Research” and “Developing Institutional Framework of Funding Civil Society Organizations in Ukraine,” which focused on assisting in improving the legal and institutional framework related to the civil society funding and determining a suitable funding model.

The projects attempted to analyze the legal framework regulating state and non-state civil society funding schemes based on best national and international practices, and to identify best international examples of confidence building measures between the state and civil society organizations. The case studies of existing models of civil society organization funding and measures on promotion dialogue and confidence in selected European countries, contained in the research, are not meant as turn-key solutions for strengthening the sustainable development of civil society in Ukraine. Rather, they are narrative examples whose lessons can be replicated in part or in whole for Ukraine.

The research reports also included the results and feedback of discussions facilitated by the OSCE PCU among the major project stakeholders dealing with civil society on the national and regional levels. Regional roundtable discussions took place in five cities across Ukraine, which were selected to provide a geographically-balanced representation: Simferopol, Odessa, Lviv, Kiev, and Donetsk. More than 230 participants representing local executive authorities, the civil society sector and the business community took an active part in discussions of the interim research findings and in their turn presented the existing regional practices regarding civil society funding mechanisms as well as successful examples of sustainable and efficient relations between the state and the civil society organizations based on trust and mutual confidence.

The OSCE PCU would like to express its deep gratitude to the Foreign & Commonwealth Office of the United Kingdom for financing the implementation of the “Developing Institutional Framework of Funding Civil Society Organizations in Ukraine” Project, under which this book has been published.

The book is addressed to public officials and legislators from the relevant ministries dealing with the civil society issues, representatives of Ukrainian and international civil society organizations, the Ukrainian business community, research institutions, consultancies and relevant experts, as well as international organizations working on the development of the civil society in Ukraine.

The research studies are also available online at www.osce.org/ukraine

TABLE OF CONTENTS

Foreword	3
Table of contents	4
Research of the existing practices and legislation of Ukraine in the area of funding of civil society organisations by government bodies, local authorities and the private sector	
1. Introduction to problems and relevance of the research	8
2. Analysis of applicable laws that regulate funding of civil society organisations in Ukraine	14
2.1. Funding from government bodies and local authorities	16
2.2. Funding from the private sector and individual citizens	27
2.3. Funding from delivery of paid services.	31
2.4. Funding from other sources	37
2.5. Analysis of applicable laws of Ukraine on civil society organisations' participation in the consultation process and decision-making	41
2.6. Interim conclusions based on the analysis of applicable laws	45
3. Analysis of the existing practices of funding of civil society organisations in Ukraine	47
3.1. Characteristics of the interviewed respondents	48
3.2. Problems of funding by government bodies and local authorities	48
3.2.1. Main problems of the existing government funding system and their importance for improvement	48
3.2.2. Respondents' perception of the government funding model	54
3.2.3. Main problems of the existing local government funding system	57
3.2.4. Respondents' perception of the local government funding model	59
3.3. Problems of funding from the private sector and individual citizens	60
3.4. Problems of funding from delivery of paid services.	65
3.5. Problems of funding from other sources	65
3.6. Positive examples of funding of civil society organisations.	67
3.7. Proposals on improvement of CSO funding based on interviews and regional round table discussions	71
3.8. Interim conclusions derived from the analysis of interview and round table discussions	74
4. Impact of the Tax Code of Ukraine #2755 as of 2 December 2010 on financial state of CSOs	77
5. Recommendations as to improvement of the existing regulatory framework of Ukraine in the area of funding of civil society organisations.	84
5.1. Funding from government bodies and local authorities	84
5.2. Funding from the private sector and individual citizens	89
5.3. Funding from delivery of paid services.	92
5.4. Public Monetary Fund	95

Appendix 1. References	97
Appendix 2. Questionnaire to study existing practices of government and non-government funding of civil society organisations (CSOs)	100

International Practices on Funding Civil Society Organizations

ABBREVIATIONS	110
Executive Summary	111
I. Introduction	113
II. Understanding the Financing Framework of CSOs	117
<i>II.1. Models of CSO sector development in Europe</i>	<i>117</i>
<i>II.2. Financial viability of CSOs in Europe</i>	<i>120</i>
<i>II.3. Mapping the Funding Sources for CSOs</i>	<i>121</i>
<i>II.4. State Financing of CSOs</i>	<i>124</i>
<i>II.5. Private Funding of CSOs</i>	<i>126</i>
<i>II.6. Individual funding</i>	<i>129</i>
<i>II.7. Earned Income of CSOs</i>	<i>132</i>
III. General Findings	137
IV. Country Specific Findings	141
<i>IV.1. Hungary</i>	<i>141</i>
<i>IV.2. Croatia</i>	<i>154</i>
<i>IV.3. Germany</i>	<i>163</i>
<i>IV.4. United Kingdom</i>	<i>176</i>
<i>IV.5. Czech Republic</i>	<i>190</i>
V. Conclusions Based on Country Findings	202
VI. Recommendations	204
Bibliography and references	208

International practices on confidence-building measures between the state and civil society organizations

Executive summary	215
I. Introduction and methodology	219
II. Methodology	222
III. Overview of the major international instruments and policies	225
<i>3.1. The role of the civil society in the provision of democratic governance</i>	<i>225</i>
<i>3.2. European instruments for better civic involvement (EU and CoE)</i>	<i>226</i>
<i>3.3. International framework for citizens participation in the decision-making process (OECD, UN)</i>	<i>233</i>

IV. European best practices facilitating active civic participation	236
<i>4.1. Openness and Transparency – provision of information.</i>	<i>236</i>
<i>4.2. Participation – citizens involvement in the decision-making process</i>	<i>252</i>
<i>4.3. Accountability – monitoring mechanisms</i>	<i>266</i>
<i>4.4. Implementing good governance principles in the organisational strategies of CSOs – international trends</i>	<i>278</i>
V. Conclusion.	284
VI. Proposals and recommendations on promotion confidence between the state and CSOs	286
Annexes.	288
References	300

EXISTING PRACTICES AND LEGISLATION OF UKRAINE
IN THE AREA OF FUNDING OF CIVIL SOCIETY
ORGANISATIONS BY GOVERNMENT BODIES,
LOCAL AUTHORITIES AND THE PRIVATE SECTOR

NGO "INSTITUTE OF RURAL DEVELOPMENT"

1. INTRODUCTION TO PROBLEMS AND RELEVANCE OF THE RESEARCH

Civil society is a social space outside governmental, business-oriented, and family relationships and activities, where individuals come together voluntarily to advocate their common interests. In a broader sense, civil society entities may include civil society organisations, charities, business associations, people's self-organisation bodies, media, trade unions, employer organisations, faith-based organisations, citizen activist groups, etc¹.

Ukraine's movement towards the development of democracy depends directly on the level of development of civil society and its ability to actually influence socio-economic and political processes in the country. Today's activities of civil society organisations (CSOs) focus on consultations and building effective solutions to particular problems; provision of social services not delivered by the business because of their unprofitability; enhancement of charities; public monitoring and participation in combating corruption – that all covers a great number of issues that positively influence economic and social conditions of the community, either directly or indirectly. Therefore, CSOs are effective partners to the state in solving humanitarian and socio-economic problems. As such they take over some functions of the state, and should be offered additional financial incentives in exchange for more transparency and control of their activities by the state and society. Currently, however, Ukrainian CSOs are mainly funded by solitary local providers and foreign donors (75-85%). The annual budget of a typical Ukrainian civil society organisation is about 50,000-60,000 hryvnias, with only 2-3% of the budget funded by state. This parameter positions Ukraine next to Philippines, Pakistan and Kenya. The annual budget of a CSO in EU member countries in Eastern Europe is equivalent to 560,000–670,000 hryvnias, with 40-60% of the amount coming from the state².

The lack of state funding of Ukrainian CSOs is the main, but not a single problem. Only 12 out of 65 central executive agencies fund certain types of CSOs. Those that can rely on government support are all-Ukraine organisations of disabled people, youth and children, Chornobyl eliminators' organisations, art groups, ethnic minority organisations and sports federations. It should be noted that there is no funding for activities of law and advocacy, environment and monitoring CSOs.

The available scant amounts of money are not always used in an effective and transparent way. Only three executive agencies of Ukraine – the Ministry for Family, Youth and Sports, the Ministry of Labour and Social Policy, and the State Committee for Television and Radio Broadcasting – allocate money on a competitive, transparent basis. But the Ministry for Family, Youth and Sports, for instance, allocated only 5 million hryvnias out of 10 million hryvnias received in 2009 to support youth organisations among competitors, the rest of money was allocated nontransparently, without an open tender exercise.

The government procurement process is still complicated and contradictory. In the first half of 2009, the state undertook a tender exercise to procure works, goods and services that amounted to 58.4 billion hryvnias, while only 2.5 million hryvnias were spent on services procured from (only three!) civil society organisations. Programmes to tender for local project funding are lacking. Only 8 of 25 oblast centres have such CSO funding programmes: councils of Odesa, Chernivtsi, Kyiv, Khmelnytsky, Mykolayiv, Lviv, Kharkiv, Chernihiv, Poltava³.

In accordance with applicable laws, civil society organisations may support statutory activities using not only the budget, but also other sources of funding – money from interested citizens,

¹ M. Latsiba. Government policy and the level of development of civil society in Ukraine / Ukrainian Centre for Independent Political Research. – Kyiv, 2006.

² Government funding of civil society organisations. How will European standards be implemented? / [O. Vinnikov, D. Kovryzhenko, A. Krasnosilska et al.]; Ukrainian Centre for Independent Political Research. – Kyiv, 2010.

³ Government funding of civil society organisations. How will European standards be implemented? / [All-Ukraine conference papers (Kyiv, 2010)]. [Available electronically from <http://gurt.org.ua/news/conferences/5535>]

enterprises, entrepreneurs. However, business is only beginning to perceive CSOs as partners in tackling social problems, an agent of social influence on government bodies. In some cases, business promotes creation, almost without exception, of civil society associations within its sectors and funds their activities. An example may be such sectoral organisations as the Agricultural Chamber of Ukraine and the Ukrainian Agrarian Confederation whose members are from farms and the farms themselves.

Laws of many countries let individuals donate larger portions of their incomes exempt from taxes than legal persons. For example, the USA have set it at 50%, and Spain at 20-30%. This may be explained by a need to reinvest naturally limiting legal persons in giving a part of their profit. Donations of a large size exempt from taxes in such countries lead to the emergence of strong charities that provide significant financial and other support to other non-profit civil society organisations and the most vulnerable groups of citizens.

Besides lack of financial support provided by the government for CSOs, state regulation in place in our country failed to create incentives for citizens and the business to financially support civil society social projects and activities of civil society associations and charities. Poor national funding framework and critical dependence on international donors create considerable risks to activities of CSOs owing to which CSOs have not as yet become the main partner to the state in solving social problems, and most citizens do not think civil society organisations to be of any use and need.

In general, neither government bodies nor the private sector has enough experience and skills to apply diverse forms and mechanisms of giving financial support to CSOs that exerts direct influence on sustainable development of the third sector. The existing practices of providing financial support to CSOs by the state, the business and private persons need to undergo scrutiny and analysis. Therefore, the *aim* of this paper is to research the existing experience and legislation of Ukraine in the area of funding of civil society organisations by government bodies, local authorities and private sector, and provide consolidated recommendations as to improvement of the existing legislative framework of Ukraine in the area of CSO funding, from the point of view of its compliance with the best international practices, fostering sustainable development and financial independence of civil society organisations.

Particular problems of development of civil society organisations and some of their types (charitable, voluntary organisations) have been studied by many researchers and stakeholders⁴. In our paper, we research theoretical (legislative) and practical (survey-based) challenges in funding civil society entities of all types. That is, we thoroughly investigate the existing legislative framework of Ukraine that regulates funding of CSOs from government bodies, local authorities, the business sector and other sources, as well as experience in the area of government and non-government funding of civil society organisations, in line with aims of the research component of the project titled "Developing Institutional Framework of Funding Civil Society Organisations in Ukraine".

Our research is composed of the three interrelated parts. The *first part* is a desk top research undertaken to provide an overview and detailed analysis of applicable Ukrainian laws regulating CSO funding and taxation issues, focusing on problematic issues relating to application of legislative provisions and their relevance. The analysed sources of funding include government

⁴ The level and the dynamics of development of non-governmental organisations in Ukraine. 2002-2006: Study Report / [L. Palyvoda, O. Kikot]; Counterpart Creative Centre;. – Kyiv: Makros, 2006. – p. 35; Shevchuk T. Non-governmental organisations in social life of Rivne area [Available electronically from <http://postua.info/news.php?nid=6>]; Stepanenko I. Conceptual uncertainty of civil society in Ukraine: Possible ways to overcome / Development of democracy in Ukraine [International science conference papers (Kyiv, 29 September – 1 October 2000)]. – Kyiv: Centre for Education Initiatives, 2001. – p. 593; Derzhalyuk O. The dynamics and expansion of the scope of activities of civil society organisations as a component of democratisation of Ukrainian society [Available electronically from <http://www.niss.gov.ua/Monitor/May08/03.htm>];

Reva S. Participation of the public in the process of making and implementation of government policy // Political management. – 2006. – No. 3 (18). – p. 7; Assessment of the system of government funding of civil society organisations in Ukraine: Analytical study report / UNITER/PACT. – Kyiv, 2010.

bodies and local authorities (supporting statutory activities of CSOs, grants to carrying out specific activities (project tenders, procurement of services); the private sector (procurement of services, charitable activities); individual citizens (charitable activities); paid services commissioned by CSOs and other sources of funding. The first part will also include a close analysis of national legislation in respect of creation of an environment by the state to foster gaining active incomes by CSOs from provision of paid services aimed at carrying out statutory activities, and participation of CSOs in the process of consultations and decision-making, building co-operation and interface with governing structures in the area of promoting development and strengthening financial capacities of CSOs. At the end of the first part, we will provide interim conclusions to serve as a basis for providing recommendations as to improvement of the existing legislative framework of Ukraine in the area of CSO funding.

The **second part** of the research deals with the analysis of government and non-government CSO funding practices existing in Ukraine, identification of weaknesses and successes. Today's CSO funding practices were studied by interviewing 300 respondents from different regions of Ukraine. An important input in highlighting this issue came from the discussion of CSO funding problems and practices by participants in regional round table discussions that represented local authorities, civil society and stakeholders. At the end of the second part, we will provide interim conclusions as to the existing practices of CSO funding by government bodies, local authorities and the private sector.

The **third part** of the research provides recommendations as to improvement of the existing regulatory framework of Ukraine in the area of funding of civil society organisations, from the point of view of its compliance with the best international practices, consistency and effectiveness in fostering sustainable development and financial independence of CSOs. The recommendations are provided in co-operation with the research component of the Unified Budget Project "Civil Society International Best Practice Research", based on materials of the desk top and field studies.

Research methodology

The research of the applicable legislative framework of Ukraine that regulates funding of civil society organisations (CSOs) from government bodies, local authorities, the business sector and other sources, as well as the experience in the area of government and non-government funding of civil society organisations in line with aims of the research component of the project aimed at "Developing Institutional Framework of Funding Civil Society Organisations in Ukraine" includes, in fact, the three parts: desk top, field studies and provision of recommendations.

Desk top study

The desk top research of applicable laws of Ukraine in the area of CSO funding by government bodies, local authorities and the private sector is conducted by the method of analysis of documents. At the stage of the desk top overview, we will focus on the analysis of legislation regulating CSO funding and opportunities for their participation in the process of consultations and law-making.

The regulatory function of the state becomes apparent both in Laws of Ukraine and a variety of by-laws, from Resolutions of the Cabinet of Ministers of Ukraine to innumerable letters and explanations of ministries and fiscal bodies. Therefore, the analysis of the national regulatory framework that regulates CSO funding covers, **firstly**, the Constitution of Ukraine, Civil, Economic and Budget Codes of Ukraine; laws of Ukraine regulating activities of citizens' associations, people's self-organisation bodies and local authorities, trade unions and art groups, civil society charitable, youth- and children organisations; CSO state registration, legal status and taxation. **Secondly**, Resolutions of the Cabinet of Ministers of Ukraine that regulate participation of the public in making and implementation of government policy, ensuring transparency of action of

government bodies, etc. are analysed. *Thirdly*, to understand the problem fully, the respective decrees, explanatory notes and references of the Ministry of Justice of Ukraine and the State Tax Administration of Ukraine (STA), other by-laws and judicial practice of settling tax disputes between STA agencies and CSOs are analysed.

There is a practice when state funds some civil society organisations while functioning of the other is fuelled by their own activities and money from other sources. The Law of Ukraine “On State Budget” contains yearly allocations to support particular non-profit organisations, especially, organisations of disabled people, Ukrainian deaf society (UTOG) and Ukrainian blind society (UTOS), etc. However, non-profit organisations are currently provided with real opportunities to be partners in implementation of local programmes, and a degree of independence of local budgets from the state, with deputies of local councils being able to influence their setting, raises hope of an increase in the number of social programmes implemented together with non-profit organisations. Therefore at the stage of the desk top overview, we attract attention to characteristics of and problems arising in the process of CSO funding by government bodies and local authorities (supporting statutory activities, grants for carrying out particular activities (project tenders), carrying out some activities based on socio-economic development programmes approved by local governments, procurement of services, inter alia, from special CSOs: youth-organisations, trade unions, disabled people, veterans organisations, etc.).

At the stage of the desk top overview, legal problems relating to CSO funding by the private sector and individual citizens (for example, procurement of services; charitable activities; non-refundable financial assistance) will also be analysed. Pursuant to applicable laws, money voluntarily transferred to the State Budget of Ukraine or local budgets, non-profit organisations referred to in the Law of Ukraine “On Enterprise Profit Tax”, article 7, section 7.11, during a reporting year, money transferred to legal persons including non-profit organisations that are founders of a permanent arbitration court, exceeding 2%, but not exceeding 5% of taxable income gained in the preceding reporting year (Law of Ukraine “On Enterprise Profit Tax”, section 5.2.2.) are incorporated into total costs. This relief is insignificant and does not result in a significant transfer of money from business entities to non-profit organisations.

The problem with giving money by the business to non-profit organisations can not be currently solved by simply raising this limit by 1-2%, a practice generally accepted in our country, because this 5% includes voluntary transfers to the budget, and besides, a large part of the business is not gaining any profits practically at all or pays a fixed (single) tax (small business). Should the proposed version of the Tax Code that heavily infringes upon rights of, especially, the small business, be adopted, most small enterprises and private entrepreneurs will stop to exist.

The desk top research will also include the analysis of opportunities of applicable laws for creation of an environment to foster gaining active incomes by CSOs from provision of paid services aimed at carrying out statutory activities. Non-profit organisations of Ukraine do not engage in any business practically at all. Charities may carry out economic activities in any form, however, provided that they are aimed at performing statutory work. But if a charity carries out economic activities on its behalf, without creating its own entrepreneurial structure, it will at once lose the status of a non-profit organisation and will have to pay a profit tax. The lawmaker allowed NPOs to found business entities that may use a part of their profits to make charitable donations and provide other types of assistance to CSOs, however, this assistance, without prejudice to the financial position of a business entity, is limited to 5%, as discussed above.

At the stage of the desk top overview, legitimate opportunities for using other sources of CSO funding and available secondary sources of information on these topics – analytical studies and statistics – will also be analysed, for example: The level and the dynamics of development of non-governmental organisations in Ukraine. 2002-2006: Research report / [L. Palyvoda, O. Kikot]; Counterpart Creative Centre. – Kyiv: Makros, 2006. – p. 35; Stepanenko I. Conceptual

uncertainty of civil society in Ukraine: Possible ways to overcome / Development of democracy in Ukraine [International science conference papers (Kyiv, 29 September – 1 October 2000)]. – Kyiv: Centre for Education Initiatives, 2001. – p. 593; Shevchuk T. Non-governmental organisations in social life of Rivne area [Available electronically from <http://postua.info/news.php?nid=6>]; Derzhalyuk O. The dynamics and expansion of the scope of activities of civil society organisations as a component of democratisation of Ukrainian society [Available electronically from <http://www.niss.gov.ua/Monitor/May08/03.htm>]; Reva S. Participation of the public in the process of making and implementation of government policy // Political management. – 2006. – No. 3 (18). – p. 7; Government funding of civil society organisations. How will European standards be implemented? / Ukrainian Centre for Independent Political Research. – Kyiv. – 2010; Assessment of the system of government funding of civil society organisations in Ukraine: Analytical research report / UNITER/PACT. – Kyiv. – 2010, etc.

Field research

Before starting the field research, we developed approaches to identify expert assessment units and territorial units used in the research, defined the structure of division of respondents on the basis of their belonging to a group of expert assessment units and a territorial unit used in the research, determined field research tools.

The field research of the existing experience in the area of CSO funding by government bodies, local authorities and the private sector is conducted by the method of a structured expert interview with 300 suitable respondents in 5 representative regions of Ukraine, in particular: 1. Eastern (Donetsk oblast); 2. Western (Volyn oblast); 3. Southern (Odesa oblast); 4. Northern (Kyiv oblast); 5. Central (Poltava oblast and Kyiv), visiting organisations and a face-to-face contact with the respondents.

The above oblasts are characteristic within the regions in terms of not only geographical and historical proximity, but also the level and the structure of economic sectors. Respondents participating in the survey included those from legislative and executive agencies at the national and local levels, civil society organisations, civil society and business experts.

Twenty per cent (20%) of respondents were interviewed in rural areas. The reason is that, along with difficulties faced by rural CSOs (limited knowledge and resources including information for bidding for funds), there are interesting examples of close co-operation and funding of rural CSOs by local authorities and entrepreneurs, technical inputs (labour, tools, equipment) provided by community members to CSOs to carry out socio-economic community development projects and statutory activities. It is such inputs that reduce dependence of local CSOs on grant funding by both local governments and international donors.

Rural survey will complement the research of the experience in the area of government and non-government CSO funding and make it more representative all over Ukraine.

Sociological data obtained at the field stage by interviewing 300 respondents will be processed using SPSS.

Recommendations

In co-operation with the research component of the Unified Budget Project “Civil Society International Best Practice Research”, based on materials of the desk top and the field studies, recommendations were provided with respect to improvement of the existing regulatory framework of Ukraine in the area of funding of civil society organisations, from the point of view of its compliance with the best international practices, consistency and effectiveness in fostering sustainable development and financial independence of CSOs.

The research of the existing experience and legislation of Ukraine in the area of funding of civil society organisations by government bodies, local authorities and the private sector is the research component of the project titled “Developing Institutional Framework of Funding Civil

Society Organisations in Ukraine”. Analytical data, experimental materials and conclusions of the national research provided a basis to inform designing activities aimed at improvement of institutional development of the CSO funding system.

Results of this research will directly influence the development of an integral system and institutional mechanisms of funding of the civil society in the national dimension, which will ensure that the research uses the cross-region and cross-sector approaches. It is also important that the research that involves national (ministries, central executive agencies) and local (local authorities) budget distributors and private sector representatives allows for different CSO funding sources and forms.

The research has strategic value as its results will promote a transparent and sustainable civil society funding system and provide a long-term perspective on its institutional development. Put into lawmaking practice, the obtained analytical and empirical results of the national research that are part of other international comparative studies will significantly influence the dynamics of processes of Ukraine’s integration into the global community.

2. ANALYSIS OF APPLICABLE LAWS THAT REGULATE FUNDING OF CIVIL SOCIETY ORGANISATIONS IN UKRAINE

Over the years of independence, Ukraine has made remarkable progress toward creation of democratic institutions and strengthening of democratic procedures. In its 2009 report, the Freedom House that has ranked Ukraine as a “free” country starting from 2005 described Ukraine as a dynamically developing democracy in the region valuing fundamental human rights and freedoms⁵. Civil society organisations belong to the very democratic institutions that help citizens exercise their fundamental rights and freedoms and provide a powerful tool to create and legitimise an effective state’s governance system by more broadly engaging CSOs in making and implementation of government policy.

The research of problems relating to the development of civil society in Ukraine, especially, such as attraction of CSOs funding of different types, seeking possible ways to improve co-operation and strengthen the framework of interaction of government bodies with the public largely benefited from efforts made by experts and research institutions.

Considerable attention to highlighting problems relating to activities and development of non-governmental organisations (NGOs) is paid by the Counterpart Creative Centre (CCC). CCC researchers estimate that the number of active organisations in Ukraine (59,321 as estimated by the Single State Register of Enterprises and Organisations of Ukraine (EDRPOU) in early 2009)⁶ may be around 4,000-5,000⁷. A large number of registered organisations exist only formally or function episodically. Based on their criteria, NGOs may be deemed to be active only when they function for at least two years, have experience in carrying out two and more projects and are well known in their region. According to the annual CCC survey, in 2006 the overall organisational capacity of Ukrainian NGOs first exceeded the average level (scored 2.9 on a five-point scale), although in 2007 it descended to 2.65. The concept of NGO organisational capacity is integrated with the assessment of strategic management, governance system, leadership and management system, NGO fundraising strategies, compliance of financial management with international accounting standards, standards of human and financial resource management.

The existence of comparatively few active NGOs can be explained not only by scant financial resources generated through government programmes, grants, and in some cases, membership subscriptions (which mainly applies to trade unions), but also, unfortunately, the lack of demand for activities of non-governmental organisations. Citizens of Ukraine are almost unaware of a role, functions and capacity of NGOs and do not participate in their activities practically at all. According to the Razumkov Centre survey, 4.7% of citizens are actively involved in volunteering in Ukraine, whilst 82.6% of the respondents are not. As regards membership, 69.3% said they do not belong to any organisations, 21.2% are members of trade unions, 3.6% of parties, and 3% of clubs.

Such disappointing results suggest that the state fails to pay due attention to strengthening capacities of civil society in order to achieve its objectives and goals. And, unfortunately, attempts of the government at creating a sophisticated state’s governance system have not so far allowed for a role played by civil society organisations in the state’s governance system. Therefore, in fact, CSOs are currently outside of the process of transformation of the Ukrainian society on its way towards democratisation.

As discussed above, current government funding of CSOs in Ukraine is quantitatively inadequate, and activities of civil society organisations are mainly supported by foreign donors and local givers. Citizens’ and business opportunities of charitable giving are limited by unavailability of

⁵ [Available electronically from <http://tsn.ua/ukrayina/>.html].

⁶ The number of EDRPOU entities by legal forms as assessed on 1 January 2009 [Available electronically from <http://www.ukrstat.gov.ua/>].

⁷ The level and the dynamics of development of non-governmental organisations in Ukraine in 2002-2009: Study report / CCC. – 2009. [Available electronically from http://ccc-tck.org.ua/file/biblioteka/CSO_2009UA.pdf].

free money, legislative tangle and practically total lack of tax reliefs. The society holds a stereotype that charitable activities of CSOs should not be paid, and thus feeds a categorical users' approach to receiving support and services from non-governmental organisations. On the other hand, civil society organisations do not have any resources and investments to run fundraising campaigns and prefer an organised and rather cheap source of resources – international donors.

This thought is confirmed by results of the research conducted by the Counterpart Creative Centre⁸. In particular, the NGO funding sources situation in 2008 is shown in fig. 1: percentage characterises the number of organisations receiving funding from the specified sources.

CCC experts also studied the dynamics of the structure of annual NGO budgets (table 1). Analysing data from 2008, they reached conclusions on a budget of an average NGO. Assistance provided by the business was mentioned by 45% of the surveyed NGOs, but donations made by the business account for only 18% of the organisation's budget.

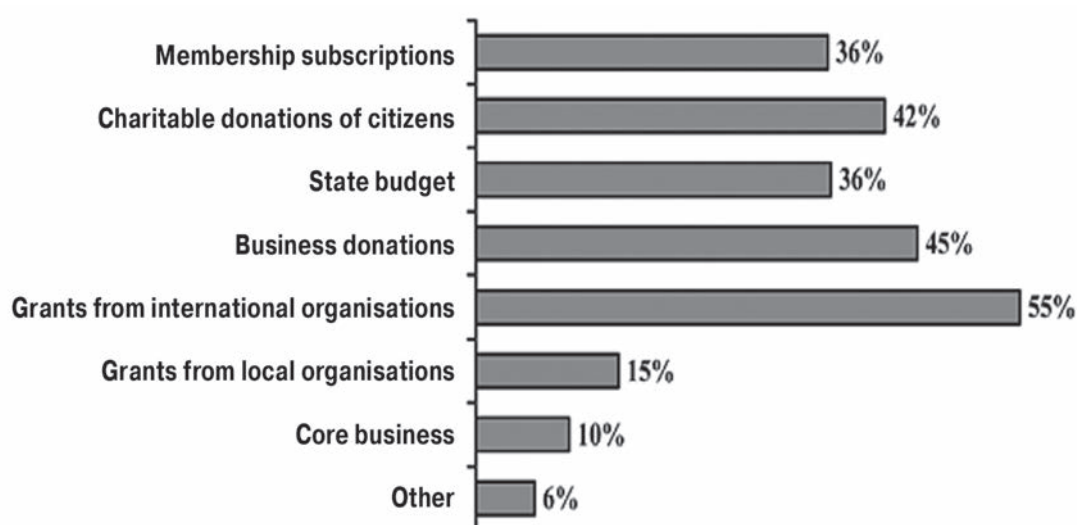


Fig. 1. Structure of sources of funding of Ukrainian NGOs

The number of NGOs that received funding from international donors is comparatively greater and accounts for 55% of the surveyed NGOs, however, grants from international organisations make up 41% of the annual budget.

Table 1

Dynamics of the structure of budgets of Ukrainian NGOs, %

Source	2002	2003	2004	2005	2006	2008
Charitable donations of citizens	11	11	12	11	12	14
Grants from local organisations	3	3	4	5	17	15
Membership subscriptions	12	14	12	9	15	12
Core business such as social entrepreneurship	4	3	4	4	4	6
State budget	11	10	9	10	13	15
Business donations	20	21	19	19	17	18
Other sources	4	6	3	4	4	5
Grants from international organisations	35	32	37	38	45	41

⁸ The level and the dynamics of development of non-governmental organisations in Ukraine in 2002-2009: Study report / CCC. – 2009. [Available electronically from http://ccc-tck.org.ua/file/biblioteka/CSO_2009UA.pdf].

Similarly, 36% of the respondents are funded by the state, but this accounts for only 15% of NGO budget. Citizens make donations to 42% of the surveyed organisations, and they account for only 14% of the budget. Local organisations give grants to 15% of NGOs that also make up 15% of the budget. Core business is the source of funding to 10% of the respondents, but they account for only 6% of the budget.

Despite general compliance of laws of Ukraine in the area of attraction of resources by CSOs with international principles and standards, they 'do not work' because of imperfection of the regulatory framework, inconsistency and complexity of its interpretation, lack of key regulations⁹.

2.1. Funding from government bodies and local authorities

Civil society organisations' entitlement to financial support from the state is established by the Law of Ukraine "On Citizens' Associations" (article 8)¹⁰ and the Budget Code of Ukraine (article 87)¹¹.

The current system of legal regulation of CSO funding by the state can be split into:

- regulation of CSO activities;
- regulation of state budgets (including the Budget Code) and targeted government programmes;
- regulation of the use of funds provided by the State Budget and targeted government programmes (in particular, resolutions of the Cabinet of Ministers of Ukraine, decrees of respective Ministries);
- regulation of the process of government-launched tenders for social projects and direct funding of activities of, and projects for CSOs.

Moreover, laws regulating government funding of CSOs undergo frequent and sporadic changes. Both users and providers often misunderstand them or fail to keep abreast of changes made to them. As a consequence, they need to be explained by competent government bodies.

Today, though, a system is already in place where the state provides financial support for Ukrainian CSOs using several mechanisms.

Subsidies, a form of government funding aimed at supporting CSO activities in general rather than particular projects. In Ukraine, subsidies are given only to some civil society organisations, for example, veterans organisations.

Grants, an allocation of government money on a competitive basis, based on identified priorities. The tendering system is rather new to Ukraine so far.

Social contracts, when contracts are used in the area of social policy, for example, in case of disabled people civil society organisations.

Government procurement of works and services based on respective regulations.

Participation of CSOs and their representatives in actions of government bodies.

There are two CSO funding planes – the national and the local. The legal basis for such funding is the Budget Code of Ukraine, Laws of Ukraine covering annual state budgets, Resolutions of the Cabinet of Ministers of Ukraine, regulations of central executive agencies recognising particular CSOs (on a competitive and non-competitive basis).

⁹ Kuts S. "Percentage philanthropy" as a guarantee of the development of civil society, a way toward involvement of citizens and civil society support, a resource of and for civil society in Ukraine. Analytical note on analysis of government policy in the area of funding of civil society organisations / Centre for Philanthropy. [Available electronically from <http://philanthropy.org.ua/chi-mozhliva-vidsotkova-filantropiya-v-ukra%D1%97ni/>].

¹⁰ Law of Ukraine 2460-XII "On Citizens' Associations" dated 16 June 1992 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>].

¹¹ Budget Code of Ukraine 2542-III dated 21 June 2001 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2542-14&p=1288600175262795>].

At the national level, the system of budget funding, in particular, of CSOs is approved by the Verkhovna Rada of Ukraine through the Budget Code of Ukraine, special laws including Laws of Ukraine covering annual state budgets. The Verkhovna Rada of Ukraine establishes the rules of providing financial support for CSOs by local authorities and its possible level (by determining amounts to be retained by local authorities and adopting assumptions with respect to whether interbudget formulae should account for financial relationship between CSOs and local government). Laws of Ukraine covering the state budget annually make specific allocations to support CSOs at the national level.

In most cases, however, the Verkhovna Rada of Ukraine does not identify particular CSOs or make specific allocations for the state to support the same and, instead, determines types of organisations entitled to it. In a similar way, the system operates at the local level where local councils identify particular CSOs to be supported only sometimes. It should be noted that the Verkhovna Rada of Ukraine recognises around 10 CSOs of different types yearly, and local councils identify, on average, from 2 to 20 organisations, depending on a region and local finance.

At the local and national levels, executive agencies determine the procedure and the level of financial support to be given to any CSOs on their own, and tender exercises seem to be formal or even avoided.

Government bodies usually decide to support any organisations in general only sometimes. As a rule, such a decision is made by a government subdivision, and the government only approves the funding procedure. At the local level, the situation is roughly similar – a particular CSO to be supported is identified by an executive department or division of a government body.

Furthermore, funding at the both levels involves the State Treasury of Ukraine as a support regulator that performs two main functions by checking CSO documents directly in the process of funding and prioritising funding by items, based, in particular, on “protected” budget items.

Current laws of Ukraine do not precisely define particular characteristics of funding, financial support to be provided to projects of civil society organisations. In general, though, the legislation addresses this in the Law of Ukraine “On Citizens’ Associations”: “the state approves the list of all-Ukraine civil society organisations in receipt of its financial assistance”. In fact the law imposes status-based limitations on civil society organisations (that have three status types – international, all-Ukraine and local) entitled to financial assistance (it appears to mean subsidies from or statutory funding by the State Budget). This law says that statutory activities of a civil society organisation may be supported only in case it has the all-Ukraine status and does not currently mention any other forms of support for civil society organisations as the main CSO type. This form is thought by most legal experts to mean that the state uses the mechanism of approval to provide financial assistance to CSOs whose activities are needed by the state and meet its interests. Therefore, the basic provision of the law provides the basis necessary to identify priorities of co-operation of the state and CSOs, as well as the basis for the development of the tender mechanism.

The Budget Code of Ukraine recognises three types of CSOs to which state funding can be allocated, in particular:

- disabled people and veterans civil society organisations having the all-Ukraine status;
- civil society youth organisations that are supported to carry out national programmes and activities targeted at children, youth, women, family;
- civil society culture and art groups having the national status.

However, it should be noted that, despite the absence of express references thereto in the Budget Code of Ukraine, other, e.g. Chernobyl organisations (founded by Chernobyl victims) are also funded. In this case, government bodies provide funding based on provisions of other laws permitting the same.

Analysis of the Law of Ukraine “On State Budget of Ukraine 2010”¹² shows that it considers spending on CSOs as follows:

- amounts of funding of particular CSOs in 2010;
- levels of funding of particular CSO types in 2010;
- money to launch CSO project tenders in 2010;
- amounts of funding of actions of government bodies in which, though, CSOs can participate.

Therefore, the State Budget, being the main financial instrument of the state, currently opens the following areas of co-operation between the government and civil society organisations: direct financial support to particular CSOs, CSO funding using special mechanisms, their indirect and potential involvement through co-operation with government bodies.

As regards the use of government money, practical legal instruments currently in force usually are by-laws approved based on the existing system of laws and codes, and resolutions of the Cabinet of Ministers of Ukraine usually establish the procedure of funding activities of any types of CSOs. As a rule, money from the State Budget of Ukraine is allocated for:

- paying wages and remuneration;
- paying fees to international organisations (for example, the Red Cross Society);
- renting premises and equipment, use of public services and energy resources;
- paying transport costs, use of transport services and owned vehicles;
- purchase of low-value or perishable products, materials, equipment and tools;
- maintenance and repairs of equipment;
- maintenance of office equipment, installation and maintenance of software, maintenance of computer programmes, cartridge and toner refill services;
- use of banking, legal, printing services;
- participation in short-term workshops, meetings, training;
- use of mailing, wire, telephone, email services;
- routine repairs;
- insurance and guarding of premises including maintenance of intruder and fire alarm systems;
- covering costs of promoting functionality and activities of institutions of civil society organisations and associations, and improvement of technical condition of premises;
- organisation of mass events, competitions, promoting learning and training process, organisational, methods building and other activities linked to implementation of approved programmes.

These by-laws include a series of Resolutions of the Cabinet of Ministers of Ukraine, decrees of the Ministry of Culture and Tourism of Ukraine, Ministry of Regional Development and Construction of Ukraine, State Committee of Ukraine for Nationalities and Religions, etc.

Also it should be noted that, besides direct funding, the State Budget of Ukraine-2010, similarly to preceding years, allows state and community owned property to be rented outside tendering, if state or community owned property is hired out to culture and art organisations (including national art groups and their members setting up their art studios); veterans organisations; disabled people organisations; centres for occupational and social rehabilitation of the disabled and centres for early social rehabilitation of handicapped children entitled to assistance from the state pursuant to the Law of Ukraine “On the Principles of Social Protection of the Disabled in Ukraine”, articles 14-1 and 14-2¹³.

The Ministry of Labour and Social Policy of Ukraine uses all opportunities provided by applicable laws for CSO funding. Pursuant to the Budget Code of Ukraine, article 87, the ministry uses

¹² Law of Ukraine 875-12 “On the Principles of Social Protection of the Disabled in Ukraine” dated 21 March 1991 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=875-12>].

¹³ Resolution 236 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure of Use of State Funds As Financial Support to Organisations of the Disabled in 2008” dated 26 March 2008 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=236-2008-%E].

allocations to the State Budget to provide direct financial support to all-Ukraine disabled people and veterans civil society organisations. Since 2009, money for disabled people organisations has been distributed employing a semi-competitive mechanism. Furthermore, in 2010 the Law of Ukraine “On State Budget of Ukraine 2010” introduced direct support for Ukrainian deaf society (UTOG) and Ukrainian blind society (UTOS).

The support mechanisms themselves are regulated by the Procedure of Use of Funds established by Resolution 236 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure of Use of State Funds As Financial Support for Organisations of the Disabled in 2008” dated 26 March 2008¹⁴ and Resolution 285 of the Cabinet of Ministers of Ukraine “On Procedure of Use of State Funds As Financial Support for Veterans Organisations and to Visit Military Cemeteries and Memorials in 2008” dated 2 April 2008¹⁵. Resolution 32 of the Cabinet of Ministers of Ukraine “On Procedure of Use of State Funds to Carry Out Particular Programmes in 2009” dated 14 January 2009¹⁶ extended these resolutions into 2009. Pursuant to Resolution 411 of the Cabinet of Ministers of Ukraine dated 9 June 2010¹⁷ and decree 89 of the State Treasury of Ukraine dated 25 May 2004¹⁸, these documents remain in force in 2010.

In accordance with this Procedure, recipients of budget funding are disabled people civil society organisations identified in the Law of Ukraine “On the Principles of Social Protection of the Disabled in Ukraine”, article 12, that have the all-Ukraine status, their local (oblast) divisions, non-production enterprises and divisions of UTOG and UTOS, as well as enterprises and associations of the said societies that use such funding to promote activities of sociocultural subdivisions.

Pursuant to the above Resolution, funding received from the state is used for:

- holding congresses, symposia, meetings, conferences, plenary meetings, rallies, providing trainings, training courses, training workshops, holding festivals, staging exhibitions, concerts, sports events, competitions, provided that disabled people account for at least 60% of the total number of participants, holding round table discussions, events to mark the International Disabled People’s Day (excepting smorgasbords and banquets), and participation of representatives of civil society organisations in these and similar international events;

- training of a chairperson and members of tender committees (maximum 6) of disabled people civil society organisations procuring goods, works and services in a manner prescribed by the law;

- carrying out activities of disabled people civil society organisations as decreed by the President of Ukraine;

- domestic contractual publication of books, manuals, guides, booklets, leaflets, especially, using the braille code, in specialised languages and put to sound, as well as newspapers and magazines dealing with social protection of the disabled, money from selling which is used only for the purposes mentioned in this section;

- supporting non-production enterprises and divisions of UTOG and UTOS, as well as enterprises and associations of the said societies that use such funding to promote activities

¹⁴ Resolution 285 of the Cabinet of Ministers of Ukraine “On Procedure of Use of State Funds As Financial Support for Veterans Organisations and to Visit Military Cemeteries and Memorials in 2008” dated 2 April 2008 [Available electronically from zakon.nau.ua/doc/?code=32-2009-p].

¹⁵ Resolution 32 of the Cabinet of Ministers of Ukraine “On Procedure of Use of State Funds to Carry Out Particular Programmes in 2009” dated 14 January 2009 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=32-2009-%EF].

¹⁶ Resolution 411 of the Cabinet of Ministers of Ukraine “On Procedure of Use of Funding Allocated under Some Budget Programmes to the Ministry of Labour and Social Policy in 2010” dated 9 June 2010 [Available electronically from http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=411-2010-%EF].

¹⁷ Decree 89 of the State Treasury of Ukraine “On Approval of the Procedure of Servicing State Budget Expenditures, Lending and Repayment of Loans” dated 25 May 2004 [Available electronically from http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0716-04].

¹⁸ Decree 89 of the State Treasury of Ukraine “On Approval of the Procedure of Servicing State Budget Expenditures, Lending and Repayment of Loans” dated 25 May 2004 [Available electronically from http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0716-04].

of sociocultural subdivisions, and incentivising of employees at a level not exceeding (including bonuses) 80% of the total funding provided to the said societies;

– supporting disabled people groups within the structure of the all-Ukraine disabled people civil society organisation that provide day care services to people with mental health problems on a special list agreed with the ministry of labour;

– as well as for:

- renting equipment, tools and spaces;
- use of public services based on average rates of consumption;
- use of mailing and electronic communication services;
- routine repairs of tools and premises;
- creation, use and maintenance of a civil society organisation's website, helps, information and accounting programmes, access to email;
- purchasing stationery;
- subscription to and purchase of periodicals, reference, information, analytical and methodical guides on social protection and rehabilitation of the disabled, activities of civil society organisations and accounting;
- incentivising of organisation's employees (at a level not exceeding (including bonuses) 35% of the total funding provided to the civil society organisation),
- spending on this, however, not more than 20% of the total funding given to the civil society organisation.

The State Veterans Committee of Ukraine provides support from the State Budget by directly funding statutory activities of veterans organisations and visits to military cemeteries and memorials. Funding allocated to CSOs is a non-refundable assistance for organisations' activities. Actual monitoring of the use of funding per se is lacking, because there is a general understanding that money is allocated for statutory CSO support. An amount of funding given to a particular organisation is determined solely by political loyalty of the management of a veterans organisation to the government. A size and a number of members of the organisation are a secondary factor¹⁹.

The Ministry of Ukraine for Family, Youth and Sports distributes funding between youth- and children organisations solely on a competitive basis. The tender exercise is undertaken on the basis and in a manner prescribed by Resolution 1062 of the Cabinet of Ministers of Ukraine "On Approval of Tender Procedure for Programmes Drafted by Civil society organisations Aiming Children, Youth, Women, and Family" dated 25 July 2002²⁰.

Presently there is a serious problem resulting from violation of provisions of the Law of Ukraine "On Youth and Children Organisations"²¹ by the said resolution: it contains discrimination provisions that prevent youth organisations having the international and local statuses from participating in the tender exercise, which reduces competition between the participants materially, and thus adversely affects the quality of the proposed drafts. Nevertheless, the number of tendering organisations and the number of submitted drafts increases every year.

The Ministry of Culture and Tourism of Ukraine also uses all 4 lines of funding by directly and indirectly supporting art groups and respective projects of respective civil society organisations and charities.

In line with article 87 of the Budget Code of Ukraine, section 10, paragraph c, State Budget allocations undertaken by the ministry include spending aimed at government support to civil

¹⁹ Assessment of the system of government funding of activities of civil society organisations in Ukraine: Analytical study report / UNITER/PACT. – Kyiv, 2010.

²⁰ Resolution 1062 of the Cabinet of Ministers of Ukraine "On Approval of Tender Procedure for Programmes Drafted by Civil society organisations Aiming Children, Youth, Women, and Family" dated 25 July 2002 [Available electronically from www.uazakon.com/document/spart09/inx09550.htm].

²¹ Law of Ukraine 281-XIV "On Youth and Children Organisations" dated 1 December 1998 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=281-14>].

society culture and art organisations having the national status, especially: National Union of Artists of Ukraine, National Union of Local Lore Experts of Ukraine, National Choreographic Union of Ukraine, National Union of Photographers of Ukraine, National Union of Theatre Workers of Ukraine, National Union of Composers of Ukraine, National Union of Kobza Players of Ukraine, National Union of Cinematographers of Ukraine, National Union of Folk Artists of Ukraine.

The Law of Ukraine “On State Budget of Ukraine 2010” extended the timescale of two budget programmes – “Actions Aimed At Revival of Culture of Ethnic Minorities and Provision of Financial Support to Newspapers in Minority Languages” and “Actions Aimed At Implementation of European Charter for Regional or Minority Languages”. The main distributor of money of these budget programmes is the State Committee of Ukraine for Nationalities and Religions. The Committee allocates funding to support culture and education activities of ethnic minority organisations. Therefore, it can be said that currently the committee gives financial support to civil society organisations using only one instrument – budget funding.

The State Committee of Ukraine for Nationalities and Religions considers government support to be a practical mechanism of implementing government policy in the area of preservation of ethnic identity of minorities. In particular, supported by the state, ethnic minorities have the opportunity to hold culture and art festivals, celebrate days of national culture, organise minority language competitions, stage exhibitions of fine arts, hold conferences, congresses, workshops, publish dictionaries, manuals, guidelines for Sunday schools, handbooks in different languages, compendiums providing information on and analysis of national and cultural development, etc.

At the same time, the list of government funding priorities appears not to include other areas of social life the Committee is responsible for as a government body.

Similarly to other government bodies, the State Committee of Ukraine for Television and Radio Broadcasting uses not only competitive, but also a series of other financial support tools. Pursuant to Law of Ukraine 554/97-VR “On Professional Artists and Artistic Unions” dated 7 October 1997²², within the framework of the budget programme titled “Financial Support to Artistic Unions in the Area of Mass Media”, the said committee provides financial support to the National Union of Journalists of Ukraine, in particular, for statutory activities of the Union’s oblast groups. Similarly to other programmes, decisions are approved by the management of the Committee. The adopted rules and procedures for approval of any spending are limited only by the funding procedure.

Within the framework of another budget programme – “Informing and Cultural Promotion of Crimeans in the Area of Revival and Development of Cultures of Crimean People” – pursuant to Law of Ukraine 2117-XII “Principles of Culture Legislation” dated 14 February 1992²³, resolution 636 of the Cabinet of Ministers of Ukraine “On Measures In Order To Solve Political, Legal, Socio-Economic and Ethnic Problems in the Autonomous Republic of Crimea” dated 11 August 1995²⁴ and resolution 1570 of the Cabinet “On Creation of the All-Ukraine Culture Information Centre in Simferopol” dated 28 December 1996²⁵, the State Committee of Ukraine for Television and Radio Broadcasting funds the above budget-based programme.

There are multiple ongoing tendering programmes on the national level in the area of provision of social services, mini grants and funding of projects/programmes of civil society and charitable organisations, especially:

²² Law of Ukraine 554/97-VR “On Professional Artists and Artistic Unions” dated 7 October 1997 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=554%2F97].

²³ Law of Ukraine 2117-XII “Principles of Culture Legislation” dated 14 February 1992 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2117-12>].

²⁴ Resolution 636 of the Cabinet of Ministers of Ukraine “On Measures In Order To Solve Political, Legal, Socio-Economic and Ethnic Problems in the Autonomous Republic of Crimea” dated 11 August 1995 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=636-95-%EF].

²⁵ Resolution 1570 of the Cabinet of Ministers of Ukraine “On Creation of the All-Ukraine Culture Information Centre in Simferopol” dated 28 December 1996 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1570-96-%EF].

- 1) grants for gifted youth (Decree 945/99 of the President of Ukraine dated 2 August 2000²⁶);
- 2) tenders launched for programmes mapped out by children, youth, women's and family organisations (Resolution 1062 of the Cabinet of Ministers of Ukraine dated 26 July 2002²⁷);
- 3) tenders for funding to deliver social services (Resolution 559 of the Cabinet of Ministers of Ukraine dated 29 April 2004²⁸);
- 4) tenders launched for projects and programmes of civil society organisations in the area of informing the public on European integration (Resolution 956 of the Cabinet of Ministers of Ukraine dated 30 October 2008²⁹).

A weakness of the above regulations is that they determine a tendering process rather schematically. The most precise outline is given of the process of tenders for funding to deliver social services. At the same time, practically all the analysed documents expect the respective central executive agency, in particular, ministries, to adopt specific instruments for their implementation (evaluation criteria, forms of tenders, etc.). The common feature of the above regulatory instruments is delegating functions in the area of running tender exercises to government bodies other than a body that issues such an instrument.

All the above documents anticipate periodic launching tenders. In line with the above resolutions of the government, tender exercises are clearly linked to the budgeting process – their announcement is preceded by approval of national or local budgets that does not always meet today's pressing challenges.

Tenderers are different from case to case. Potential recipients of grants of the President of Ukraine are citizens of Ukraine. When social services are funded from the budget, tenderers are legal persons (except for state and community owned specialised enterprises and institutions and organisations delivering social services) and natural persons entitled to deliver social services professionally. Applicants for carrying out programmes targeted at children, youth, women and family, as well as informing the public on European integration are civil society organisations registered as legal persons.

It should be also noted that the analysed regulatory instruments mostly fail to answer the question, what evaluation criteria for winners actually are, in a clear and unambiguous way.

Recipients of grants of the President of Ukraine and winners of tenders for projects and programmes targeted at children, youth, family and women are funded from the State Budget of Ukraine. Winners of tenders for funding to deliver social services and inform the public on European integration are funded both from the central and respective local budgets.

At the local level, NGOs receive budget funding using the following procedures:

- social contracts;
- tenders launched for social projects (programmes);
- tenders launched for socio-cultural projects;
- tenders launched for projects of civil society and charitable organisations;
- tenders launched for projects and programmes of non-profit organisations.

It should be noted that close co-operation between CSOs and government bodies on the ground is impossible without political will of local authorities and adequate support from a community.

²⁶ Decree 945/99 of the President of Ukraine "On Grants for Gifted Youth" dated 2 August 2000 [Available electronically from zakon.rada.gov.ua/cgiin/laws/main.cgi?nreg=945%2F2000].

²⁷ Resolution 1062 of the Cabinet of Ministers of Ukraine "On Approval of Tender Procedure for Programmes Drafted by Youth, Children Civil society organisations and Their Associations Aiming Children, Youth, Women, and Family" dated 25 July 2002 [Available electronically from uapravo.net/data2008/g2002/list8.htm].

²⁸ Resolution 559 of the Cabinet of Ministers of Ukraine "On Approval of Rules of Tendering for Funds to Deliver Social Services" dated 29 April 2004 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=559-2004-%EF>].

²⁹ Resolution 956 of the Cabinet of Ministers of Ukraine "On Approval of Civil society organisations Tendering to Carry Out Projects and Programmes In the Area of Informing the Public on European Integration" dated 30 October 2008 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=956-2008-%EF>].

In practice, however, issues related to local budget funding of projects of civil society and charitable organisations often arise. If a community fails to develop and adopt particular targeted programmes that are mostly not referred to in respective provisions/guidelines and instruments regulating tendering process, the grounds for funding projects of entities that neither allocate budget funding nor implement targeted programmes appear to be doubtful.

At the level of Ukrainian cities, documents are presently approved and in force, that widely vary in their complexity, structure and quality – from rather detailed and complex descriptions of procedures to declarative documents that do not regulate any procedural issues practically at all.

Models of social contracting and municipal grants currently widespread in Ukraine are aimed at providing both general support to community beneficial activities of NGOs that often follow social lines and support to specific target groups, especially, young people, or direct involvement of NGOs in delivery of social services. Hence, local NGO funding models in force in Ukraine can be conditionally split into implementation of the system of municipal grants and use of social contracting mechanisms.

One of the main mechanisms ensuring implementation of strategies and concepts of the country's socio-economic development is, in particular, development, approval and carrying out of targeted programmes at different levels. They are used for fulfilment of the regulatory requirement for planning and prediction of delivery of social services, tackling of particular problems on the ground requiring central and local budget funding.

At the regional level, the existence of a problem requiring use of budget funding, co-ordination of combined activities of local executive agencies and local authorities, enterprises, institutions and organisations, provision of real resources for carrying out planned activities by the local budget make it possible to implement respective local programmes at oblast, region, city or town levels.

The Procedure for Engaging Citizens in Making and Implementation of Government Policy approved by Resolution 10 of the Cabinet of Ministers of Ukraine dated 6 January 2010³⁰ introduces mandatory public consultations on national and regional economic, social and cultural development programmes, implementation status decisions. Therefore, the state aims at engaging citizens and CSOs in making and implementation of government policy, monitoring of activities of government bodies, access to information.

The issue of funding targeted programmes in Ukraine is regulated by the Law of Ukraine "On Targeted Government Programmes"³¹ saying that the Targeted Government Programme is a system of interconnected actions aimed at coping with the most important challenges in development of the state, particular economic sectors or administrative units, that is funded from the State Budget of Ukraine and agreed in terms of its timelines, implementers, resources.

Aiming at implementation of provisions of the above law, the ministry of economy of Ukraine developed the relevant decree³² approving recommendations as to methods of mapping out targeted regional programmes, their monitoring and reporting. This provision says that the targeted regional programme is an aggregate of interconnected tasks and actions agreed in terms of its timelines and resources with all implementers and aimed at coping with the most important challenges in development of the region or particular economic or socio-cultural sectors of the region, that is funded from the local budget and is a component of respective annual programmes of socio-economic development of the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol Cities.

³⁰ Resolution 10 of the Cabinet of Ministers of Ukraine "On the Procedure for Engaging Citizens in Making and Implementation of Government Policy" dated 6 January 2010 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=10-2010-%EF].

³¹ Law of Ukraine 1621-IV "On Targeted Government Programmes" dated 18 March 2004 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1621-15>].

³² Decree 367 of the Ministry of Economy of Ukraine dated 4 December 2006 [Available electronically from <http://www.yurist-online.com/zakoni/007/04/012399.php>].

The programme is deemed to be integrated, if it combines multiple related programmes within the respective sector and provides for their funding under multiple codes of functional classification of local spending.

The initiator of development of programmes can be a local executive agency, local authority.

The programme is developed based on:

- existence of a regional problem requiring use of budget funding, co-ordination of combined effort of local executive agencies and local authorities, enterprises, institutions and organisations, provision of real resources for carrying out planned activities by the local budget make it possible to implement respective local programmes at oblast, rayon, city levels;
- provision of real resources for carrying out planned programme activities by the local budget and meeting regional development priorities by the aim of the programme.

Priorities for involvement of civil society organisations in regional development programmes can be:

– mobilisation of local communities and transformation of their needs into programmed provisions;

– organisation of protection of user rights;

– development of regional trade unions in line with EU standards;

– monitoring of policy and practice of local authorities and donors;

– implementation of socially-oriented projects, delivery of social services;

– analysis of needs of local communities and making them known to government bodies, proposals of respective projects and their implementation.

Having outlined the legal ground where process of CSO funding by government bodies and local authorities is regulated, we can not ignore practices and problems arising in the process of government funding. On 16 December 2009 in Kyiv, the Ukrainian Centre for Independent Political Research conducted a thorough research – in-depth interview “Assessment of the system of government funding of activities of civil society organisations”³³ the main objective of which was to research the assessment of problems arising in the process of government funding of projects and programmes of civil society organisations by their heads. The target group of this focus group research was selected civil society organisations having experience of receiving government funding for their projects. The organisations’ representatives were selected from civil society organisations that, according to information placed on websites of central executive agencies of Ukraine, received government funding in 2007-2009.

General discussion confirmed that ministries and other executive agencies prioritise CSO project funding based on purely departmental responsibilities. Participants said that project selection criteria and transparency of ministerial decision-making remained obscure to most organisations.

For example, the Ministry of Emergencies of Ukraine does not invite CSOs to tender, and continually works with a few all-Ukraine civil society organisations. A particular amount of funding is considered based on the annual application by the organisation and consultations with representatives of the ministry.

Allegedly in order to ensure intended use of money and prevent duplication of assistance, the said ministry requires each individual receiving government assistance to be a member of the All-Ukraine organisation, Chornobyl Union of Ukraine, and submit membership application in the individual’s home rayon or city. Such a requirement directly contravenes the applicable Law of Ukraine “On Citizens’ Associations”³⁴, article 2, but protects partners of the ministry against competition.

³³ In-depth interview “Assessment of the system of government funding of activities of civil society organisations” [Available electronically from <http://www.ucipr.kiev.ua/modules.php?op=modload&name=News&file=index&catid=26&topic=>] / Ukrainian Centre for Independent Political Research. – 2009.

³⁴ Law of Ukraine 2460-XII “On Citizens’ Associations” dated 16 June 1992 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>].

At the beginning of the year, the tender commission of the Ministry of Labour and Social Policy of Ukraine reviews funding proposals (tenders). Composition of the commission is approved by the minister's decree. The tender commission includes one annually rotating representative of civil society organisations; other members of the commission are from respective departments of the ministry.

The Law of Ukraine "On the Principles of Social Protection of the Disabled in Ukraine"³⁵ binds the state to provide financial support to all-Ukraine disabled people civil society organisations. In order to select some of dozens of such organisations, the Ministry of Labour and Social Policy of Ukraine analyses the work of applicant civil society organisations over the preceding year. Furthermore, the Ministry of Justice of Ukraine is requested to prove their all-Ukraine status, and should the status of some organisations not be proved, they might not be entitled to government funding.

The largest part, especially, means for incentivising employees, continually falls to UTOG and UTOS, and other civil society organisations are thought by participants in the discussion to be funded by the Ministry of Labour and Social Policy of Ukraine applying the residual principle. Besides tenders, each organisation receiving government funding from the said ministry should write questionnaires for their own programmes. As a rule, the ministry support unique activities, and if similar activities are proposed by multiple organisations, the ministry decides whom to support at its discretion.

According to those interviewed, composition of the tender commission of the Ministry of Ukraine for Family, Youth and Sports is changed every year by the minister's decree. The commission should include representatives of civil society youth organisations. Representatives of organisations submitting projects were previously banned from participation in the tender commission, but this ban, in fact, is not complied with. In the process of tenders launched for youth organisations, projects are submitted and justified to the tender commission by managers of organisations or projects personally. At the same time, participants in the discussion confirmed that the number of allocations of government funding to organisations that did not receive it previously increases every year.

As a rule, ministries other than the Ministry of Ukraine for Family, Youth and Sports do not contract with CSOs whose projects were supported. For example, the Ministry of Labour and Social Policy of Ukraine issues a decree approving the checklist on the budget programme. The first deputy minister approves plans of the use of funding for the civil society organisation (the third counterpart of the document is delivered to the treasury).

As regards possible improvement of the procedure, the ministries do not have any "one-stop shop" for the tender process, therefore, documents are to be visaed by different officials and even at different offices. Furthermore, an excessive number of documents are to be notarised. This takes a lot of time and even sometimes hampers tendering.

Those interviewed also repeatedly confirmed that government funding of CSO projects significantly differs from procedures prescribed by law. At the same time, government funding procedures are departmentally specific on such important issues as payment timelines, CSO contribution requirements.

For example, at the beginning of the year the Ministry of Labour and Social Policy of Ukraine issues an allocation plan, an approval of the checklist on the budget programme, and a limitation. On official request, the Ministry of Finance of Ukraine transfers money to a CSO account. If budget money is not received on the account, it becomes the organisation's accounts payable, but this does not help CSO activities in any significant way.

Furthermore, budget allocations are rather conditional: only 50% of the budgeted amounts is paid actually. Advances are not currently applied, though in 2007-2008 such a practice was usual, which undoubtedly suited most CSOs.

³⁵ Law of Ukraine 875-XII "On the Principles of Social Protection of the Disabled in Ukraine" dated 21 March 1991 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=875-12>].

Participants in the discussion also confirmed that no ministry covers 100% of costs of civil society organisations, and it has been continually emphasised that CSOs can receive grants, set up subsidiaries, and have other sources of additional funding. Therefore, their own contribution is virtually critical for receiving government funding. As a rule, contribution of CSOs accounts for 25% of funding of youth organisations, and organisations have to carry out some activities using only their own money. In some projects, such a contribution is too large.

The Ministry of Ukraine for Family, Youth and Sports requires the contribution to be in the form of money rather than volunteering, use of equipment, etc. For example, CSO contribution can be accepted as rent by the organisation or its partners.

A significant problem also arises from lack of periodic budget tranches (in contrast to grants from international organisations) which compels organisations to use their own money much of the year or even all year long. Budget funding is distributed without assessing needs of disabled people and other target groups, and organisations simply try to break down annual allocations month by month.

Furthermore, the above interview conducted by the Ukrainian Centre for Independent Political Research confirmed that the State Treasury applies daily limits to funding of the so called “unprotected” expenditure. Budget classifiers do not place government support given to programmes and projects of civil society organisations among protected expenditures, and thus, CSOs have to divide maximum possible costs between such protected items as wages (code 1111), public services (code 1160), catering provided to participants, etc. This reduces effectiveness of many activities significantly.

For example, the Procedure for Use of State Funds to Provide Financial Support to Disabled People Civil Society Organisations³⁶ allocates up to 35% of budget funding to incentivising employees of the organisation. But respective code – 1310 – of the budget classifier does not belong to protected expenditures, therefore, CSOs can not virtually use this money before the end of financial year.

Treasury agencies can retain notes to pay unprotected expenditures for up to 10 days, until the permission is given, which prevents organisations from carrying out many activities practically at all.

The above Procedure imposes many unreasonable restrictions on uses of funding. For example, it recognises only renting, and not purchase and repairs of fixed assets (code 2000), office equipment, etc. It is also problematic to civil society organisations to fulfil some other requirements of the Procedure, such as participant quotas fixed at minimum 60% of disabled people.

Currently, there are also wide differences in departmental practices of reporting, control, monitoring and assessment of CSO projects. In particular, quarterly and annual reporting to the Ministry of Emergencies of Ukraine is assumed to be simple and quite adequate, and does not result in any conflicts between CSOs and ministerial departments.

Reporting to the Ministry of Labour and Social Policy of Ukraine allows government officials to understand CSO activities in general, evaluate effectiveness of the use of money and outcomes of particular activities. However, it is much more in scope than in case of the Ministry of Emergencies.

Reporting requirements of the Ministry of Ukraine for Family, Youth and Sports are neither excessive. On the ministry’s website, there is a special electronic page where civil society organisations receiving state funding publish their reports on their own. Such a condition is included in contracts, and copies of what organisations publish on the page should be attached to their reports.

Organisations submit mandatory reports at the end of projects – due to special timelines of state funding the reporting takes place as a rule in the second half of the year. If projects are limited to

³⁶ Resolution 236 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Use of State Funds to Provide Financial Support to Disabled People Voluntary Organisations in 2008” dated 26 March 1998 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=236-2008-%EF>].

particular activities (conferences etc.), reports are submitted in one-two months. Project reports are often published by civil society organisations or their partners on their own websites. Websites of all the above ministries contain plans of actions determining participation of particular CSOs.

Participants in the discussion confirmed that the Ministry of Finance of Ukraine's Control and Audit Department continually controls the use of budget funding pursuant to law.

Programmed (operational) control mainly covers particular activities involving representatives of ministries producing their own reports. However, due to limited funding of similar expenditures from the budget, this control is rather formal.

For example, whilst CSOs did not previously provide the Ministry of Labour and Social Policy of Ukraine with any information to be used in assessment of effectiveness of activities, now provision of information on activities carried out is mandatory, in the same way as invitation of the ministry's representatives writing separate conclusions. However, the assessment of effectiveness of activities is rather formal, uses a score system and does not deal with qualitative changes.

Currently, the prevalent view among CSOs is that a special resolution of the Cabinet of Ministers is needed for all the ministries to use a common tendering process to be based on approved priorities. But, although unified rules must also allow for moves of individual ministries to some extent, the problem is how to avoid duplication of departmental functions.

Importance of the research and use of practical experience of European countries in the area of state funding of projects of civil society organisations has been emphasised more than once already, but Ukraine continues to fund networks of such organisations or cover protected expenditures rather than delivery of particular services by CSOs.

2.2. Funding from the private sector and individual citizens

Civil society organisations receive around one-third of funding in the form of money and property given by private donors – legal and natural persons – as a non-refundable financial assistance (see table 1).

CSO incomes from non-refundable assistance varies very immaterially, for example, they slightly increase in years of presidential or parliament elections or decrease when tax reliefs cease to be given on other CSO incomes.

Pursuant to applicable laws (Law of Ukraine "On Enterprise Profit Tax", article 1, section 1.22)³⁷, non-refundable financial assistance to CSOs includes:

1) money transferred under gift and other contracts not requiring compensation or repayment of money (except for budget grants and subsidies), or without entering into these contracts;

2) bad debts repaid after their writing off, if these bad debts were previously incorporated into total costs of the lender;

3) debts to another person not recovered within time limits allowed for claims (as a rule, these are three years);

4) a loan or deposit given without setting time limits for repayment of the principal sum, other than loans secured with unlimited bonds and call deposits with banks, including interest on the loan or deposit;

5) interest conditionally charged on refundable financial assistance not repaid by the end of the reporting quarter at a rate fixed by the National Bank of Ukraine on the day of actual use of such non-refundable financial assistance.

Sometimes donor enterprises want their contribution to CSO activities to be publicised. However, it has been not decided so far, whether income from sponsorship – publicising the name or trademark of the sponsoring enterprise – should be regarded as non-refundable financial assistance.

³⁷ Law of Ukraine 334/94-VR "On Enterprise Profit Tax" dated 28 December 1994 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=334%2F94-%E2%F0&p=1288600175262795>].

Though it is funding in the form of money that prevails in Ukraine, its specific type is also distinguished – goods and services delivered to CSOs free of charge (Law of Ukraine “On Enterprise Profit Tax”, article 1, section 1.23)³⁸, that include:

1) goods delivered as gifts and under other contracts not requiring monetary or any other compensation of value of tangible and intangible assets or their return, or without entering into such contracts;

2) works and services delivered without requiring compensation of their value;

3) goods put in trust that are used by CSOs in their production or business turnover.

CSO representatives and experts have again and again pointed out that inadequacy and instability of tax incentives created for local private donors, especially, legal persons, are the main obstacle to fundraising by CSOs.

Pursuant to the Law of Ukraine “On Enterprise Profit Tax”, total costs of enterprises paying income tax at the standard rate may incorporate value of money or property delivered to CSOs free of charge that amounts to 2-5% of taxable profit gained in the previous reporting year, as well as up to 10% of taxable profit in case of providing assistance to enterprises of all-Ukraine associations of Chernobyl victims in which employment of such persons is at least 75%, and charitable activities of such associations³⁹.

However, the above reliefs given to donors are a necessary, though apparently insufficient move of government policy, should its expected outcome be more stable funding of Ukrainian CSOs by local donors. At the same time, the Tax Code that passed its first reading this year and *virtually destroys the simplified taxation and accounting system and thus jeopardises the very existence of small and a large part of medium business will result in the closure of over 60% of private entrepreneurs (as shown by the survey on the Private Entrepreneur website⁴⁰), which would adversely affect contributions from private donors as a source of CSO funding.*

Furthermore, giving money or property does not currently change tax liabilities of legal persons and entrepreneurs that chose to use the simplified taxation system. That is, they can fund CSOs only using their net profit. Nevertheless, before adoption of the law on the simplified system of taxation of small businesses, government policy is unlikely to undergo any changes, though profit accounting and taxation need to be more specific (e.g. profits from tours and other charity events CSOs benefit from).

In Ukraine, many entrepreneurs and enterprises state zero profits or losses every year. Contributions to CSOs may not be incorporated into losses or total costs where profit is not gained, therefore, a large group of local donors can not legally fund CSOs by making charitable donations altogether.

Should government policy be aimed at achieving not only short-term fiscal outcomes but also more transparency in financial activities of CSOs, such a situation can not be justified. In general, international experience shows that actual level of support given to charities and non-profit organisations by the business does not depend on provision of tax reliefs and the presence of stated profit. However, transparency and possible monitoring of intended use of this assistance mainly depend on adequate government policy. In our country, business structures would better make charitable donations from their own net profit than use such reliefs.

In many countries, CSO funding benefited from regulations incorporating CSO contributions amounting to 0.2-0.3% of total income of donor enterprises into their total costs. The similar option based on donor’s costs as paying wages and remuneration is already in place in Ukraine pursuant to the Law of Ukraine “On Enterprise Profit Tax”, but it applies only to contributions to employers’ organisations that also have civil society status. This relief can be also used by making

³⁸ Law of Ukraine 334/94-VR “On Enterprise Profit Tax”, article 5, section 5.2., dated 28 December 1994 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=334%2F94-%E2%F0&p=1288600175262795>].

³⁹ Law of Ukraine 334/94-VR “On Enterprise Profit Tax”, article 5, section 5.2., dated 28 December 1994 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=334%2F94-%E2%F0&p=1288600175262795>].

⁴⁰ [Available electronically from http://www.chp.com.ua/persp_43.php].

charitable contributions to CSOs and budget-funded organisations and institutions that also have non-profit status. Therefore, in fact, CSOs have often to compete for limited resources with budget-funded institutions, which does not only undermine their financial stability, but also can give rise to negative attitudes towards co-operation between CSOs and government bodies and cause a conflict of interest within some government bodies.

Given practical experience of co-operation between Ukrainian CSOs and their local donors, relatively more effective means for fundraising are those provided by social marketing, that is, selling goods and services with deducting a part of the price for specific social projects of CSOs. In particular, they include different charity events, such as raffles, sellouts to the highest bidders, discount and debit cards, bonuses and tickets promoting aims and logos of CSOs in the process of selling goods and services by business companies or entrepreneurs⁴¹.

Article 1 of Law of Ukraine 531-97/VR “On Charity and Charitable Organisations” dated 16 September 1997⁴² says that charitable activities are voluntary non-profit donations by natural and legal persons to provide material, financial, organisational and other charitable assistance to recipients; specific charitable activities are patronage and sponsorship.

Imposition of value added tax on charity transactions will depend on what type of organisations receive charitable assistance from the enterprise – non-profits or profits. If charitable contributions go to profit organisations, tax is charged on charitable contributions in the same way as in case of delivery free of charge. However, since goods (works, services) are purchased for charitable purposes, based on the Law of Ukraine “On Value Added Tax”⁴³, subsection 4.4, there will not be any entitlement to a tax credit equal to value added tax (VAT) on the value of these goods will not arise.

Subsection 5.1.21 of the VAT Law gives a tax relief on charitable contributions to non-profit organisations listed in the Law of Ukraine “On Enterprise Profit Tax”, subsection 7.11.1, paragraphs “a”, “b”, “f”. Charitable delivery of goods, works, services to such organisations is exempt from VAT. However, this relief is given subject to meeting certain conditions.

Firstly, the provided charitable assistance should not have any implications of compensation by its recipient. Otherwise, this will be considered to be deliberate avoidance of taxation by the provider of charitable assistance. Secondly, recipients of charitable assistance shall comply with the requirements of the Procedure for Distribution of Goods Received as Charitable Assistance and Control Over Targeted Distribution of Charitable Assistance in the Form of Delivered Services or Performed Works approved by resolution 1295 of the Cabinet of Ministers of Ukraine dated 17 August 1998⁴⁴.

VAT exemption does not apply to charitable donations of excisable goods (works, services), securities, intangible assets and goods (works, services) destined for business use, as well as those imported into the customs area of Ukraine, except for goods under international treaties that were given assent by the Verkhovna Rada of Ukraine.

Based on subsection 7.4.2 of the VAT Law, an enterprise that donates goods and has VAT credit is not entitled to VAT credit on purchase of these goods.

In case goods are purchased for the purpose of their further use in taxable transactions that are part of the taxpayer’s business, and to further provide charitable assistance to non-profit organisations referred to in subsection 5.1.21 of the VAT Law, and VAT is incorporated into the VAT

⁴¹ Analytical report “Funding of Civil Society Organisations (CSOs) in Ukraine”, 2006 [Available electronically from <http://www.ucipr.org.ua/modules.php?op=modload&name=News&file=article&sid=5368&mode=thread&order=0&thold=0>].

⁴² Law of Ukraine 531-97/VR “On Charity and Charitable Organisations” dated 16 September 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=531%2F97-%E2%F0&p=1288600175262795>].

⁴³ Law of Ukraine 168/97-VR “On Value Added Tax” dated 3 April 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=168%2F97-%E2%F0&p=1288600175262795>].

⁴⁴ Resolution 1295 of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Distribution of Goods Received as Donation and Control Over Targeted Distribution of Donations in the Form of Delivered Services or Performed Works” dated 17 August 1998 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1295-98-%EF>].

credit, then in accordance with the last paragraph of the VAT Law's subsection 7.4.1, this tax is charged on standard price of goods delivered as charitable assistance.

If an enterprise states VAT as a component of a VAT credit as buying materials to be used in making of finished products that will be delivered as a charitable assistance, VAT is charged on a part of materials used to make products delivered for charitable purposes.

The taxpayer's total costs include money or value of goods (works, services) voluntarily transferred (delivered) to the State Budget of Ukraine or local budgets, non-profit organisations referred to in the Law of Ukraine "On Enterprise Profit Tax"⁴⁵, section 7.11, in the reporting year, money transferred to legal persons including non-profit organisations that are founders of a permanent arbitration court, exceeding 2%, but not exceeding 5% of taxable income received in the preceding reporting year, except for contributions referred to in subsections 5.6.2 and 5.2.17 of the law.

Pursuant to subsection 7.11.1 of the above law, non-profit institutions and organisations include:

a) government bodies of Ukraine, local authorities and institutions or organisations that are established by them and rely on funding from respective budgets;

b) charities established in a manner prescribed by law to carry out charitable activities, including civil society organisations created in order to carry out environmental, recreation, amateur sports, cultural, educational and research activities, as well as art groups and political parties, disabled people civil society organisations and their local groups set up pursuant to the Law of Ukraine "On Citizens' Associations"⁴⁶, research institutions and accredited universities (levels 3 and 4) that are on the State Register of State-Supported Scientific Institution, preserves, museums;

c) legally established pension funds, credit unions;

d) legal persons other than those referred to in paragraph "b" of this subsection, whose activities are not aimed at gaining profit in line with provisions of respective laws;

e) unions, associations and other groups of legal persons that are established to represent interests of their founders, rely solely on contributions by such founders, and do not conduct any business, except for receiving passive income;

f) legally registered faith-based organisations;

g) legally set up housing co-operatives, groups of co-owners of blocks of flats;

h) legally established professional groups, their associations and trade unions.

Depending on the status of a non-profit organisation, subsections 7.11.2-7.11.14 of the Law of Ukraine "On Enterprise Profit Tax" identify types of income exempt from profit tax.

Therefore, an enterprise that gave money or goods, works, services is entitled to incorporate these into total costs, provided that they exceed 2% and not exceed 5% of taxable income received in the past reporting year. The donor can refer to "relief-giving" subsection 5.2.2 of the Law of Ukraine "On Enterprise Profit Tax" subject to the evidence of the recipient's non-profit status. Non-profit evidence is a copy of a decision to put the organisation (institution) on the Register of Non-Profit Organisations (institutions), remove it from or not to put it on the Register (hereinafter called the Decision) made in a form shown in appendix 2 to the Provision on the Register of Non-Profit Organisations and Institutions approved by decree 232 of the State Tax Administration of Ukraine dated 11 July 1997⁴⁷.

Charitable activities of private persons in Ukraine are gradually beginning to develop due to fundraising actions and campaigns undertaken by civil society organisations⁴⁸. Unfortunately, quite

⁴⁵ Law of Ukraine 334/94-VR "On Enterprise Profit Tax" dated 28 December 1994 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=334%2F94-%E2%F0&p=1288600175262795>].

⁴⁶ Law of Ukraine 2460-XII "On Citizens' Associations" dated 16 June 1992 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>].

⁴⁷ Decree 232 of the State Tax Administration of Ukraine "On Approval of the Form of Report on the Use of Money of Non-Profit Organisations and Institutions and the Guidance on Filling It Out" dated 11 July 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0290-97>].

⁴⁸ Whether percentage philanthropy is possible in Ukraine [Available electronically from philanthropy.org.ua/chimozhliva-vidsotkova-filantropiya-v-ukraïni] / Centre for Philanthropy.

few citizens are interested in social life because of a low standard of living, though people's interest in civil society is growing, in the first place, due to brisk political life of Ukraine. Private charitable activities are carried out in several ways: those from rich groups establish their own charitable structures mainly aimed at promoting their own image. In contrast, some rich citizens engage in charitable activities anonymously. However, resources of such funds are generally inaccessible to civil society organisations because donors are willing to contact with recipients directly. Another way is to engage in charitable activities through small donations by wide groups of people, which takes place at the level of a community and is often stirred in response to social crises or organisations' moves. One more way that can not be termed charitable activity in the true sense of the word is membership subscriptions (some CSOs, especially, trade unions rely on membership subscriptions). Unfortunately, receiving private donations is rather complex procedure, technically. There are only two ways available to organisations to collect donations – cashless, when money is transferred to the organisation's settlement account, or in cash, when money is given to the cashier of the organisation. The both ways are technically embarrassing, especially, to donors.

The state supports private charitable activities by giving a tax relief amounting to 2-5% of the annual taxable income to natural persons⁴⁹. However, this provision is limited to taxpayers, applies only to wages and does not allow for interests of the retired, non-working people, natural persons conducting business. This provision neither applies to non-profit membership subscriptions. Therefore, donating natural persons do not exercise their right to be given a tax relief on their donations and other contributions to CSOs practically at all. Taking into account low income tax rates set for natural persons and their absolute incomes in the form of wages, tax reliefs given to donating natural persons in Ukraine are not considered to be critical for CSO funding. This also applies to Ukraine's potential use of provisions covering the so called "percentage philanthropy" widespread in Central and Eastern Europe. Here a natural person may ask tax agencies to deduct a percentage of a tax charged on the person's income in favour of community benefit organisations recognised by law.

Furthermore, natural persons provide assistance to CSOs mainly in the form of free-of-charge services and volunteering that are not currently included in tax returns and national statistics. Ukraine has already a few regulations in force that cover volunteers. However, a special Law is still lacking, in contrast to, for example, Spain, despite attempts to pass it. In particular, the draft Law of Ukraine "On Volunteering" was introduced to the Verkhovna Rada of Ukraine in 2007. So far, the legal status of volunteers is in fact uncertain and brings CSO staff, elected officials and providers of free-of-charge services under the same category.

The Civil Code of Ukraine provides CSOs with strong funding opportunities also under succession law (wills, claims and contracts of succession, as well as will-based establishments)⁵⁰. But since 2004 when this code came into force, too little time has passed for the practice to become common in Ukraine.

2.3. Funding from delivery of paid services

Tackling CSOs' financial sustainability problems is negatively affected in a considerable way by de facto prohibition (with some nuances) of conduct of business.

The Law of Ukraine "On Citizens' Associations"⁵¹ allows civil society organisations to engage in business activities only by establishing self-governing institutions and organisations having

⁴⁹ Law of Ukraine 889-IV "On Personal Income Tax", article 5, section 5.3.2, dated 22 May 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=889-15&p=1288600175262795>].

⁵⁰ Civil Code of Ukraine 435-IV dated 16 January 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=435-15&p=1288600175262795>].

⁵¹ Article 24 of Law of Ukraine 2460-XII "On Citizens' Associations" dated 16 June 1992 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>].

the legal status. At the same time, while this is allowed by the Economic Code of Ukraine, CSOs shall use the gained profit for statutory purposes. In practice, this sometimes results in an one-sided interpretation of applicable legislation by tax agencies, and thus some CSOs lose their non-profit status. In its turn, this limits sources of funding and undermines financial sustainability of organisations. Complicated process of registration of business activities of civil society organisations departs from the practice of advanced countries where non-profits are entitled to the same subject to the use of profits for statutory activities, without any other limitations and interpretations.

As addressing issues related to regulation of CSO activities and their taxation, one should very precisely know what such activities are. CSOs can have a bank account, investments in securities and other investments producing income in the form of dividends and increase in market value. There are also periodic activities such as charity lotteries and auctions. However, the above activities are considered to be a sort of attracting contributions and are also non-business. For example, museum entry fees or charges for services of a charity medical centre are not seen as a trade or business activities, and mostly are token. Tax laws of some countries expressly state that incomes from such sources are non-business, and though other laws say nothing about it, it is a tradition.

As regards business in such areas as selling goods and delivery of services, it is difficult to determine whether such activities are not-for-profit. For example, work for physically handicapped persons is aimed at employment rather than conduct of business and gaining profit. Furthermore, increasingly more organisations work under contracts binding them to deliver goods and services to third parties (for example, educational programmes), and these organisations themselves see these activities as principal.

In some countries, for instance, in Poland, non-business and business activities can be carried out by the same organisation, whilst in other countries, for example, in Great Britain, only a CSO's subsidiary can have business activities. But anyway, profit tax is not paid. French CSOs can not engage in business activities, so there is simply no taxation.

In most countries, CSOs are allowed to conduct business to support their principal activities, however, subject to two conditions being met: the organisation's profit is not distributed and is used for principal activities; the organisation is established and exists in order to achieve non-business aims. A criterion proposed to assess when NPO can engage in business activities is termed the "principal aim". Based on this criterion, NPO conducting business that accounts for more than one half of its activities loses its status and reliefs⁵².

An alternative is the "income aiming". According to this criterion, the organisation would be given reliefs as long as the income from business activities is used for achievement of humanitarian aims. The latter concept has been traditionally thought to be better, because it becomes possible to develop the non-profit sector of transitional economies. However, the problem is nothing but taxation, the global practice of taxation covers the whole spectrum of possibilities, from prohibition of business activities to allowing them without any limitations. In Bulgaria, business profit is taxed irrespective of its use; in Poland, profit used for achievement of NPO aims is non-taxable.

Allowing non-governmental organisations to conduct business in order to support their statutory activities is very important, especially, in countries with underdeveloped private capital. The conduct of business permission can considerably support the non-profit sector in the recession. The main problem with regulation of taxation of NPO activities is defining limits and scope of activities a non-profit organisation can engage in. In general, non-profits compete with businesses not only in the market, but also for government contracts. The main argument against tax reliefs on non-principal activities of NPOs is the risk of undermining activities of the business sector.

⁵² Legislative regulation of activities of non-profit organisations: Global experience and recommendations for Ukraine [Available electronically from http://www.parlament.org.ua/index.php?action=publication&id=8&ar_id=42&as=0] / Laboratory for Legislative Initiatives. – 2001.

An important source of financial strengthening of CSOs can become delivery of paid services, especially, to the state. Government procurement processes can involve any legal persons including CSOs. These processes are mandatory, if the procurement cost exceeds 100,000 hryvnias (goods), or 300,000 hryvnias (works) (Law of Ukraine 2289-IV “On Government Procurement” dated 1 June 2010⁵³).

Currently, CSOs participate almost solely in open tendering processes having a regulatory framework that is the largest among six legal processes (closed tenders, two stage tenders, quotations, single contractor schemes). Involvement of CSOs in the tendering process is limited by several factors. Firstly, contractor qualification requirements allow most CSOs to be directly or indirectly excluded from tendering based on territorial status, the number of staff or non-provision of a tender guarantee (a percentage of the procurement cost). Great number of business activities are also subject to licensing or certification by the state and are to be entered in special state registers which does not always allow CSOs to remain non-profit.

One of conditions to government funding of CSOs that deliver social services or participate in processes of government procurement of other services are the absence of debts to the budget and availability of an auditor’s opinion. Writing off and delayed paying debts to budgets and targeted government funds being prohibited, it is not so easy for small CSOs to comply with these quite justified requirements.

The Law of Ukraine “On Amending Some Laws of Ukraine Aimed At Simplifying Conduct of Business in Ukraine”⁵⁴ repeals particular provisions of the Law of Ukraine “On Social Services”, especially:

- “non-government entities willing to professionally deliver social services relying on their own money, attracted money or funding from the central and local budgets, shall deliver them under a license in a manner prescribed by the Cabinet of Ministers of Ukraine”;
- “professional activities in the area of delivery of social services are subject to licensing in a manner and order prescribed by the Cabinet of Ministers of Ukraine”.

This law creates more favourable environment for CSOs, enterprises and institutions set up by them to deliver social services than it was previously thanks to the following changes:

- reduction of the minimum level of chartered capital of limited liability companies from 100 minimum wages to one (from 66,900 hryvnias to 907 hryvnias (as of 1 October 2010)), which correlates with the European approach;
- setting a minimum five-year period for renting state and community owned property (except when a tenant proposes a lesser period);
- establishing a moratorium on increase of the current state property rental by January 2011;
- change in licensing business activities involving some civil society organisations and their enterprises since 28 February 2010;
- cancellation of the requirement for licensing of CSO activities in the area of social services;
- limitation of the period of issue of permissions (to 10 business days);
- applying the following principle to all the permissions: when a permission or ineligibility notice is not issued within ten days, the permission is deemed to be obtained without the receipt of a respective document.

Certainly, these changes are positive, but they do not suffice to create an environment that would favour CSO functioning and activities aimed at delivery of these services. It should be noted that information on charity events and social services is not recognised as social advertising, and thus is not exempt from taxes. The Law of Ukraine “On Renting State and Community Owned Property”⁵⁵ requires all CSOs, excepting culture and art groups, veterans and disabled people

⁵³ Article 2 of Law of Ukraine 2289-IV “On Government Procurement” dated 1 June 2010 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1288600175262795>].

⁵⁴ Law of Ukraine 1759-IV “On Amending Some Laws of Ukraine Aimed At Simplifying Conduct of Business in Ukraine” dated 15 December 2009 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1759-17>].

⁵⁵ Law of Ukraine 2269-12 “On Renting State- and Community-Owned Property” dated 10 April 1992 [Available electronically from <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2269-12>].

civil society organisations, to tender for renting state and community owned property they will use to carry out their activities. CSOs that won project tenders are not allowed to rent premises they need in order to engage in their activities without an additional tender exercise. Furthermore, governmental standards and provisions covering quality of delivery of social services are lacking so far, and there are not government programmes in place to provide training and certification of volunteers delivering social and community benefit services on the long-term basis⁵⁶, which, in its turn, also hampers the development of the market of social services.

Ukrainian budget laws leave delivery of social services to government institutions a priori. Consequently, the whole budget policy is aimed at maintaining budget-funded institutions and their orientation to the needs of citizens, though, there are some positive trends in funding CSOs willing to deliver such services.

However, the legislation and political will of deputies limit CSO's access to government funding (in fact, it mostly comes only through local budgets), and thus the state budget does not provide for conditions and size of subventions aimed at carrying out targeted social service delivery programmes. Only 10% of Ukrainian cities fund CSOs delivering social services by launching social project tenders, which ensures more transparency and effectiveness of their activities and their orientation to the citizens' needs. Other communities distribute money "manually"⁵⁷.

Major weaknesses of the social contracting system are also associated with lack of necessary reliable information. On the one hand, not having enough resources, civil society organisations do not inform the general public about social services they deliver, and on the other hand, some parties to social co-operation are not interested in dissemination of particular information (for example, related to consultations on budget items between local authorities and charitable activities of business structures). Exchanges of information, knowledge and experience will promote development of each of them⁵⁸.

We would also like to pay attention to two important problems faced by CSOs as delivering paid services. Pursuant to amended Law of Ukraine 2642-IV "On Value Added Tax" dated 3 June 2005, non-profit organisations shall register for VAT as soon as the total income from delivery of goods (services) taxable pursuant to the Law, including using the local or global computer network, paid (given) to such a person or third persons as liable exceeds 300,000 hryvnias (excluding the value added tax) in the last twelve calendar months. The first problem likely to arise is the organisation's ceasing to be non-profit, and the second is not exceeding the 300,000 hryvnias' limit that requires the organisation to continually control regularity of paying for services within 12 calendar months. Because, if money is received irregularly or a lump sum is paid for a large scope of services, a CSO can lose the chance to deliver services for rather a long time, up to 11 months.

The capacity to carry out business activities independently belongs to general civil capacities of non-government legal persons including non-governmental non-profits. This capacity is secured by Recommendation CM/Rec(2007)14 (7) of the Council of Europe's Committee of Ministers to member states (adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting) on the legal status of non-governmental organisations (NGOs) in Europe: "NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and should be subject to the administrative, civil and criminal obligations and sanctions generally applicable to those legal persons"⁵⁹.

⁵⁶ Government funding of civil society organisations. How will European standards be implemented? / [All-Ukraine Conference Papers]; Ukrainian Centre for Independent Political Research seconded by UNITER Project and National Endowment for Democracy (NED). – [Available electronically from <http://gurt.org.ua/news/conferences/5535/>].

⁵⁷ Interaction between government bodies and civil society organisations: Study / National Institute for Strategic Studies. – [Available electronically from <http://www.niss.gov.ua/Monitor/juli/23.htm>].

⁵⁸ Interaction between government bodies and civil society organisations: Study / National Institute for Strategic Studies. – [Available electronically from <http://www.niss.gov.ua/Monitor/juli/23.htm>].

⁵⁹ Civil society in the EU-Ukraine Association Agreement [Available electronically from eu.prostir.ua/.../civil%20society%20in%20EU-Ukraine%20association%20agreement.pdf].

More specific provisions covering the capacity to engage in business activities are given in section 14 of the Recommendation: “NGOs should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned”.

Only seven of 27 EU member states currently tax incomes gained by community benefit organisations from business activities. Germany exempted even incomes from non-principal or non-statutory activities amounting up to EUR 35,000 per year, Hungary set the limit at EUR 41,000, Great Britain at EUR 60,000, and Lithuania even at EUR 300,000⁶⁰. Other countries, such as Czech Republic and Slovakia, exempt incomes from charity cultural and educational events, social services, sports competitions, auctions and lotteries.

Can Ukrainian organisations engage in similar activities? After all, the recession significantly limits opportunities to receive private donations and other voluntary contributions⁶¹. However, Ukrainian NGOs have to rely on these very donations, since they receive little money from delivery of services or other business activities: less than 12% of the total income as compared with 47% in Hungary or 90% in Italy and 96% in Japan.

Even gaining income in the process of government procurement of goods and services including social ones requires clear guarantees of the capacity to engage in business activities, especially, for civil society organisations. Such guarantees are lacking, moreover, Ukrainian courts again and again would not allow organisations to engage in such activities or take out the necessary licenses in cases prescribed by law, even where law, for example, the Law covering social services⁶², expressly says that it is non-profit organisations that should deliver these services, rather than their enterprises. Issues relating to charity auctions and lotteries are also unsolved.

The main legislative regulation problem remains contradiction between provisions of articles 8 and 24 of the current Law of Ukraine “On Citizens’ Associations”. On the one hand, the law deals allow civil society organisations to conduct business not only through subsidiaries, but also directly. However, administrative and judicial practice strictly follows the limiting interpretation of the law and requires engagement in any activities having any potential to produce profit through participation in other enterprises.

Laws of most countries that became EU members by 2004 (Austria, Great Britain, Greece, Denmark, Ireland, Iceland, the Netherlands, Germany, Portugal, France and Sweden) do not impose any special restrictions on business activities of NGOs. Among the recent member countries, the general capacity to engage in such activities is recognised by laws of Estonia and Latvia⁶³.

As before, a justification for bureaucratic attention to business activities of NGOs is provided by article 24 of the Law of Ukraine “On Citizens’ Associations”: civil society organisations are allowed to engage in “business and other commercial activities by establishing self-governing institutions and organisations with legal personality, setting up enterprises in a manner prescribed by law”. The rest appears not to comply with the laws of Ukraine, which leads to numerous problems referred to above. Fiscal bodies mostly think business activities to include delivery of services free of charge.

Consequently, a stalemate ensues when NGOs can in no way avoid virtual violation of prohibition of business activities. Section 1.32 of the Law of Ukraine “On Enterprise Profit Tax”⁶⁴ expressly states that

⁶⁰ Comparative charts of foundation laws (2009). – European Foundation Centre, 2010.

⁶¹ According to the Ministry of Economy of Ukraine, in the first half of 2009 profit of Ukrainian enterprises was 20.6 billion hryvnias as compared to 193 billion hryvnias in 2008. This means, in particular, that in 2010 enterprises could incorporate contributions to NGOs not exceeding 800 million hryvnias into their total costs. However, in 2008 such donations were around 2,600 million hryvnias.

⁶² Law of Ukraine 966-IV “On Social Services” dated 19 June 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=966-15>].

⁶³ Civil Society Journal. – 2010. – Issue 2(13). – p. 28. – [Available electronically from http://www.eternityclub.kiev.ua/pdf/gr_obsh_2.pdf].

⁶⁴ Law of Ukraine 334/94-VR “On Enterprise Profit Tax” dated 28 December 1994 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=334%2F94-%E2%F0&p=1288600175262795>].

business activities are “any activities aimed at gaining income in the monetary, tangible or intangible form”, and NGO’s participation in developing such activities is regular, continual and essential, inter alia, in case these activities are carried out by representatives acting on behalf of the NGO. Section 1.31 of the same law is more specific and says that free-of-charge delivery of outcomes of works and services is also considered to be a sale, that is, earning of income, at any rate, in intangible form.

Contradictions can also be found in article 904 of the Civil Code of Ukraine allowing free-of-charge delivery of services to be contracted – not for advertising but for the clients to recover all associated costs to the provider of particular services, including NGOs, which is equivalent to earning money.

However, many lawyers firmly believe that provisions of the Constitution and other framework laws covering fundamental freedoms and rights become valid only when they are regulated by special laws or even by-laws.

But as conducting business, NGOs again and again ignore the fact that the above Law of Ukraine “On Citizens’ Associations” is framework rather than special and covers exchanges, housing co-operatives, political parties, foundations, and even trade unions and art groups.

Instead, special laws allow civil society organisations to directly engage in independent business activities. These are not only disabled people or Chernobyl victims’ organisations. This capacity, in particular, is affirmed by laws “On Co-Operation” (article 23)⁶⁵, “On Professional Artists and Artistic Unions” (article 9)⁶⁶, “On Employer Organisations” (article 11)⁶⁷, “On Credit Unions” (article 21)⁶⁸, as well as “On Charity and Charitable Organisations” (article 20)⁶⁹.

The list of special laws is being extended every year. Since May 2004, fees for services of arbitration courts not creating a legal person such as CSO, inter alia, within all-Ukraine civil society organisations, are exempt from profit tax. Such incomes are not considered to be from business activities.

Article 36 of the Constitution of Ukraine guarantees equality of all civil society organisations before the law. As per article 8 of the Constitution, its provisions apply directly, which was affirmed by the Constitutional Court that revoked discrimination provisions of laws “On Youth and Children Organisations” and “On Trade Unions, Their Rights and Guarantees”. If the special law allows civil society organisations of each type to have business activities, the direct applicability of article 36 of the Constitution will also mean unconstitutionality of general prohibition of business activities of such organisations.

Article 42 of the Constitution guarantees the right of each person to engage in entrepreneurship that is a special right in terms of business activities. This capacity of NGOs is specified in article 86 of the Civil Code: “non-entrepreneurial societies and institutions, along with their principal activities, can engage in entrepreneurship, *unless otherwise stated by law* and provided that these activities meet and support the aim they were established with”.

Transitional provisions of the Constitution (section 1) say that laws and other regulations adopted before it came into force apply as far as this does not contravene the Constitution. The Civil Code of Ukraine and special NGO laws passed in 1997-2004 do not contravene the Constitution and Ukraine’s international treaties, while the application of article 17 of the Law of Ukraine “On Citizens’ Associations” passed in 1992 contravenes them fundamentally⁷⁰.

⁶⁵ Law of Ukraine 1087-IV “On Co-Operation” dated 10 July 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1087>].

⁶⁶ Law of Ukraine 554/97-VR “On Professional Artists and Artistic Unions” dated 7 October 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=554%2F97-%E2%F0>].

⁶⁷ Law of Ukraine 2436-III “On Employer Organisations” dated 24 May 2001 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2436-14>].

⁶⁸ Law of Ukraine 2908-III “On Credit Unions” dated 20 December 2001 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2908-14&p=1288600175262795>].

⁶⁹ Law of Ukraine 531/97-VR “On Charity and Charitable Organisations” dated 16 September 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=531%2F97-%E2%F0>].

⁷⁰ Vinnikov O. Memo on NGO’s capacity to engage in independent business activities [Available electronically from <http://www.ucipr.org.ua/modules.php?op=modload&name=News&file=article&sid=4035&mode=thread&order=0&thold=0>].

Simultaneously with the Civil Code, the Economic Code of Ukraine⁷¹ distinguishes non-commercial business activities as independent and systematic business activities not aimed at making profit business entities, that is, any registered legal persons other than government bodies and local authorities (articles 52-55) engage in. Entrepreneurial activities of legal persons can be prohibited only in specific areas explicitly defined by law (article 43). It is important that article 167 of the Economic Code clearly distinguishes having corporate rights (including NGO subsidiaries) as a kind of business activities and entrepreneurship.

2.4. Funding from other sources

Membership subscriptions

A large number of non-governmental organisations use membership subscriptions as a source of funding for their activities. At the same time, if we follow the logic of tax officers and laws, they should be taxable. This was the point of the State Tax Administration in its explanation 16884/10/15-109/244 dated 10 August 2009 to letter No. 0907 of the Centre of Civic Advocacy dated 8 July 2009⁷². Tax agencies are not currently concerned only with taxation of membership subscriptions of trade unions.

The Law of Ukraine “On Enterprise Profit Tax”⁷³ providing the basis for exemption of respective incomes of non-profit organisations mentions membership subscriptions not in all of its sections. Respective parts of this law identify sources of income to be exempt from tax for non-profits of each type. Most charities and civil society organisations are among organisations listed by the Law “On Enterprise Profit Tax”, article 7, section 7.11.1, paragraph “b”, in particular: charitable foundations and organisations set up legally to provide charitable assistance, including by civil society organisations created in order to engage in environmental, recreation, amateur sports, cultural, educational and research activities, as well as art groups, disabled people civil society organisations and their local groups set up pursuant to the Law of Ukraine “On Citizens’ Associations”⁷⁴.

Correspondingly, the Law (article 7, section 7.11.3) identifies incomes of the said non-profit organisations to be exempt from tax that, to be more specific, are incomes earned in the form of:

- money or property supplied free of charge or as non-refundable financial assistance, or voluntary donations;
- passive incomes;
- money or property coming to such non-profits from their principal activities subject to provisions of subsection 7.11.11 of this article;
- grants or subsidies from the central or local budget, targeted government funds or as part of charitable activities, including humanitarian or technical assistance provided to such non-profits under international treaties that were given assent by the Verkhovna Rada of Ukraine, except for grants aimed at regulating prices for paid services delivered to such non-profits or through them to their recipients in line with law, in order to lower the prices.

As interpreted by the State Tax Administration, “...pursuant to the Law of Ukraine “On Enterprise Profit Tax”, article 7, section 7.11, subsections 7.11.6-7.11.7, exempt incomes of non-profit organisations are those gained in the form of membership subscriptions referred to in paragraphs “e” (unions, associations and other groups of legal persons), “f” (housing co-operatives, groups of co-owners of blocks of flats) and “g” (legally established trade unions, their associations and organisations)”.

⁷¹ Economic Code of Ukraine 436-IV dated 16 January 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=436-15&p=1288600175262795>].

⁷² Socio-legal portal. – [Available electronically from <http://www.pilga.in.ua/node/763>].

⁷³ Law of Ukraine 334/94-VR “On Enterprise Profit Tax” dated 28 December 1994 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=334%2F94-%E2%F0&p=1288600175262795>].

⁷⁴ Law of Ukraine 2460-XII “On Citizens’ Associations” dated 16 June 1992 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>].

Today, therefore, fiscal bodies think that, if an organisation belongs to non-profits other than a union, association and group of legal (not natural) persons, housing co-operative, group of co-owners of blocks of flats, trade union, association, its membership subscriptions are taxable.

Furthermore, fiscal bodies believe that a non-profit gaining income from sources other than those identified by respective subsections 7.11.2-7.11.7 of this section should pay income tax identified as a sum of incomes earned from such other sources less a sum of costs associated with gaining such incomes, however, not exceeding the sum of such incomes.

Organisations and lawyers attempted to place membership subscriptions among “money and property coming to non-profits from their principal activities”, however, as pointed out in the explanation, such a “theory” is unsupportable. Presently, in order to avoid problems associated with possible charges of non-paying taxes liable on membership subscriptions and arguments with tax agencies, organisations not belonging to the types with exempt membership subscriptions may state such contributions as “voluntary donations” of natural persons rather than membership subscriptions, which currently became a practice many NGOs actively engage in.

Such a type of sources of income is exempt for civil society organisations and charities belonging to those covered by the Law of Ukraine “On Enterprise Profit Tax”, article 7, section 7.11.1, paragraph “b”.

Unions, associations and other groups of legal persons that are established to represent the interests of their founders, rely solely on contributions by such founders, and do not conduct any business, except for receiving passive income, can be included in the Register of Non-Profit Institutions and Organisations pursuant to the Law of Ukraine “On Enterprise Profit Tax”, article 7, section 7.11, subsection 7.11.1, paragraph “e”.

This law (article 7, section 7.11, subsection 7.11.6) applies exemption from profit tax to incomes of such organisations earned in the form of one-off and periodic contributions from founders and members; passive incomes; grants and subsidies from the central or local budget, targeted government funds or as part of charitable activities, including humanitarian or technical assistance provided to such non-profits under international treaties that were given assent by the Verkhovna Rada of Ukraine, except for grants aimed at regulating prices for paid services delivered to such non-profits or through them to their recipients in line with law, in order to lower the prices.

The Law of Ukraine “On Enterprise Profit Tax” (article 7, section 7.1, subsection 7.11.13) defines the term “principal activities” as activities of non-profit organisations engaged in providing charitable assistance, delivery of awareness-building, cultural, research, educational and other similar services to the society, creation of citizens’ social self service systems (non-government pension funds, credit unions and other similar organisations). Principal activities also include the non-profits selling goods (services) promoting principles and ideas advocacy of which was the aim of creation of the non-profit, that are closely linked to its principal activities, provided that a price for such goods (services) is below the standard price or is regulated by the state.

Based on the above law, subject to article 7, section 7.11, subsection 7.11.9, paragraph two, and notwithstanding the provisions of paragraph one of this subsection, in case a non-profit organisation gains income from sources other than those identified by respective subsections 7.11.2-7.11.7 of this section, such a non-profit shall pay profit tax charged as a sum of incomes earned from such other sources less a sum of costs associated with gaining such incomes, however, not exceeding the sum of such incomes.

Therefore, in the context of the above law, selling goods received by the association as a membership subscription is equivalent to a business transaction aimed at making profit. Consequently, the income from selling such goods is subject to profit tax pursuant to section 11 of article 7, subsection 9, paragraph two, as income from sources other than those identified by respective subsection 7.11.1-7.11.7 of this section.

As regards value added tax liable on membership subscriptions, it should be noted that, pursuant to the Law of Ukraine “On Value Added Tax”⁷⁵, article 3, section 3.1, value added tax is charged on supplies of goods and services by the taxpayers within the customs area of Ukraine. Membership subscriptions the non-profit receives from natural and legal persons that are its members in the form of money are non-taxable, value added tax is not charged since they are not paid for delivery of goods or services.

Passive incomes

Pursuant to tax laws of Ukraine, exempt passive incomes of CSOs, i.e. those associated with the use of their property and service delivery outcomes by other persons, include interest, dividends, insurance payments and royalties.

Interest and credits

CSOs have limited access to funding in the form of money and goods on credit. In case of charities, law (Law of Ukraine “On Charity and Charitable Organisations”⁷⁶) directly prohibits borrowing and pledging their property.

In case of civil society organisations, the main limitations are lack of assets to secure credits and a low financial stability. Sparse examples of borrowing by civil society organisations are mainly associated with purchasing real property and other fixed assets. It is this property that, along with guarantees of members of the civil society organisation’s executive body, serves as a security for such credits.

On the other hand, the practice when CSOs sell their goods and services directly, especially, to receive interest in the form of goods on credit, is very rare in Ukraine so far. Only credit unions, pension funds and some other non-profit types are allowed by law to receive interest on money offered on credit.

Refundable financial assistance (loan) is an important source of funding of CSOs lacking circulating assets. Such organisations do not have any insurance funds or reserves, or undistributed profit to cover unexpected costs (penalties or costs associated with untimely transfer of grants, donations or budget subsidies).

Refundable financial assistance is regulated by the Civil Code of Ukraine⁷⁷ and tax law.

Endowment is not regulated by special law. In fact, the point is special terms and conditions of contracts for depositing money or securities with banks and other financial institutions, under which interest, in full or in part, is transferred to the account of a beneficiary named by the account holder.

Effective funding of CSOs from their own endowment requires large amounts of fixed capital not used for programmed and other day-to-day activities. Therefore, both foreign and local donors are unwilling to allow CSOs to transfer their charitable donations to long-term deposit accounts.

Examples of funding of Ukrainian CSOs from their own endowment include only few corporate charitable foundations. Nevertheless, creation of individual endowments to fund CSOs selected by a donating natural person is prevented by tax law and ineffective “reliefs” described above.

Dividends. Incomes from corporate rights include dividends from CSOs’ participation in business companies, private (subsidiary) companies and other enterprises owned by them, as well as carrying out joint activities.

⁷⁵ Law of Ukraine 168/97-VR “On Value Added Tax” dated 3 April 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=168%2F97-%E2%F0&p=1288600175262795>].

⁷⁶ Article 20 of Law of Ukraine 531/97-VR “On Charity and Charitable Organisations” dated 16 September 1997 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=531%2F97-%E2%F0>].

⁷⁷ Articles 1046-1053 of Civil Code of Ukraine 435-IV dated 16 January 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=435-15&p=1288600175262795>].

Participation of CSOs in business companies in Ukraine was limited by the need to pay the minimum chartered capital. The total chartered capital of a limited liability company and joint-stock company was 100 and 1,250 minimum wages respectively. Presently, these amounts are much less. Since changes in law took place not very long ago, as a rule, today's CSOs have small share in companies' capital, and thus use-of-dividends policy of the companies and retaining their share in the event of increase in the companies' chartered capital are out of their control almost altogether.

On the other hand, legal forms of unlimited companies are uncommon in Ukraine. Nevertheless, the main (unlimited) members of these companies with chartered capital not regulated by law can be only registered business entities.

The most widespread type of incomes from corporate rights is dividends from private enterprises owned solely by CSOs. Taking into account virtually limited business activities of especially CSOs, these enterprises often engage in activities identical to statutory targets of CSOs. However, excepting enterprises of disabled people civil society organisations, such enterprises are not entitled to special tax reliefs or use of simplified taxation system.

Passive incomes also include dividends from joint activities paid as specially regulated by tax law. Furthermore, joint working agreements need to be registered with tax agencies. Owing to this, CSOs prefer mixed and not always transparent legal forms of joint working such as co-operation agreements, joint charitable and other programmes, as well as co-sharing.

Contributions to such activities, including rights to use premises or other property, often lack financial assessment, and thus it can not be adequately assessed how much they account for in funding of Ukrainian CSOs. However, given wide use of similar agreements, it can be estimated that dividends and passive incomes generally account in CSO funding for much more than it is suggested by official statistics⁷⁸.

Other passive incomes

There are only isolated cases of CSO funding in the form of insurance payments, because insurance companies are poorly developed in Ukraine so far. Instead, CSO funding from royalties, that is, paying for the use of their intellectual property (including marks, database and know-how) is mainly hampered, paradoxical as it may seem, by exemption of such transactions from value added tax. It does take VAT credit from business companies which is important to them.

Incomes from renting CSO property are excluded from passive incomes but they are passive incomes in their legal nature. CSOs can receive incomes, for example, from leasing within depreciation expense, without ceasing to be non-profit. Though incomes from renting property are difficult to estimate, because CSOs state not all of them and often receive them in exchange for other services or property, they are also an important source of CSO funding. A typical practice is, for example, when CSOs allow other persons to use their premises free of charge, provided that they pay for public services or repairs.

Furthermore, it is reduced rent on their property (especially, premises) that is the way in which local authorities support CSOs.

CSOs' activities that do not belong to principal activities or are not expressly stated in their statutory documents are considered to be unlawful. Nevertheless, laws of Ukraine only require such activities not to conflict with statutory targets of CSOs and legal requirements⁷⁹.

However, even if government bodies consistently adhere to such an interpretation, funding that comes from selling goods and services outside of principal activities of CSOs is considerably

⁷⁸ Funding of civil society organisations (CSOs) in Ukraine: Analytical report, 2006 [Available electronically from <http://www.ucipr.org.ua/modules.php?op=modload&name=News&file=article&sid=5368&mode=thread&order=0&thold=0>].

⁷⁹ Article 86 of Civil Code of Ukraine 435-IV dated 16 January 2003 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=435-15&p=1288600175262795>].

limited by the risk of not receiving the non-profit status or losing such a status on the ground of discrediting decisions of state tax agencies. As long as clear regulation of principal activities is lacking, delivery of practically all services by CSOs can be deemed to be their non-principal activities producing income taxable at the standard rate.

Laws of Ukraine consider accounting of incomes from non-principal activities and exempt incomes separately. Separate accounting is also used when incomes from principal and non-principal activities are earned using the same fixed assets.

2.5. Analysis of applicable laws of Ukraine on civil society organisations» participation in the consultation process and decision-making

As regards the state's use of the existing public consultation mechanisms, the latter continue to follow a top-down strategy, because they do not encompass specific proposals to the government in any area of government policy, and thus are unable to produce a subject for the discussion; mechanisms to provide information on how the government is taking account of results of the discussion are not developed or outlined by law.

In contrast, civil society organisations perceive, for example, public councils to government bodies more often as a way of incorporation into the government structures with potential performance of particular government functions rather than a mechanism to influence it⁸⁰.

Civil society organisations in Ukraine do not influence the process of government decision-making in a perceptible way so far. Government bodies and CSOs lack sufficient experience and skills in applying public policy and consultation processes, which leads to ineffective decision-making and obscure policy.

Today, most citizens are unable to exercise their rights to participate in the issue-solving process at the local level too. Also, far from all interest groups are represented in professional organisations, which even more complicates the process of public consultations and taking care of interests of the public.

CSOs should become needed by the government, that is, develop and deliver goods and services good quality of which can not be ensured by the government. However, neither government bodies nor CSOs themselves make full use of even the existing legal mechanisms of public consultations. Means to ensure openness of local representative bodies are:

- public hearings;
- public forums (discussions initiated by local government to look at positions adopted by citizens on any issues on the local agenda, outcomes of which are not mandatory);
- submission of applications, proposals or complaints to local authorities;
- citizen initiatives (discussions initiated by citizens to look at solutions to problems the public is concerned with);
- appealing against decisions of local authorities to courts directly or through law and advocacy.

One of forms of co-operation of CSOs and citizens with government bodies is public councils.

Public councils are informal public structures working with government bodies and local authorities in fields and organisational formats chosen by them. In other words, public councils should be seen as groups involving representatives of the public that have a formalised internal structure, are delegated certain authority of (by a competent decision) and/or consulted by government bodies or local authorities on mapping out, adoption and execution of their own authority (decisions). Creation and activities of public councils are primarily based on article 38 of the Constitution giving citizens the right to participate in governance, and Decree 854/2004

⁸⁰ Derzhalyuk O. The dynamics and expansion of the scope of activities of civil society organisations as a component of democratisation of Ukrainian society [Available electronically from <http://www.niss.gov.ua/Monitor/May08/03.htm>].

of the President of Ukraine “On Encouraging Wider Participation of the Public in Making and Implementation of Government Policy” dated 31 July 2004⁸¹.

These days, besides specialised public councils set up with particular government bodies or co-operating with them at the national level, the process of creation of public councils within communities (in the first place, oblast cities, because it is they that can exercise local authority really, not virtually) is becoming increasingly wider.

Public councils act as advisory bodies to government institutions in line with Resolutions of the Cabinet of Ministers of Ukraine “Some Issues of Promoting Engagement of the Public in Making and Implementation of Government Policy” that does not apply any more, and “On Additional Actions Aiming to Promote Engagement of the Public in Making and Implementation of Government Policy” currently in force⁸². Indeed, currently there are public councils to the Cabinet of Ministers of Ukraine, most ministries, state committees.

However, the governmental actions aimed at creating other mechanisms to engage the public in the process of decision-making by government bodies appear to lack activity and effectiveness. To be more specific, this is public consultations and acceptance of proposals of the public by the government, researches by public experts, participation of representatives of non-governmental organisations in work groups to central executive agencies that draft regulations and so on.

Such actions are mostly formal and fail to look into public opinion to be taken account of, because public consultation mechanisms: 1) do not encompass specific proposals to the government in any area of government policy, and thus are unable to produce a subject for the discussion; 2) are sometimes initiated to get information that would justify taking positions by representatives of the government; 3) fail to give equality to participants making known their positions and putting forth proposals in consultations and discussions. Furthermore, mechanisms to provide information on how the government is taking account of results of the discussion are not developed or outlined by law.

At the same time, activities of active public councils are lacking coverage. On websites of many central executive agencies, information related to creation of such bodies (not to mention their activities) either is absent or is restricted to a decree creating such bodies, the respective provision and a list of members. To some degree, this limits involvement of the interested public in activities of the bodies. Therefore, the development of interaction between political government and civil society institutions is considerably hampered by the fact that conceptual provisions in this respect stated by regulators are not put into practice so far.

On the other hand, civil society organisations perceive public councils more often as a way of incorporation into the government structures with potential performance of particular government functions or furthering narrow departmental and corporate interests rather than a mechanism to influence them.

Presently, many CSOs are trying to deliver services that previously were the responsibility of the state. They undertake to improve public awareness and enhance the government’s responsibility for decision-making.

Local civil society organisations proved to be more successful than national ones, due to their accessibility and closeness to citizens⁸³. In the process of co-operation between NGOs and local authorities, the government gains increasingly more citizens’ confidence. Identification of a citizen initiative through which citizens advocate their interests, as well as active involvement of local non-governmental organisations promote dialogue between citizens and government

⁸¹ Decree 854/2004 of the President of Ukraine “On Encouraging Wider Participation of the Public in Making and Implementation of Government Policy” dated 31 July 2004 [Available electronically from zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=854%2F2004].

⁸² Decree 1302 of the Cabinet of Ministers of Ukraine “On Additional Action Aiming to Promote Engagement of the Public in Making and Implementation of Government Policy” dated 26 November 2009 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1302-2009-%EF>].

⁸³ Slavko T.O. The role of civil society organisations in development of civil society [Available electronically from www.nbu.gov.ua/Portal/Soc_Gum/Npchdu/Politology/2005.../31-7].

bodies. Such a dialogue is possible subject to monitoring quality of public services at the local level and building capacity of non-governmental organisations to engage citizens in the policy-making process. This capacity includes, in particular:

- conducting public hearings;
- setting up people’s self-organisation bodies;
- undertaking surveys to measure quality of public services;
- research into government policy by sectors;
- provision of trainings;
- setting up consulting bodies where government officials work together with representatives of civil society organisations.

Of course, transition to democratic forms of governance through development and enhancement of influence of civil society is critical to Ukraine. This process will be facilitated by strengthening of non-governmental organisations and their increasingly closer co-operation with government bodies on all levels.

Law of Ukraine “On Local Self-Government in Ukraine”⁸⁴ defines particular forms of participation of citizens in local governance and characteristics of their application:

- local referendums (article 7);
- general meetings of citizens (article 8);
- local initiatives (article 9);
- public hearings (article 13);
- people’s self-organisation bodies (article 14).

We think that, from the point of view of consultations and decision-making, the most interesting forms are public hearings and people’s self-organisation bodies.

Creation and activities of people’s self-organisation bodies are regulated by the Law of Ukraine “On People’s Self-Organisation Bodies”⁸⁵. The main targets of these bodies are:

- to participate in socio-economic and cultural development of the respective area, implementation of other local programmes;
- to encourage inhabitants to participate in solving issues on the local agenda within the framework of the Constitution and laws of Ukraine;
- to meet social, cultural, everyday and other needs of people by promoting delivery of respective services to them.

In order to achieve these targets, local councils empower people’s self-organisation bodies to:

- foster observance of the Constitution and laws of Ukraine, decrees of the President of Ukraine and executive agencies, decisions of local councils and their executive bodies, ordinances of heads of a village, small town, city, city district council (if any), decisions made by local referendums;
- represent, together with deputies, the interests of inhabitants of a house, street, neighbourhood, village, small town, city in the respective local council and its bodies, local executive agencies;
- assist deputies of respective local councils in organising their meetings with the electorate, meeting with citizens and other activities within constituencies;
- examine citizens’ applications, meet with citizens;
- inform citizens about activities of the body, organise discussions of drafts of its decisions on the most important issues;
- duly put forth proposals as to draft local programmes covering socio-economic and cultural development of respective administrative units and draft local budgets;

⁸⁴ Law of Ukraine 280/97-VR “On Local Self-Government in Ukraine” dated 21 May 1997 [Available electronically from <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=280%2F97-%E2%F0&p=1288256627401397>].

⁸⁵ Law of Ukraine 2625-III “On People’s Self-Organisation Bodies” dated 11 July 2001 [Available electronically from <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2625-14>].

- organise voluntary participation of people in activities in the area of environmental protection, improvement, greening and maintenance of cottages, courtyards, streets, squares, parks, cemeteries, common graves, equipment of play- and sports grounds, children’s art studios, clubs, etc.; to this end, temporary or permanent teams can be set up, with possible use of other forms of people’s engagement;

- organise voluntary participation of people in protection of historic and cultural sites, elimination of the aftermath of a natural disaster, construction and repairing of roads, footpaths, utility networks, public facilities in a manner and order prescribed by law for such works;

- monitor quality of public and home refurbishment services delivered to citizens living within the area covered by the self-organisation body;

- provide assistance to educational institutions, cultural, physical training and sports institutions and organisations in their people-targeted cultural, sports, recreation and educational activities, development of arts, physical culture and sports;

- foster preservation of cultural heritage, traditions of national culture, protection of historic and cultural sites, introduction of new rites into everyday life;

- organise provision of assistance to the elderly, people with disabilities, families of soldiers and partisans killed in the war, killed military men, poor families and families with many children, as well as sole citizens, orphans and children deprived of parental care, put forth respective proposals to local authorities;

- provide necessary assistance to fire protection agencies in fire prevention, organise fire safety training of people, participate in public monitoring of observance of fire safety requirements;

- assist law enforcement agencies in maintaining public order.

The community has the capacity to conduct public hearings – meet with deputies of the respective council and local officials to hear them, raise issues and make proposals in respect of issues on the local agenda. It is the definition provided by the Law of Ukraine “On Local Self-Government in Ukraine”⁸⁶, article 13, part one.

The law also requires public hearings to be conducted at least once per year, and leaves the review of proposals based on results of hearings to local authorities. The law-maker also notes that the process of public hearings is regulated by statutes of communities, and therefore all procedures pertaining to public hearings should be clearly set out in the statute or a separate provision (appendix) that is an integral part thereof. This is important because it is much more difficult to amend a statute than a separate provision to be approved by the decision of the local council. Let us look closer at the main essential elements of the process of public hearings. Special organisational aspects of preparation and conduct of public hearings will be addressed farther on.

Based on provisions of the Law of Ukraine “On Local Self-Government in Ukraine”, a subject of hearings can be any issues on the local agenda. It is demand of the day to devote public hearings to problems of strengthening resources and development of communities, their property, housing, local budget, construction, etc. Based on most local regulations, initiators of public hearings are:

- community activist groups,
- people’s self-organisation bodies,
- civil society organisations,
- heads of communities,
- deputies of local councils, etc.

Decisions based on results of public hearings are voted openly and reflected in a resolution that, together with the minutes, is delivered to local authorities for a review.

Analysis of current legislation of Ukraine in the area of CSO funding shows that its provisions mainly meet criteria established in the Fundamental Principles on the Status of Non-governmental Organisations in Europe. However, there is a very significant difference between the theory and

⁸⁶ Law of Ukraine 280/97-VR “On Local Self-Government in Ukraine” dated 21 May 1997 [Available electronically from <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=280%2F97-%E2%F0&p=1288256627401397>].

practice of its application, that can be compensated for only by co-ordinated actions aiming at organisational development of both CSOs and the government service, and independent public monitoring of meeting CSO funding standards.

The Tax Code with proposals of the President of Ukraine passed by the Verkhovna Rada of Ukraine improved the regulatory framework to some extent as far as CSO funding opportunities are concerned. Removal of a section concerning the simplified taxation system is also positive, because application of that section virtually did away with small and medium business in Ukraine that uses this simplified taxation system, and thus one of (mainly on the ground) sources of money for CSOs – the private sector. But in 2011, a heavy burden will be put on the business by the one-off social contribution, that will also negatively affect small and medium business capacities to provide support to CSOs on the ground.

Due to passing of the Tax Code and other laws and by-laws associated with the system of mandatory taxes and payments, CSO funding mechanisms need further research, especially, after their putting into practice.

2.6. Interim conclusions based on the analysis of applicable laws

Based on the results of the desk top research and conclusions of other researchers of these problems, such as M. Latsyba, O. Solontay, O. Derzhalyuk and others, we can provide interim conclusions that will serve as a basis for provision of recommendations as to improvement of the existing legislative framework of Ukraine in the area of CSO funding.

1. Inconsistency of provisions of articles 8 and 24 of the Law of Ukraine “On Citizens’ Associations” currently in force allowing civil society organisations to engage in business activities not only through subsidiaries but also directly needs to be dealt with.
2. In order to eliminate some restrictions put on CSO funding by unfavourable regulatory policy, it is needed to extend actions in the area of deregulation of business activities in Ukraine to main risks associated with CSO funding, especially: requirements for amendments to statutory documents of CSOs not set forth by law; requirements for special government authorisations (licenses, special registrations, agreements, etc.), unless expressly stated by law; administrative restrictions of CSOs’ capacity to use and dispose of their property and property rights in some cases; restriction of CSOs’ access to financial services and imposition of administrative financial sanctions for minor or not duly proven breaches.
3. In order to minimise the influence of the unstable system of taxation of non-refundable assistance provided to CSOs on the status of funding, attention can be focused on the need for creating an alternative tax base for non-refundable assistance provided by donors with legal personality at 0.2-0.3% of their total income as payers of enterprise profit tax or their wages and remuneration costs; remove the link between entitlement of natural persons to tax credit on contributions and non-refundable assistance provided to CSOs to wages received by such donors.
4. In order to solve the problem resulting from exercise of some discriminating powers of executive agencies, the following needs to be undertaken: setting forth the main provisions on CSO funding and administration of taxes in respective laws and resolutions of the Cabinet of Ministers of Ukraine; establishment of clear and generally understandable criteria to assess compliance of principle activities of CSOs with non-profit status; providing all the ministries with common tendering techniques based on priorities approved by the minister, while avoiding duplication of departmental functions.
5. In order to solve the problem resulting from restricted access of CSOs to long-term funding, the following needs to be undertaken: amending tax laws so as to promote long-term state

funding of CSOs, for example, through special government funds; establishment of a special legal status of endowments of private donors of CSOs.

6. The problem resulting from discrimination of particular CSO types on the basis of their status or other characteristics can be solved by exempting one-off and periodic contributions from founders and members of CSOs referred to in the Law of Ukraine “On Enterprise Profit Tax”, section 7.11.1, paragraphs “b”, “c” and “d”, from enterprise profit tax and VAT; exempting non-refundable assistance provided to CSOs referred to in the Law of Ukraine “On Enterprise Profit Tax”, section 7.11.1, paragraphs “c” and “d”, from income tax, on the grounds of constitutional guarantees of equality of civil society organisations before the law; cancelling division of CSOs on the basis of territorial status as an obstacle to access to budget funding and earning incomes from principal activities.
7. The existing problem that results from competition between budget-funded institutions and CSOs for non-refundable financial assistance from private donors can be solved by setting a special quota for non-refundable assistance provided to budget-funded institutions and CSOs in the Law of Ukraine “On Enterprise Profit Tax” (section 5.2.2) and the Law of Ukraine “On Personal Income Tax” (section 5.3); exempting targeted assistance in the form of social services supplied in line with government standards and provisions from personal tax for beneficiaries of this assistance coming from both budget-funded institutions and CSOs.
8. Informing the public on social services delivered by CSOs shall be deemed social advertising.
9. The Law of Ukraine “On Value Added Tax” is to be amended where it fixes the worth of delivery of goods or services, by replacing the sentence “within 12 calendar months” with “within calendar year”.
10. The Law of Ukraine “On Enterprise Profit Tax” should be amended by expressly stating that membership subscriptions of CSOs of all types are non-taxable.

3. ANALYSIS OF THE EXISTING PRACTICES OF FUNDING OF CIVIL SOCIETY ORGANISATIONS IN UKRAINE

Before starting the field research of the existing experience in the area of funding of civil society organisations by government bodies, local authorities and the private sector, we identified expert assessment units as a primary element of the research topic, that possess a set of characteristics limiting selection of respondents involved in the research. As key characteristics of an expert assessment unit, we selected the respondents' belonging to respective government, self-governing, private organisations and CSOs, as well as their having experience in CSO funding by government bodies and local authorities, the private sector and natural persons.

In order to obtain data reflecting all the existing experience in the area of CSO funding by government bodies, local authorities and the private sector, groups of assessment units were identified – civil society organisations as a recipient of funding; government bodies, local authorities and the private sector as financial donors.

As the territorial unit used in the research, 5 representative regions of Ukraine were selected on the basis of the cross-geographic characteristic, level of economic development and structure of economic sectors, where we selected oblasts equally represented in the research: 1. Eastern (Donetsk oblast); 2. Western (Volyn oblast); 3. Southern (Odesa oblast); 4. Northern (Kyiv oblast); 5. Central (Poltava oblast and Kyiv). As selecting respondent groups, it was taken into account that not less than 20% of respondents work in the rural area. Rural surveys were undertaken with representatives of target groups of respondents evenly distributed across all expert assessment units: government bodies, local authorities, private sector, CSOs.

Even distribution of respondents on the basis of the cross-geographic characteristic allows us to evenly focus on the research of existing funding practices in place in different regions of Ukraine and conduct comparative analysis of effectiveness of particular forms and mechanisms of CSO funding taking into account differentiation of economic development of oblasts and structure of economic sectors.

Given the above, the field research was conducted by the method of a structured expert interview with 300 suitable respondents in 5 representative regions of Ukraine and Kyiv, visiting organisations and a face-to-face contact with the respondents.

The field research tool is a questionnaire that is divided into five respective blocks of information and has in total seven parts two of which relate to procedural aspects of the survey (see Appendix 2.):

1. Interviewer's instruction.
2. Block I containing questions about who the respondent is: civil society development expert, representative of a government body, business/private sector, local authority, manager or member of a CSO. The respondent representing the CSO is asked about the status and the structure of funding received by the organisation.
3. Block II containing questions regarding problems of CSO funding by government bodies.
4. Block III containing questions regarding problems of CSO funding by local authorities.
5. Block IV containing questions regarding non-government CSO funding.
6. Block V of proposals as to improvement of CSO funding.
7. Questions to the interviewer.

Data obtained in the process of the field research were processed using SPSS. They allowed us to see into existing Ukraine's practices in the area of funding of civil society organisations by government bodies, local authorities and the private sector.

3.1. Characteristics of the interviewed respondents

In the process of the research, 300 respondents from 5 representative regions of Ukraine were interviewed, in particular:

- 71 respondents (23.3%) representing government bodies;
- 72 respondents (24.0%) representing business/private sector;
- 74 respondents (24.7%) representing local authorities;
- 84 respondents (28.0%) that were managers or members of CSOs.

Besides 223 respondents (74.3%) living in urban areas, 77 respondents (25.7%) living and working in rural areas were interviewed.

The research included 84 respondents representing CSOs that were distributed as follows: 26.2% were from charities; 19% were from professional associations; 54.8% were from other CSOs (youth, women's, disabled people, veterans organisations, people's self-organisation bodies, etc.).

Most CSO representatives were from organisations having over 50 members (47.6%), 20-50 members (32.1%), 1-10 members (20.2%). On the basis of their status, surveyed CSOs were distributed as follows: most of respondents (71.4%) were from local organisations, 19% were from all-Ukraine, and 4.8% were from international organisations. Surprisingly, 4.8% of respondents representing CSOs could not identify their status.

Survey was to address the issue of CSO budget 2009. Ranking of the participants showed that most of them (39.3%) were from organisations whose 2009 budget did not exceed 10,000 hryvnias; 23.8% of respondents represented organisations whose budget exceeded 200,000 hryvnias; 15.5% said that the budget of their organisation was from 10,000 to 50,000 hryvnias; 10.7% represented organisations whose budget was from 50,000 to 100,000 hryvnias. Very few (2.4%) represented organisations with a budget from 100,000 to 200,000 hryvnias.

These data showed a significant difference between budgets of civil society organisations within the sample. Only few, so to speak, "heavy-budget" organisations can compete with the others whose budget does not exceed 10-15 living wages. This can be explained by subjective (unprofessionalism of CSOs, their "newness" and organisational development) and objective factors linked to the existing civil society development policy.

On the basis of their sources of funding (government funding, business, community money, international funds, domestic charitable foundations, membership subscriptions), civil organisations were distributed, in general, evenly (from 1.2% to 4.8%), however, most surveyed organisations relied solely on membership subscriptions (20.2%), assistance provided by the business (8.3%), international foundations (7.1%).

3.2. Problems of funding by government bodies and local authorities

3.2.1. Main problems of the existing government funding system and their importance for improvement

Respondents assessed the main problems of the current CSO government funding system formalised in the questionnaire and their importance for development of CSOs using a scale, "very important – important – unimportant – hard to answer". Besides problems outlined in the questionnaire, respondents were asked to name other problems with government funding of CSOs and assess their importance. In this way, the widest coverage of the research topic was achieved.

The general results of distribution of the respondents on the basis of their answers to the posed questions are presented in fig. 3.1. Fig. 3.1 shows that the biggest problem of state funding of civil society organisations is thought by the respondents to be scant government funding. 57% of

the respondents consider this problem to be very important, 28.3% assess it as important, and only 0.7% think that this problem is unimportant. If we rank state funding problems by the number of respondents that assessed them as “very important”, the problem put by us as the “Lack of programmes to tender for project funding” is ranked second, and the “Legislative uncertainty of aims and criteria of CSO state funding, government’s lacking respective techniques to select competing programmes” is ranked third. Respectively, only 1.7% and 1% of the respondents consider these problems to be “unimportant”.

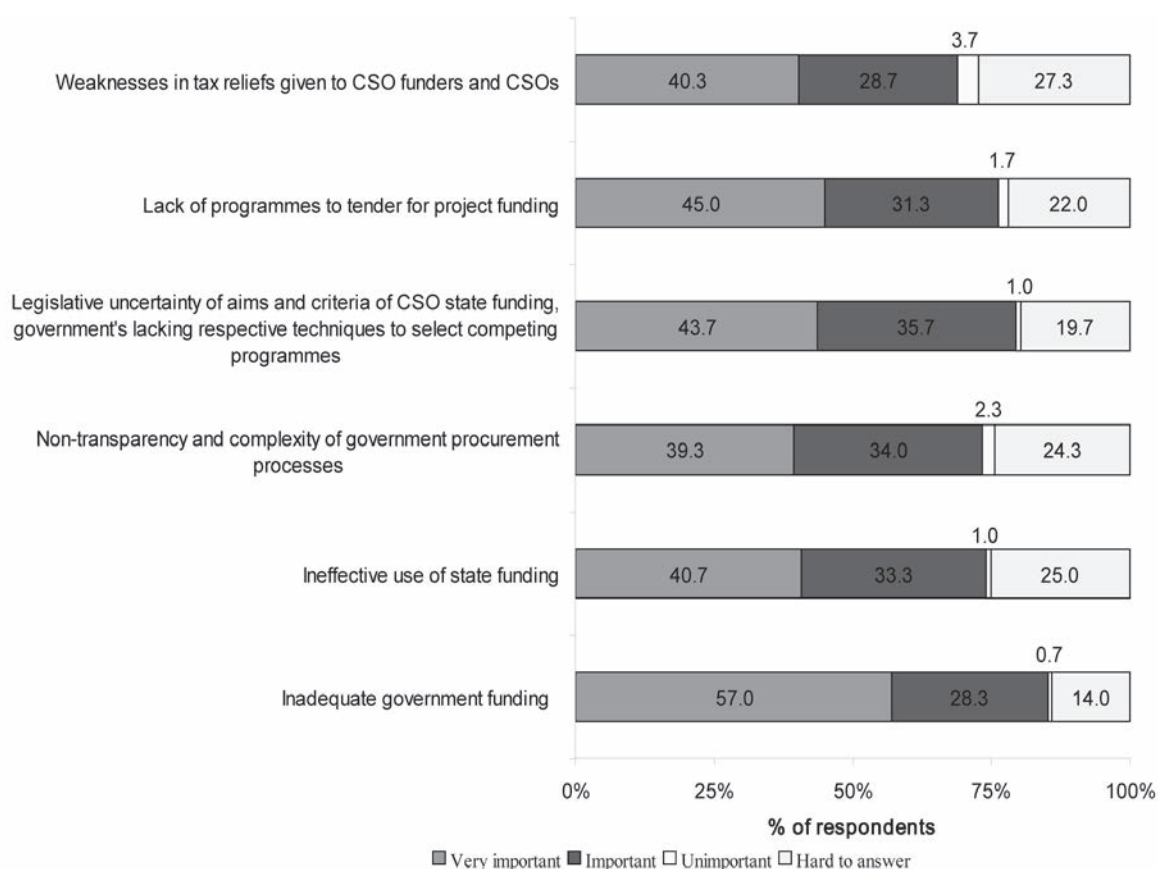


Fig. 3.1. Distribution of the respondents on the basis of their answers to the question:
 «PLEASE ASSESS THE MAIN PROBLEMS OF THE EXISTING CSO GOVERNMENT FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs’, % OF RESPONDENTS, N (number of respondents)=300

It should be noted that all the answers to questions about CSO state funding problems formalised by us in the questionnaire were supported by most respondents (that assessed the problems as “very important” or “important”). Each problem was assessed as “unimportant” by less than 4%.

In general, the survey showed that the respondents are highly aware of CSO state funding problems. Naturally, some groups of respondents that had not encountered CSO government funding problems face to face answered some questions of the questionnaire with “hard to answer”. Most “hard to answer” answers were received to questions about importance of the following problems:

- weaknesses in tax reliefs given to CSO funders and CSOs – 27.3%;
- ineffective use of state funding – 25%;
- non-transparency and complexity of government procurement processes – 24.3%.

Hence, the next step in the analysis of research results was to look into attitudes towards CSO state funding problems held by groups of respondents that are aware of these problems the best and personify subjects and objects of the process – those representing government bodies, on the one hand, and managers or members of CSOs, on the other. Comparison of their answers to questions about importance of the main CSO state funding problems will make it possible to find out whether there is a consensus on the vision of CSO state funding problems between the subject and the object of funding. If such a consensus exists, this provides the basis for effective dialogue between the public and the state aimed at solving such problems.

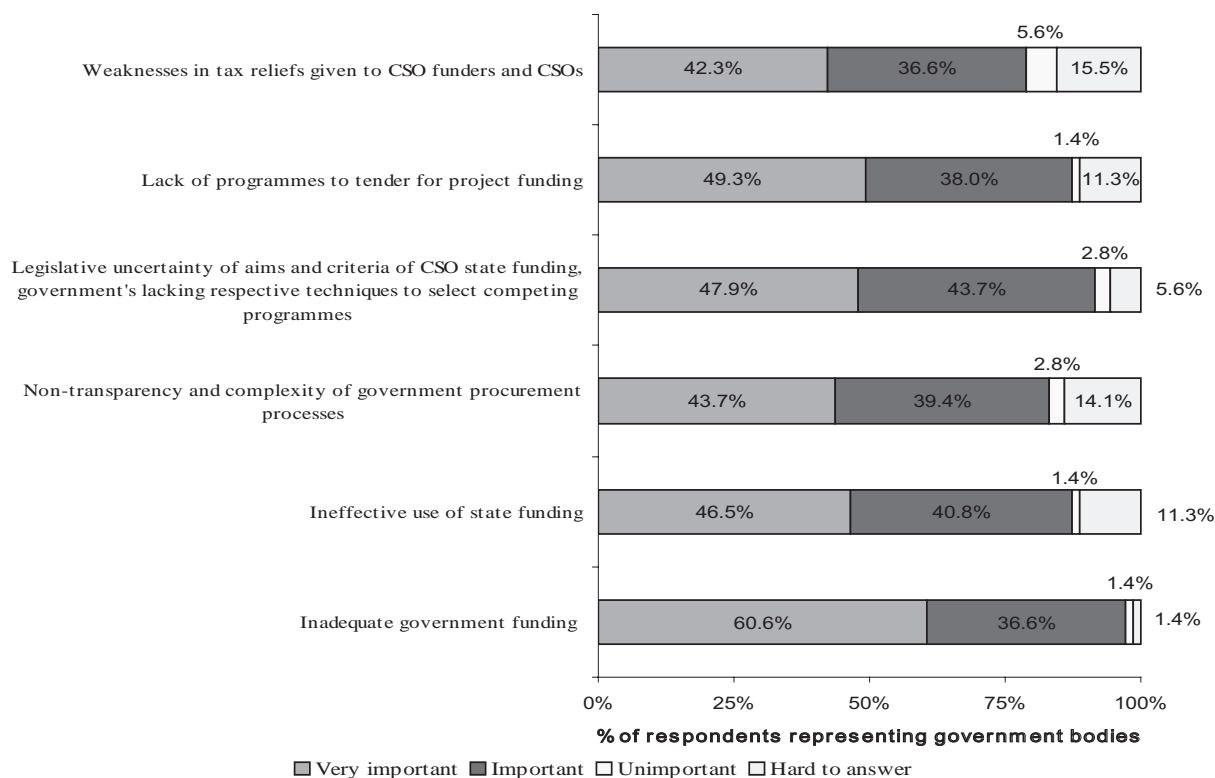


Fig. 3.2. Distribution of the respondents representing government bodies on the basis of their answers to the question: «PLEASE ASSESS THE MAIN PROBLEMS OF THE EXISTING CSO GOVERNMENT FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs', % OF RESPONDENTS REPRESENTING GOVERNMENT BODIES, N=71

Fig. 3.2. shows distribution of respondents representing government bodies on the basis of answers to the question: "Please assess the main problems of the existing CSO government funding system and their importance for development of CSOs". The number of members of the respective reference group is 71.

Our hypothesis that the government reference group should include a minority of those that answered "hard to answer" to the question about importance of CSO state funding problems proved to be true. Less than 15% of the respondents were uncertain in answering this block of questions. Just as it was across the sample, government officials saw the most important problem in "inadequate government funding" that was assessed by 60.6% as "very important", and by 36.6% as "important". If we rank state funding problems by the number of government officials that assessed them as "very important", the problem put by us as the "Lack of programmes to tender for project funding" is ranked second, and the "Legislative uncertainty of aims and criteria of CSO state funding, government's lacking respective techniques to select competing programmes"

is ranked third. Respectively, only 1.4% and 2.8% of the government officials consider these problems to be “unimportant”. Hence, the officials identified the same triplet of the most urgent CSO state funding problems as all the respondents within the sample.

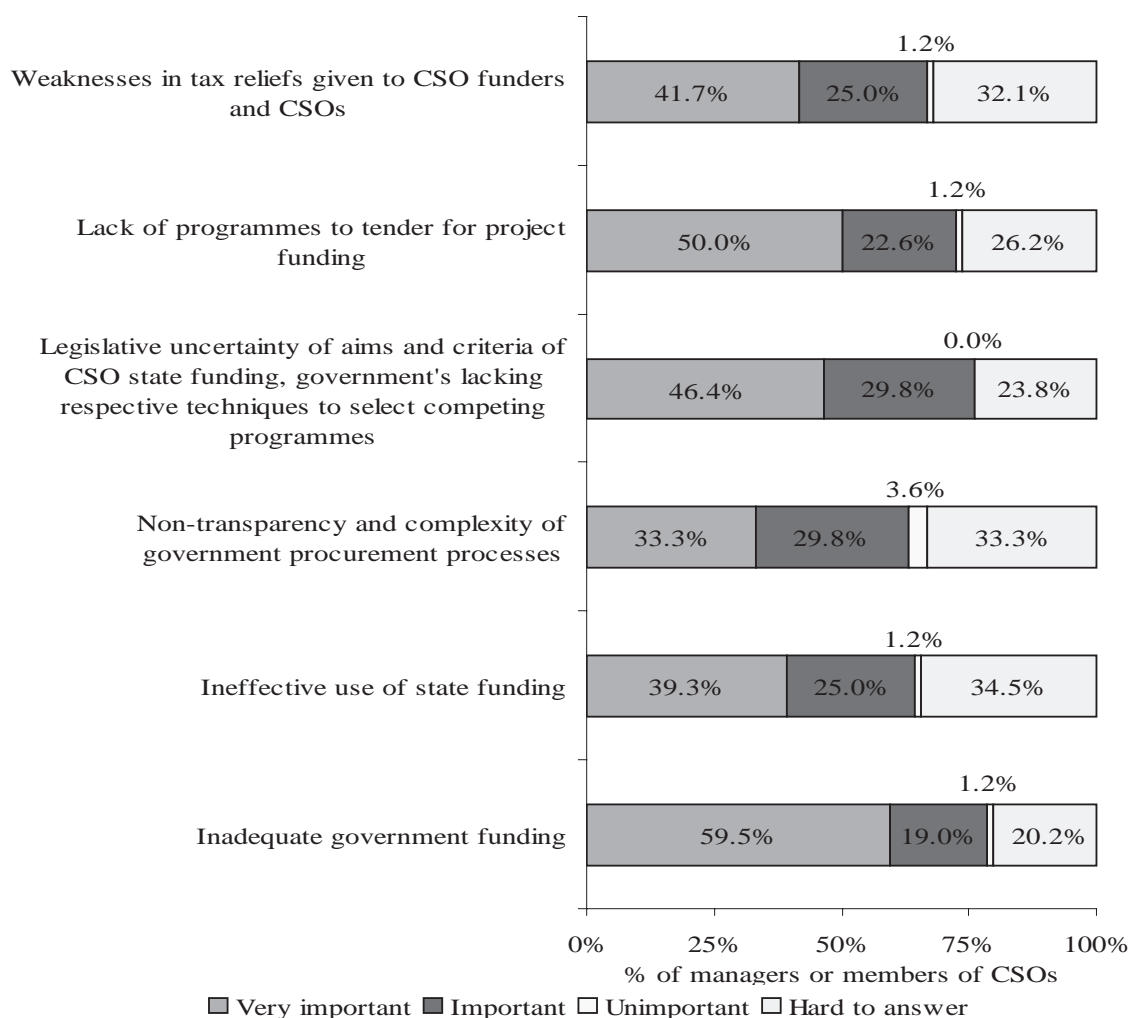


Fig. 3.3. Distribution of the managers or members of CSOs on the basis of their answers to the question: «PLEASE ASSESS THE MAIN PROBLEMS OF THE EXISTING CSO GOVERNMENT FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs', % OF MANAGERS OR MEMBERS OF CSOs, N=84

It is characteristic that 87.3% of the respondents representing government bodies believe that CSO funding is spent ineffectively, and 83.1% think government procurement processes to be complex and non-transparent.

Let us compare answers of government officials with answers of managers or members of CSOs shown in fig. 3.3. The number of members of the respective reference group is 84.

Managers or members of CSOs proved to be less aware of government funding problems. For example, 34.5% of the respondents of this group answered “hard to answer” to the problem of “ineffective use of budget funding”, and 33.3% of CSO members answered the same to the problem of “non-transparency and complexity of government procurement processes”.

This suggests a very interesting conclusion that, perhaps, information on winners of government procurement tenders and outcomes of projects or delivery of procurement services is simply unknown to a wide group of stakeholders.

It should be noted that so big uncertainty primarily applies to problems with distribution and use of budget funding, that is, stages of the budget funding process strange to most civil society organisations. Those that were uncertain in answering the rest of the problems set out in the questionnaire accounted for not more than one-third.

What follows is the results of ranking of government funding problems based on the criterion of a percentage of CSO members considering a problem to be “very important”.

The top-ranked problem is “inadequate government funding” (59.5% of the respondents think it to be very important), the problem of “lack of programmes to tender for project funding” was ranked second, and that of “legislative uncertainty of aims and criteria of CSO state funding, government’s lacking respective techniques to select competing programmes” was ranked third.

Conclusion. Therefore, the analysis of research results shows that reference groups of government officials and CSO members are unanimous in selection of the most important CSO state funding problems. They selected the following three problems (ranked in order of importance):

- 1) inadequate government funding;
- 2) lack of programmes to tender for project funding;
- 3) legislative uncertainty of aims and criteria of CSO state funding, government’s lacking respective techniques to select competing programmes.

Given unanimity of views of subjects and objects of the funding process, one might expect a constructive dialogue between the government and civil society aimed at solving CSO state funding problems.

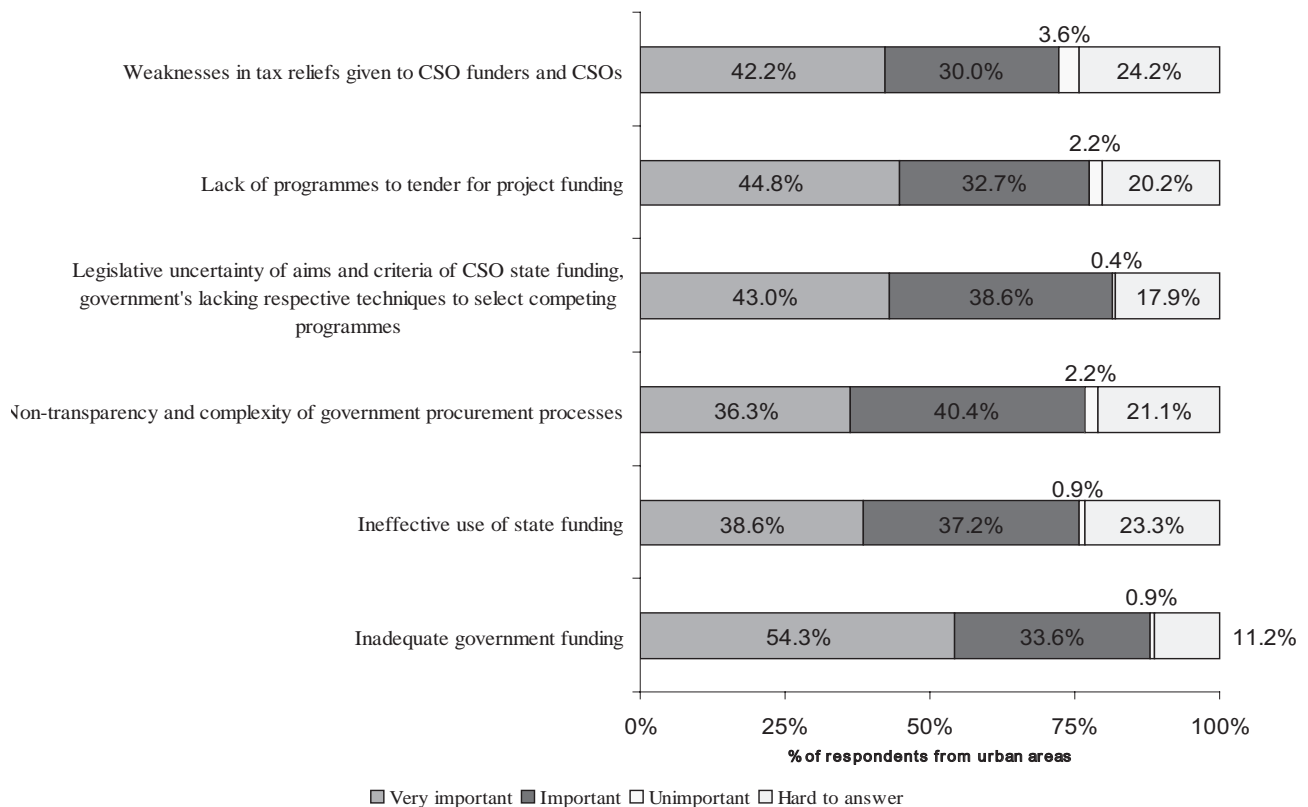


Fig. 3.4. Distribution of respondents living in urban areas on the basis of their answers to the question: «PLEASE ASSESS THE MAIN PROBLEMS OF THE EXISTING CSO GOVERNMENT FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs', % OF RESPONDENTS LIVING IN URBAN AREAS, N=223

A distinctive feature of our research is in-depth study of views of respondents living in rural areas. Figures 3.4 and 3.5 show answers of respondents from urban (223 respondents within the sample) and rural areas (77 respondents) to the set of questions of the questionnaire regarding CSO state funding problems.

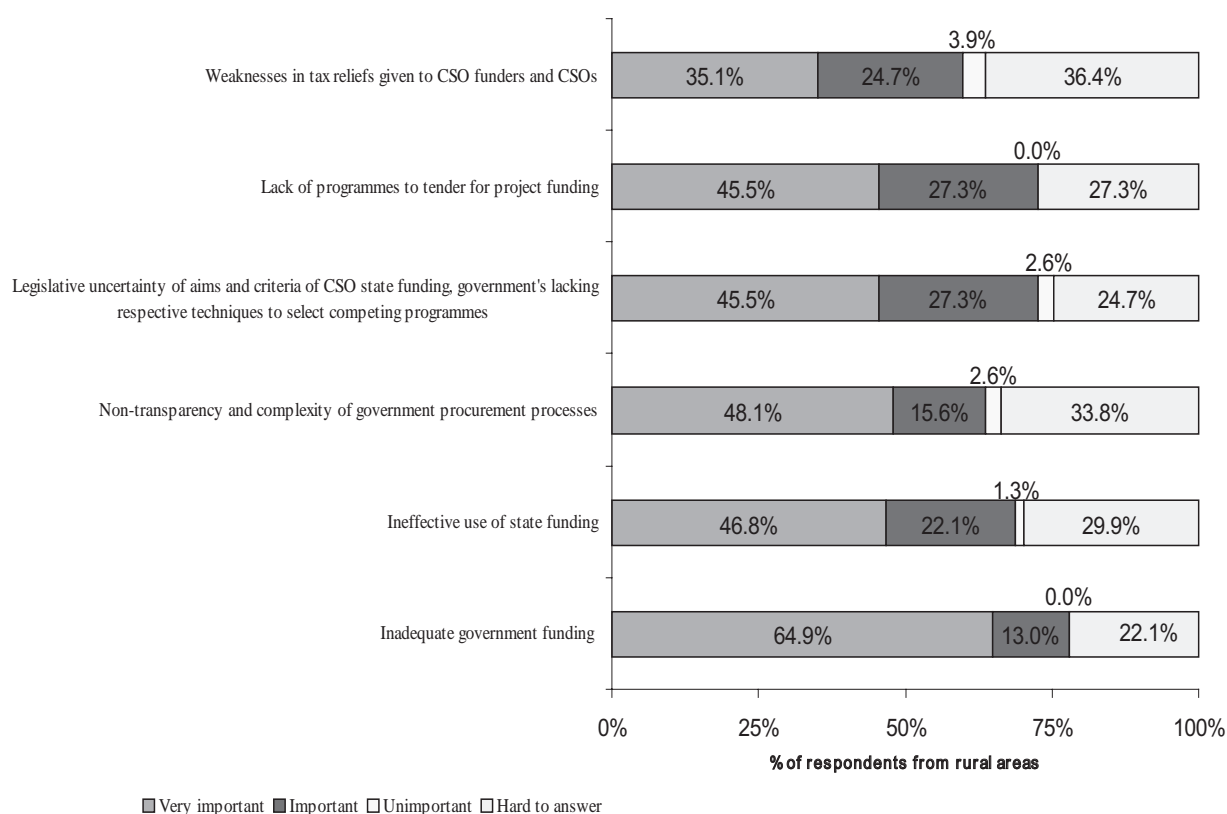


Fig. 3.5. Distribution of respondents from rural areas on the basis of their answers to the question: «PLEASE ASSESS THE MAIN PROBLEMS OF THE EXISTING CSO GOVERNMENT FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs', % OF RESPONDENTS LIVING IN RURAL AREAS, N=77

Comparison of data from figures 3.4 and 3.5 shows:

- much more percentage of the respondents from rural areas that are uncertain in their assessment of CSO state funding problems. In particular, 36.4% of the respondents from rural areas could not assess the problem resulting from weaknesses in the system of tax reliefs given to CSO funders and CSOs, and 33.8% of the same respondents could not assess the government procurement problem. At the same time, respondents from urban areas that were uncertain in their assessment of government funding problems accounted for only one-fourth.
- In general, assessments of government funding problems by the respondents from urban and rural areas are close – the both reference groups ranked first, second and third:
 - 1) inadequate government funding;
 - 2) lack of programmes to tender for project funding;
 - 3) legislative uncertainty of aims and criteria of CSO state funding, government's lacking respective techniques to select competing programmes.

Besides formalised CSO state funding problems, the respondents were asked an open question regarding other government funding problems they would face.

The problems identified by the respondents are listed below:

- half-hearted attempts of CSOs at receiving government funding: *“too little knocking”* as one of the respondents put it figuratively;
- lack of the government funding information system. One of the respondents said: *“Despite the existence of the practice and some announcements about getting funding from local budgets for specific aims and programmes at the regional level, this system is not in place at the national level so far. Some civil society organisations receive money in a non-transparent way”*;
- weaknesses in the government funding process. One of the respondents put it as follows: *“Even the existing government programmes are funded not always in full. Furthermore, money is provided at the end of the year, when it can not be spent effectively, as a rule. The organisation first spends its money, and then the state does not recompense it because the budget is changed”*. Another respondent added: *“It is impossible to carry unspent money to the next budget year”*;
- besides the problem of non-transparency and complexity of government procurement processes formalised in the questionnaire, the respondents pointed out that there is a problem of complexity of reporting on the use of budget funding;
- according to some respondents representing government bodies, the problem is the *“CSOs’ low prestige among government bodies”*. On the other hand, the interviewed members of civil society organisations speak about *“nonrecognition of CSOs by government bodies”*, *“CSOs’ neglect by the state”*;
- *“lack of a legislative provision requiring planning of (oblast, rayon, village) budget spending on CSOs’ projects or events”*;
- in addition, the respondents point out that *“the tradition of CSO funding by the state does not exist”*.

Conclusion: *The respondents supplemented the list of CSO state funding problems with half-hearted attempts of CSOs at receiving government funding; lack of tradition of CSO funding by the state; complexity of reporting on the use of budget funding; CSOs’ low prestige among government bodies; lack of the system to provide information on government funding; weaknesses in the government funding process, especially, uneven funding over the year; lack of legislative provisions requiring planning of (oblast, rayon, village) budget spending on CSOs’ projects or events.*

3.2.2. Respondents perception of the government funding model

The respondents were offered both formalised and non-formalised (open) questions about elements of the CSO state funding model.

Formalised questions prompted to assess the following elements of the model:

- setting up the National Civil Society Development Foundation, predominantly competitive funding of CSO activities;
- possible participation of CSOs of all types in project tenders;
- possible funding to cover administrative costs;
- simplified processes of government procurement of services and works for CSOs.

Fig. 3.6. shows the distribution of the respondents’ answers to the set of questions regarding the CSO state funding model. Most respondents supported the main elements of the proposed CSO state funding model. Around 11% of the respondents did not answer the posed questions, 7% to 16% of the respondents answered “hard to answer”. The elements that received the biggest support were “possible participation of CSOs of all types in project tenders” (78.7% of the respondents) and “simplified processes of government procurement of services and works for CSOs” (74%).

Possible funding to cover administrative costs was supported by 69% of the respondents; introduction of predominantly competitive CSO funding was supported by 62.7% and negated by 15.7% of the respondents.

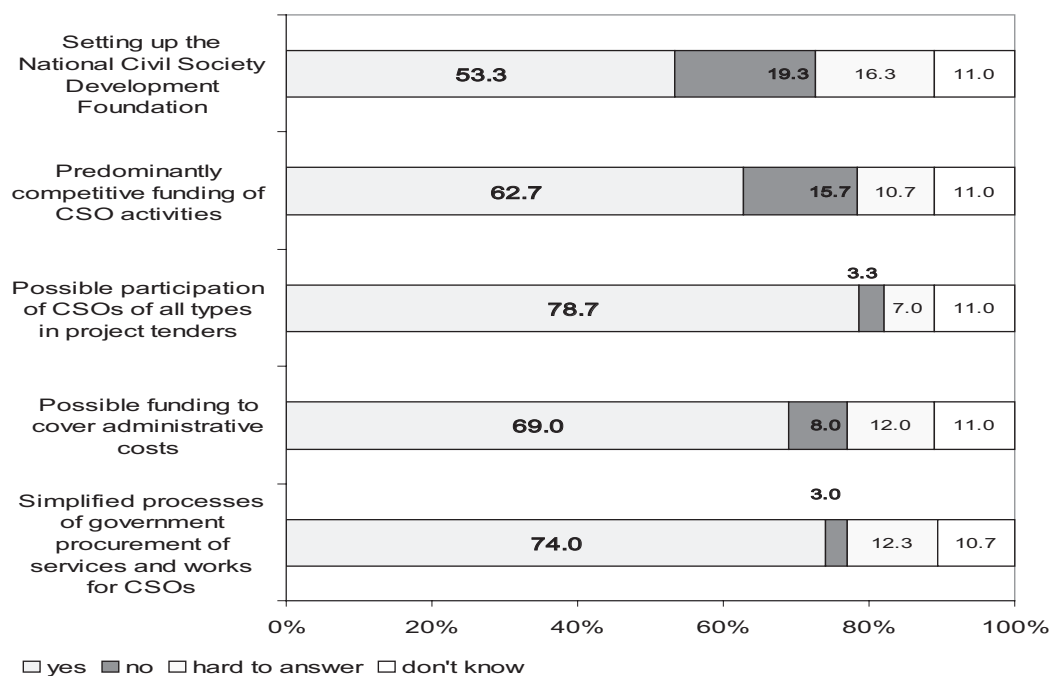


Fig. 3.6. Distribution of the respondents' answers to the question regarding the CSO state funding model, % of respondents (N=300)

Conclusion. Attitude towards setting up the National Civil Society Development Foundation proved to be the most ambiguous. It was supported only by 53.3% and negated by 15.7% of the respondents.

Since many experts consider the National Civil Society Development Foundation to be the central element of the CSO funding model, we will analyse support of this idea by the main reference groups within the sample in detail.

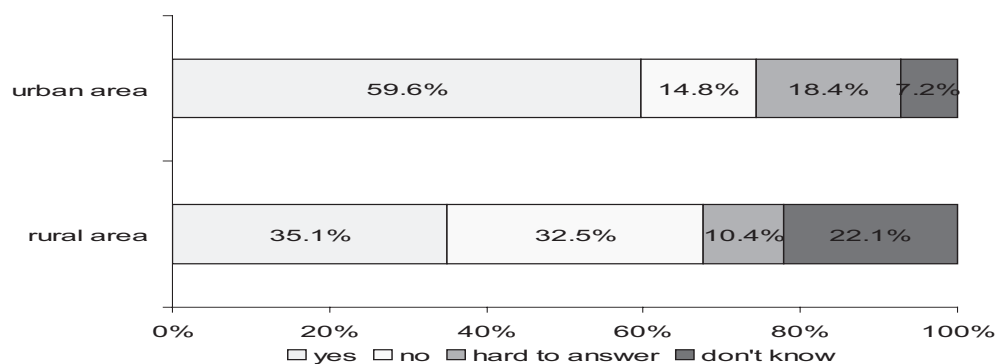


Fig. 3.6. Attitudes the respondents from urban (N=223) and rural areas (N=77) have towards setting up the National Civil Society Development Foundation, % of respondents.

Fig. 3.6. shows the results of interviewing the respondents from urban and rural areas on setting up the National Civil Society Development Foundation.

Conclusion. The results show differences in attitudes the respondents from urban and rural areas have towards setting up the foundation. Whilst over one half (59.6%) of the respondents from urban areas support the CSO funding model based on the National Civil Society Development Foundation, in ruralities setting up the foundation is thought to be expedient by only 35.1% and negated by 32.5% of the respondents. Almost one-fourth (22.1%) of the respondents from rural areas did not answer the question about expediency of setting up the foundation at all. Such an attitude is likely to be explained by the respondents' view that funding from centralised sources is inaccessible to rural CSOs.

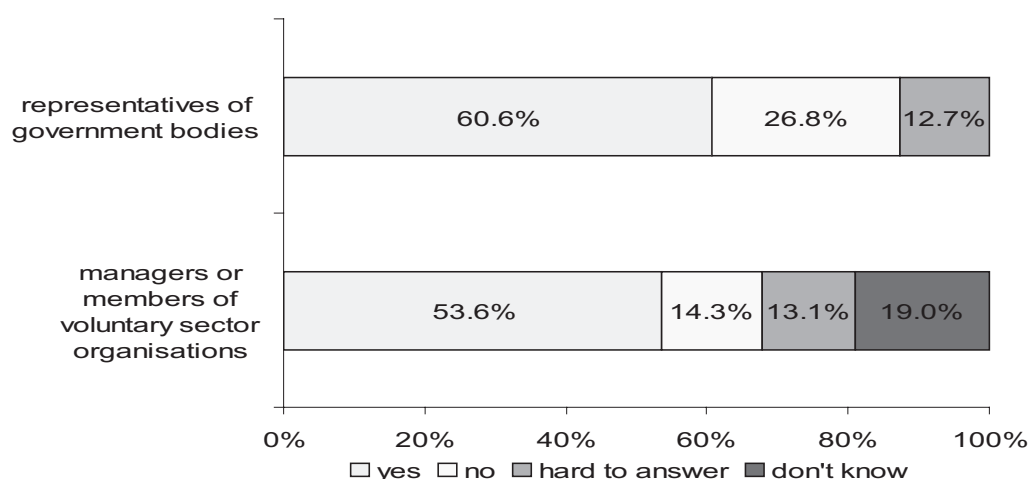


Fig. 3.7. Attitudes representatives of government bodies (N=71) and managers and members of CSOs (N=84) have towards setting up the National Civil Society Development Foundation, % of respondents

It would be logical to assume the existence of a difference between views of setting up the foundation in the reference groups of government officials and CSO members. Fig. 3.7. shows the results of interviewing representatives of government bodies (N=71) and managers and members of CSOs (N=84) on setting up the National Civil Society Development Foundation.

Conclusion. Setting up the foundation is supported by 60.6% of representatives of government bodies that is more than across the sample (53.3%). However, 26.8% of the respondents of this group negated creation of the Foundation that is noticeably more than across the sample (19.3%). Therefore, polarisation of views of setting up the National Civil Society Development Foundation between representatives of government bodies is greater than across the sample. Furthermore, there are no respondents from among government officials that would not answer the question.

Distribution of views of respondents from among managers and members of CSOs is close to distribution of views of all the respondents across the sample: 53.6% support the model based on the National Civil Society Development Foundation, 14.3% negate it, 13.1% answered “hard to answer”, and 19% did not answer at all.

The respondents were also asked open questions regarding the CSO funding model. In their answers, many respondents emphasise the need for “creation of regional divisions of the National Foundation”. The respondents believed that “funding of CSO activities must be stipulated by law and provided for in the budget”.

The respondents also emphasise the need for “creation of a system to provide information on opportunities of CSOs” participation in tenders” as a component of the CSO state funding

model. In particular, it is proposed “to create a newsletter” to provide information on government procurement for CSOs, winners of tenders and outcomes of projects or services. Noteworthy is the proposal of a few respondents that the model should allow for “complementary funding of projects funded by international foundations” and “capital investments using budget money”. One of the respondents combines the two initiatives and proposes “budget co-funding of construction projects subject to the approval of complementary funding of a CSO’s project by international financial organisations”.

The respondents emphasise that the government funding model should be based on “clearly identified long-term directions (priorities) of funding”, “civil society development programmes and development priorities”. And one respondent proposes “testing the CSO development programme implementation pilot in one region, after which the development of the nation-wide programme should only follow”.

3.2.3. Main problems of the existing local government funding system

The respondents assessed the main problems of the existing CSO local government funding system offered in the questionnaire and looked into their importance for development of CSOs using a scale, “very important – important – unimportant – hard to answer”. Besides problems outlined in the questionnaire, the respondents were asked to name other problems with local government funding of CSOs and assess their importance. In this way, the widest coverage of the research topic was achieved.

The general results of distribution of the respondents on the basis of their answers to the posed questions are presented in fig. 3.8.

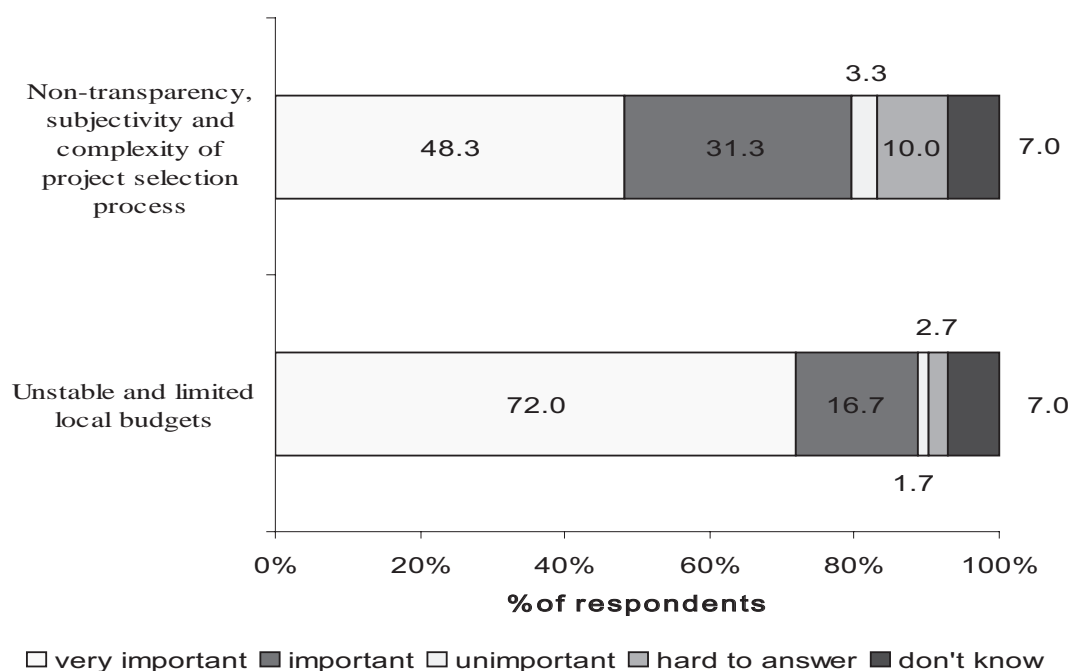


Fig. 3.8. Distribution of the respondents on the basis of their answers to the question: «PLEASE ASSESS THE MAIN PROBLEMS OF THE EXISTING CSO LOCAL GOVERNMENT FUNDING SYSTEM», % OF RESPONDENTS, N=300

Fig. 3.8 shows that the biggest problem of funding of civil society organisations by local authorities is thought by the respondents to be unstable and limited local budgets. 72% of all

regions that had participated in the field research pointed out that unstable and limited local budgets are a very important problem, 16.7% saw it as important for the existing CSO funding system, and only 1.7% thought it to be unimportant.

The next step in the analysis of research results was to look into attitudes towards CSO local government funding problems held by groups of respondents that know these problems the best – those representing local authorities and managers or members of CSOs. Comparison of their answers to questions about importance of CSO local government funding problems will make it possible to find out whether there are differences in views of this issue between the subject and the object of funding. It is characteristic that vast majority of the respondents – 99% of representatives of local authorities and 77% of managers or members of CSOs – identified the problem of local government funding of civil society organisations as “very important” and “important” for the existing CSO funding system.

It should be noted that virtually the same number of the respondents – 90% in urban and 87% in rural areas – consider this problem to be “important” and “very important”.

The funding problem resulting from non-transparency, subjectivity and complexity of project selection process is very important to 48.3%, and 31.3% of the respondents believe it to be important for CSO funding. If we look at answers of the respondents from the regional angle, it proved to be the most important in Donetsk region (88%). In other regions, the number of the respondents that believe the problem resulting from non-transparency, subjectivity and complexity of project selection process to be “very important” and “important” was distributed fifty-fifty, on average.

It should be noted that all the answers to questions regarding CSO local government funding problems formalised by us in the questionnaire were supported by most respondents (identified as “very important” or “important”). In the similar way, this problem is also regarded by representatives of local authorities (88%) and managers or members of CSOs (74%) that identified it as “very important” and “important” for the existing CSO funding system.

It should be also emphasised that importance of this issue was unanimously supported by the respondents from urban and rural areas (80%).

The expert interview included answering open questions regarding problems of the existing CSO local government funding system. The respondents’ open answers were analysed, generalised and grouped. Conclusions as to the “Main problems of the existing CSO local government funding system” thought by the respondents to be the most relevant are listed below:

1. Lack of interest in supporting civil society development among local authorities. Especially, this applies to those managers who, in the first place, being politically slanted and unprofessional, have worked within local authorities rather a little.
2. The current budget settlement system. Because of rather small local budgets and their deficiency, local authorities (including village and small town areas) have very limited resources to fund CSOs and support social projects.
3. Civil society development is not always seen as a priority as mapping out programmes funded from the local budget. Local authorities have their own, rather uncertain view of specific civil society development problems solution of most of which can be delegated to civil society organisations.
4. Complexity of the funding process pursuant to applicable budget law. The existing practice of social contracting is encumbered with some objective factors – the need to go through complex formal processes of opening treasury accounts, budget funding and reporting, and subjective ones – in some cases, the key role is played by having personal relationships with a manager making decisions.
5. Non-transparency and thus low awareness of opportunities to attract financial resources from the local budget among civil society organisations.
6. Corrupted competitive practices of receiving grants, “kickbacks”, etc.

7. Lack of proper regulation of selection of civil society organisations through tendering processes at the legislative level and vagueness of funding priorities, which results in their lacking a system and diversification.
8. Lack of development strategies for urban and rural communities supported by socio-economic development programmes.
9. Poor expertise of the staff and managers of CSOs. Lack of professional skills in developing projects and setting their budget for tenders.
10. Low civic consciousness. Poor community funds.

3.2.4. Respondents' perception of the local government funding model

The respondents were asked open and closed questions to provide insight into their attitudes towards the CSO local government funding model. Generalised results of distribution of the respondents on the basis of their answers to the posed questions are shown in fig. 3.9.

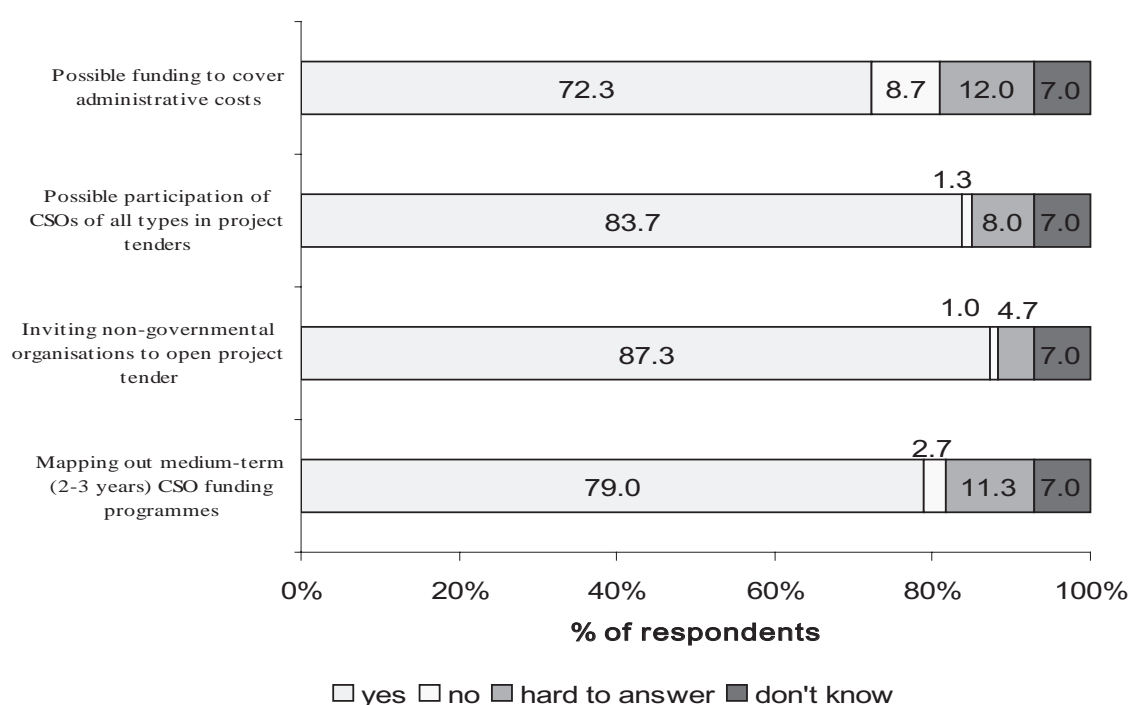


Fig. 3.9. Distribution of the respondents on the basis of their answers to the question: «WHAT, IN YOUR VIEW, SHOULD BE THE CSO LOCAL GOVERNMENT FUNDING MODEL?», % OF RESPONDENTS, N=300

The vast majority of the respondents (87.3%) supported “Inviting non-governmental organisations to open project tender” as a CSO funding model. This model will foster, on the one hand, transparent action of local authorities, and on the other hand, equal access of civil society organisations to resources of the local budget. This model was supported by 89.2% and 81.8% of the respondents from urban and rural areas respectively.

It should be noted that 97.3% of the respondents representing local authorities assessed this CSO funding model positively. This indicates that local authorities are prepared to an open dialogue with the public. A positive, though more moderate attitude towards this model is also characteristic of managers and members of CSOs. Rather large percentage (79.8%) of the respondents from among managers or members of CSOs assessed the model positively. A 17.5% difference may show some degree of distrust of those from the government among CSOs. Round table discussions in five regions of Ukraine and Kyiv show that such an attitude the public has

towards the government, as it were, became a tradition, though devoted and active steps taken by the government toward establishing relationships based on openness and interest in social development could produce some results.

Eighty-three point seven per cent of the respondents supported possible participation of CSOs of all types in project tenders as an effective funding model. The model was accepted by 84.3 and 81.8% of the respondents from urban and rural areas respectively.

Ninety point five per cent of the respondents representing local authorities assessed this CSO funding model positively. It was also supported by 77.4% of the respondents from among managers or members of CSOs.

The model ranked third by the respondents is mapping out medium-term (2-3 years) CSO funding programmes. Most respondents (79%) believe the development of medium-term funding programmes to be an effective CSO funding model. 78 and 81.3 per cent of the respondents from urban and rural areas respectively assessed this model positively.

Eighty-nine point two per cent of the respondents representing local authorities and 71.4% of those from among managers or members of CSOs also support the development of medium-term CSO funding programmes.

The model of possible funding to cover administrative costs was supported by 72.3% of the respondents. The model was accepted by 73.5 and 68.8% of the respondents from urban and rural areas respectively.

Seventy-seven per cent of the respondents representing local authorities and 71.4% of those from among managers or members of CSOs assessed possible funding to cover administrative costs positively.

The expert interview included answering open questions regarding the CSO local government funding model. The respondents' open answers were analysed, generalised and grouped. To summarise answers to the open question regarding "Perception of the CSO local government funding model", it should be noted that the respondents think that the CSO local government funding model should allow for:

1. Development of short-, medium- and long-term CSO funding programmes aimed at their carrying out particular social projects.
2. Development of a simplified process of local budget funding and its use.
3. Mandatory CSO training in filling out proposals and setting project budgets.
4. CSOs' administrative costs complementing the programmed activities rather than being the main costs.
5. CSO local government funding occupying a definite place within the general CSO funding system and interacting with other CSO funders.
6. Funding from local budgets within 30% of CSOs' total costs.
7. Setting up regional foundations combining particular civil society organisations depending on the area, with mixed funding. Managers of the regional funds should be elected for a fixed period, and the specialist staff of the foundations is permanent.
8. Low level of the government's confidence in CSOs and low awareness of the government of community problems.

3.3. Problems of funding from the private sector and individual citizens

Block IV of the questionnaire contained questions about CSO non-government funding, regarding possible funding from the business, private persons, and the organisations' capacity to earn money independently.

The respondents assessed the main problems of the existing CSO non-state funding system offered in the questionnaire and their importance for development of CSOs using a scale, "very important – important – unimportant – hard to answer". Besides problems outlined in the

questionnaire, respondents were asked to name other problems with non-government funding of CSOs and assess their importance. In this way, the widest coverage of the research topic was achieved.

The general results of distribution of the respondents on the basis of their answers to the posed questions are presented in fig. 3.10. divided into two parts because of a large number of questions characterising problems of the existing CSO non-state funding system.

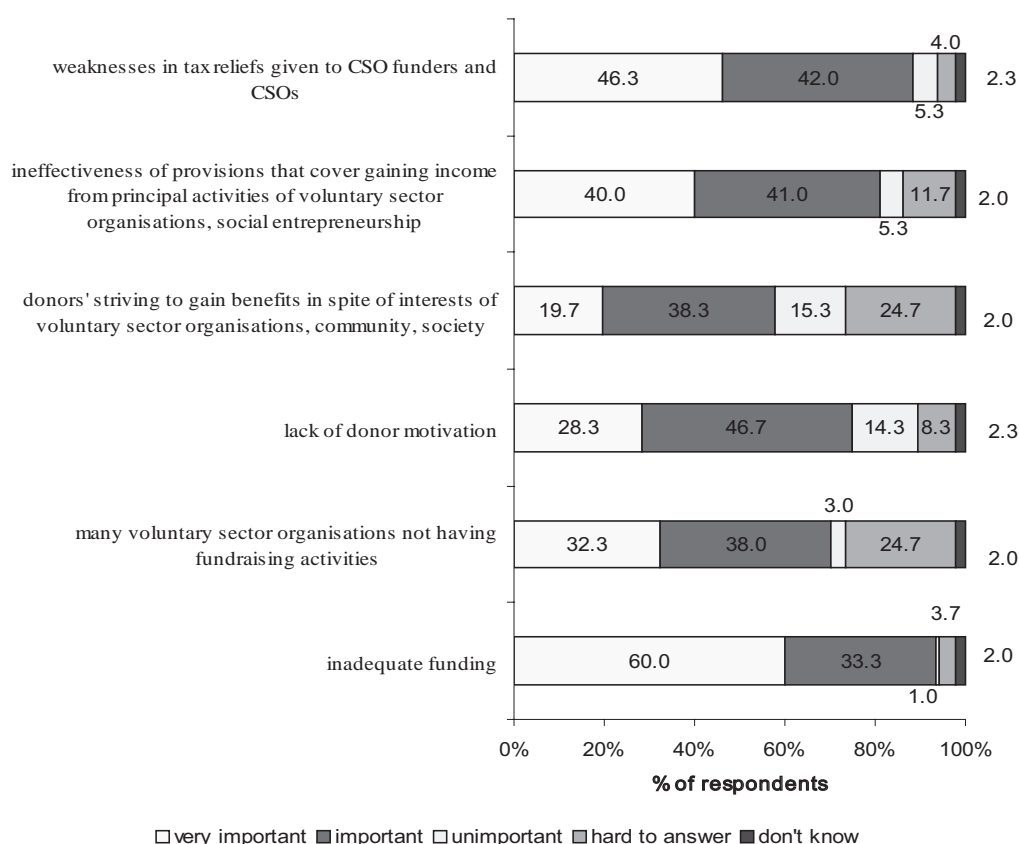


Fig. 3.10. (first part) Distribution of the respondents on the basis of their answers to the question: «THE MAIN PROBLEMS OF THE EXISTING CSO NON-STATE FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs', % OF RESPONDENTS, N=300

Fig. 3.10. shows that the biggest non-government funding problem is its inadequacy: 60% of the respondents consider this problem to be very important, 33.3% assess it as important, and only 1% of the sample think that this problem is unimportant. Therefore, the number of the respondents that identified this problem as “very important” and “important” reaches 93.3%. Analysis of distribution of answers of the respondents in urban and rural areas shows that 94% and 93% of them said that inadequacy of non-government funding is “very important” and “important” CSO funding problem respectively.

It was interesting to look into attitudes the business/private sector has towards this. Results of the interview show that 95% of representatives of the business/private sector believe funding inadequacy to be very important and important issue. Ninety-three per cent of the respondents from among managers or members of CSOs answered the question in the same way. If we rank non-state funding problems by the number of respondents that assessed them as “very important”, the problem put by us as “Small and medium business liable to single tax becoming

unable to reduce taxes by providing assistance to the non-profit sector” is ranked second. Forty-nine point three per cent of the respondents identified this problem as “very important” and 37.7% as “important”, 87% in aggregate.

Analysing distribution of answers of the respondents from urban and rural areas, it should be noted that 85% and 94% pointed out that the small and medium business liable to single tax becoming unable to reduce taxes by providing assistance to the non-profit sector is very important and important CSO funding problem respectively.

Representatives of the business/private sector and managers or members of CSOs are unanimous in their view of this question. Ninety-four per cent of the interviewed representatives of the business/private sector and 90% of those from among managers or members of CSOs think the small and medium business liable to single tax becoming unable to reduce taxes by providing assistance to the non-profit sector to be very important and important.

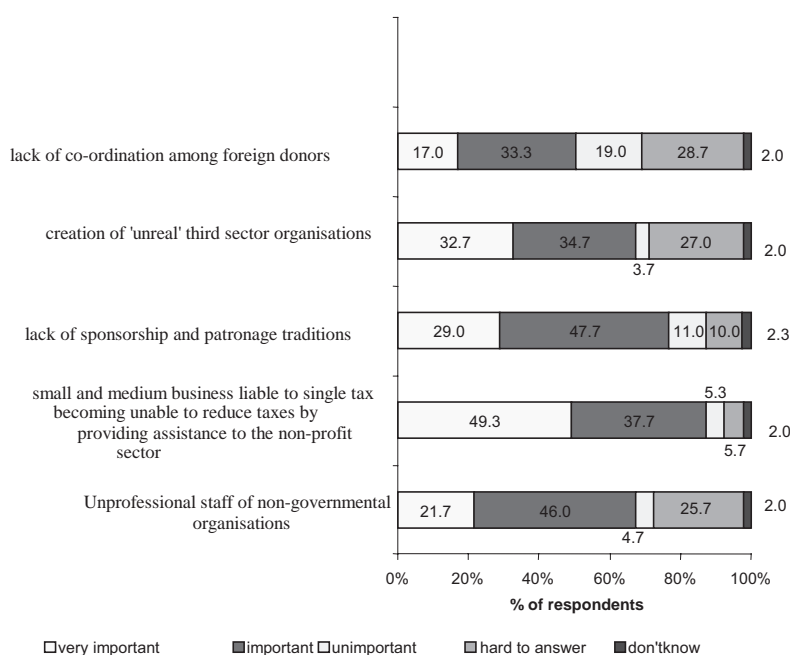


Fig. 3.10 (second part). Distribution of the respondents on the basis of their answers to the question: «THE MAIN PROBLEMS OF THE EXISTING CSO NON-STATE FUNDING SYSTEM AND THEIR IMPORTANCE FOR DEVELOPMENT OF CSOs', % OF RESPONDENTS, N=300

The next non-government funding problem is “weaknesses in tax reliefs given to CSO funders and CSOs”. Forty-six point three per cent of the respondents identified this problem as “very important”, and 42% as “important”, 86.3% in aggregate.

As regards distribution of answers of the respondents from urban and rural areas, 88% and 91% pointed out that weaknesses in tax reliefs given to CSO funders and CSOs are very important and important CSO funding problem respectively.

A way in which representatives of the business/private sector and managers or members of CSOs regarded this proved to be unanimous – 94% within each group believe weaknesses in tax reliefs given to CSO funders and CSOs to be very important and important.

The next non-government funding problem studied by us was “many civil society organisations not having fundraising activities”. Thirty-two point three per cent of the respondents identified this CSO funding problem as “very important”, and 38% as “important”, 70.3% in aggregate.

Analysing distribution of answers of the respondents from urban and rural areas, it should be noted that 69% and 77% said that many civil society organisations not having fundraising activities is very important and important CSO funding problem respectively.

Representatives of the business/private sector and managers or members of CSOs regard this in the similar way. Seventy-three per cent of the interviewed representatives of the business/private sector and 79% of those from among managers or members of CSOs think many civil society organisations not having fundraising activities to be very important and important.

An important non-government funding problem is “lack of donor motivation”. Twenty-eight point three per cent of the respondents identified this CSO funding problem as “very important”, and 46.7% as “important”, 75% in aggregate.

Seventy-seven and seventy-two per cent of the respondents from urban and rural areas pointed out that lack of donor motivation is very important and important CSO funding problem respectively.

Representatives of the business/private sector and managers or members of CSOs answered this question largely in the same way. Seventy-four per cent of the interviewed representatives of the business/private sector and 83% of those from among managers or members of CSOs believe lack of donor motivation to be very important and important.

An important non-government funding problem is also “lack of sponsorship and patronage traditions”. Twenty-nine per cent of the respondents identified this CSO funding problem as “very important”, and 47.7% as “important”, 76.7% in aggregate.

Analysing distribution of answers of the respondents from urban and rural areas, it should be noted that 76% and 81% pointed out that lack of sponsorship and patronage traditions is very important and important CSO funding problem respectively. Representatives of the business/private sector and managers or members of CSOs regard this in the similar way. Seventy per cent of the interviewed representatives of the business/private sector and 79% of those from among managers or members of CSOs think lack of sponsorship and patronage traditions in Ukraine to be very important and important.

An equally important non-government funding problem is “creation of “unreal” third sector organisations”, that is, those that exist from grant to grant and promote their organisation as such rather than function as a civil society organisation. Thirty-two point seven per cent of the respondents identified this CSO funding problem as “very important”, and 34.7% as “important”, 67.4% in aggregate.

Analysing distribution of answers of the respondents in urban and rural areas, it should be noted that 66% and 72% pointed out that creation of “unreal” third sector organisations is very important and important CSO funding problem respectively. Representatives of the business/private sector and managers or members of CSOs regard this in the similar way. Sixty-four per cent of the interviewed representatives of the business/private sector and 66% of those from among managers or members of CSOs think creation of “unreal” third sector organisations to be very important and important.

An important non-government funding problem is also “unprofessional staff of non-governmental organisations”. 27.7% of the respondents identified this CSO funding problem as “very important”, and 46% as “important”, 67.7% in aggregate.

Analysing distribution of answers of the respondents in urban and rural areas, it should be noted that 66% and 73% said that unprofessional staff of non-governmental organisations is very important and important CSO funding problem respectively.

It should be noted that only 52% of the interviewed representatives of the business/private sector think unprofessional staff of non-governmental organisations to be very important and important. Furthermore, a significant number of the respondents (44%) did not give their view of the question. This can be associated with the fact that so far some representatives of the business/private sector do not see civil society as a professional force able to influence the government, business, population and implement significant social projects.

Seventy per cent of the interviewed managers or members of CSOs believe the problem of unprofessional staff of non-governmental organisations to be very important and important.

An important non-government funding problem is “donors” striving to gain benefits in spite of interests of civil society organisations, community, society”. Nineteen point seven per cent of the respondents identified this CSO funding problem as “very important”, and 38.3% as “important”, 58% in aggregate.

57 and 63% of the respondents in urban and rural areas respectively pointed out that donors’ striving to gain benefits in spite of interests of civil society organisations, community, society is very important CSO funding problem. The representatives of the business/private sector and managers or members of CSOs answered this question largely in the same way. Forty-five per cent of the interviewed representatives of the business/private sector and 58% of those from among managers or members of CSOs think the problem of donors’ striving to gain benefits in spite of interests of civil society organisations, community, society to be very important and important.

The last non-government funding problem of those listed in the interview is “lack of co-ordination among foreign donors”. Seventeen per cent of the respondents identified this CSO funding problem as “very important”, and 33.3% as “important”, 50.3% in aggregate.

Analysis of distribution of answers of the respondents in urban and rural areas shows that 48% and 59% pointed out that lack of co-ordination among foreign donors is very important and important CSO funding problem respectively.

The representatives of the business/private sector and managers or members of CSOs answered this question largely in the same way. Forty-one per cent of the interviewed representatives of the business/private sector and 55% of those from among managers or members of CSOs think lack of co-ordination among foreign donors to be very important and important.

In conclusion of the review of CSO non-government funding problems, it should be emphasised *that all formalised answers to all the questions were supported by most respondents (minimum 50%) and were “very important” or “important”*.

It is characteristic that less than one half (45.8%) of the representatives of the business/private sector answered “yes” to the question “Did you or your organisation provide funding to CSOs?”. Positive examples of CSO funding are known only to 34.7% of the representatives of the business/private sector. This indicates the need to provide an appropriate information framework to cover activities and the role of CSOs in social life, and integrated means for incentivising the business/private sector to fund CSOs.

In general, most questions showed that the respondents regarded the existence of CSO non-state funding problems largely in the same way. Most answers of the respondents such as “hard to answer” are associated with lack of openness in activities of particular CSOs, as well as necessary expertise of CSO staff and business patronage traditions in modern history of Ukraine. In most cases, the respondents answered “hard to answer” to questions regarding importance of the following problems:

- many civil society organisations not having fundraising activities;
- lack of donor motivation;
- ineffectiveness of legislative provisions that cover gaining income from principal activities of civil society organisations;
- “donors” striving to gain benefits in spite of interests of civil society organisations, local community or society in general;
- unprofessional staff of non-governmental organisations;
- lack of sponsorship and patronage traditions;
- creation of “unreal” third sector organisations;
- lack of co-ordination among foreign donors.

The expert interview included answering open questions regarding other CSO non-state funding problems. The respondents’ answers to the open questions were analysed, generalised and grouped. Conclusions as to the open question about “problems of the existing CSO non-state funding system” are listed below:

1. Lack of state's reliefs for the business. Given reliefs, CSOs could use business money in particular directions more efficiently.
2. The system of taxes should be more oriented to the development of civil society.
3. Co-ordination and effectiveness of the use of donors' money by CSOs need betterment.
4. Lack of expertise, some information and CSOs' experience in the area of attraction of non-state funding. On the other hand, lack of expertise holds business players back from funding CSOs.
5. Low civic and people's activity.
6. Poor popularisation of sponsorship and patronage ideas in the Ukrainian society.
7. The society's low awareness of CSO activities.
8. Lack of a systematic and accessible publication that would provide information on CSO non-state funding opportunities and their needs.
9. Sometimes, donor priorities do not meet interests of communities.

3.4. Problems of funding from delivery of paid services

As can be seen in fig. 3.10. (first part), a significant non-government funding problem is "ineffectiveness of legislative provisions that cover gaining income from principal activities of civil society organisations, social entrepreneurship". Forty per cent of the respondents identified this CSO funding problem as "very important", and 41% as "important", 81% in aggregate.

Analysing distribution of answers of the respondents in urban and rural areas, it should be noted that 81% and 84% said that ineffectiveness of legislative provisions that cover gaining income from principal activities of civil society organisations, social entrepreneurship is very important and important CSO funding problem respectively.

The representatives of the business/private sector and managers or members of CSOs regarded the problem largely in the same way. Seventy-eight per cent of the interviewed representatives of the business/private sector and 87% of those from among managers or members of CSOs think the problem of ineffectiveness of legislative provisions that cover gaining income from principal activities of civil society organisations, social entrepreneurship to be very important and important.

It should be noted that it was hard to answer the question regarding ineffectiveness of legislative provisions that cover gaining income from principal activities of civil society organisations to around 12% of the respondents. In our view, such a situation can be explained by the answer to another question, that about "lack of expertise, some information and CSOs' experience in the area of attraction of non-state funding" and "consumerist" spirit of particular organisations.

Conclusion: the vast majority (81%) of members of the civil society organisation are willing to earn money to achieve statutory aims of their organisations and their development on their own. But they are hampered in this by the existing system of laws – "ineffectiveness of provisions that cover gaining income from principal activities of civil society organisations, social entrepreneurship".

Answering open questions about opportunities to deliver paid services, the respondents most often proposed to "allow CSOs to engage in business activities".

3.5. Problems of funding from other sources

Other sources of funding include membership subscriptions by CSO members and passive incomes. Unfortunately, our respondents do not have any deposit accounts and do not receive any dividends. However, as can be seen from fig. 3.11, 19% of the interviewed representatives of CSOs said they had other sources of funding.

From the answers to open questions, it can be inferred that such money mainly comes to the organisation from hiring out premises, or vice versa, the organisation uses premises free of charge as a result of delivery of free-of-charge legal and other consulting services, arbitration fees.

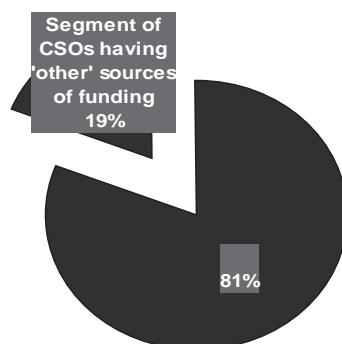


Fig. 3.11. The segment of CSOs having «other» sources of funding within the sample (number of CSOs within the sample N=84).

Membership subscriptions are rather essential source of funding of CSOs that took part in the survey. Fig. 3.12. shows that membership subscriptions are the sole source of funding of 13% of the organisations, and almost one-third, that is, 29% of the respondents said they are one of sources of funding. Fifty-eight per cent of the interviewed members or managers of CSOs did not identified membership subscriptions as a source of funding of their organisation.

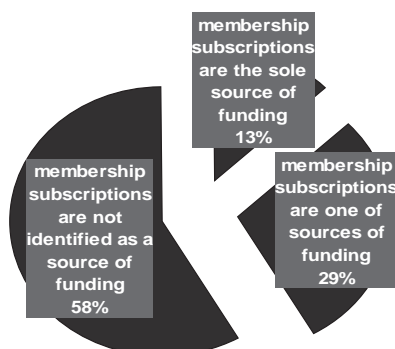


Fig. 3.12. The role of membership subscriptions as a source of CSO funding: segment of respective CSOs within the sample (number of CSOs within the sample N=84)

Analysis of fig. 3.13 shows that the vast majority of organisations – 71% of organisations in Kyiv oblast, 69% in Poltava oblast, 57% in Volyn oblast – rely on membership subscriptions. However, it should be noted that only 7% of CSOs in Donetsk oblast are funded by their members, or the respondents ignore membership subscriptions as a source of funding because of their small size.

In our interview, we also looked into existence of control over activities of civil society organisations. The respondents' answers to the question "Do you know any cases of CSOs being controlled?" are shown in fig. 3.14.

To the above question, 82.7% of the respondents answered "no", and 17.3% answered "yes". Ninety-one point seven per cent of the representatives of the business/private sector and 77% of representatives of local authorities answered "no". It should be noted that the respondents that answered "yes" did not explain their answer.

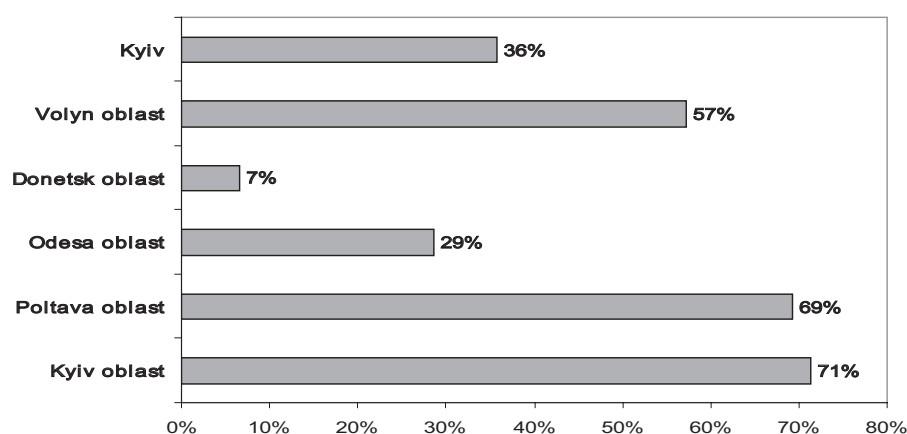


Fig. 3.13. Percentage of CSOs relying on membership subscriptions in sample oblasts

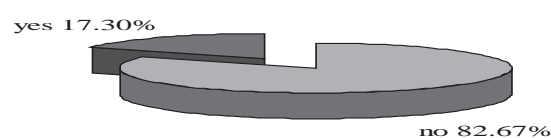


Fig. 3.14. Distribution of the respondents on the basis of their answers to the question: «Do you know any cases of CSOs being controlled?», % of respondents, N=300

3.6. POSITIVE EXAMPLES OF FUNDING OF CIVIL SOCIETY ORGANISATIONS

Only 36.3% of the respondents said that they knew positive examples of funding. Only 39.2% of 74 representatives of local authorities that participated in the research answered “yes” (fig. 3.15.). However, the questionnaire offered the respondents to answer the open question regarding positive examples of funding of CSOs.



Fig. 3.15. Distribution of the respondents on the basis of their answers to the question: «Do you know any positive examples of CSO funding?», % of respondents, N=300

However, summarised answers to the open question showed that financial and other assistance can be provided to CSOs and civil society along various lines, for example:

- contributions to different celebrations;
- providing assistance to youth, children and sports organisations, schools, kindergartens, people with disabilities and veterans;
- ecological and art competitions, conferences, workshops;

- development of green travel and travel information centres;
- restoration of cultural, historic and spiritual heritage;
- patronage of children care homes;
- assistance to and improvement of local areas;
- delivery of different services;
- development of infrastructure in rural areas, etc.

The respondents' answers can be grouped by a source and mechanisms of funding:

1. Positive examples of central and local budget funding:

- 1.1. Competing youth support programmes (family and youth departments of Odesa oblast state administration);
- 1.2. Funding from the local budget (Odesa) is provided to support some events undertaken by civil society organisations, inviting civil society organisations to tender for social projects;
- 1.3. Over a few years, some local authorities (village, rayon and city councils) were funded from the local development foundation, having won the tender launched by the Cabinet of Ministers of Ukraine (Foundation for Local Self-Government in Ukraine);
- 1.4. Some projects were supported by the Odesa Oblast Foundation for Local Self-Government. The Agroindustrial Development Department launches tenders for budget funding to deliver social consultancy services;
- 1.5. Country people receiving free-of-charge consultations from different economic sectors and training at workshops and presentations;
- 1.6. Rural travel development projects supported, inter alia, by local authorities;
- 1.7. Village council helping all villagers to get gasified, improving local areas, etc.;
- 1.8. City veterans association is funded from the local, not central budget;
- 1.9. CSO funding from the local budget, if necessary.

Notwithstanding a positive funding practice in place and fruitful co-operation with local authorities, many respondents pointed out that they, unfortunately, do not know any cases of CSO support by the state.

2. Positive examples of funding from the business/private sector:

- 2.1. Provision of non-refundable financial assistance for purchase of wheelchairs;
- 2.2. Provision of charitable assistance to veterans;
- 2.3. Putting veterans on care lists of rayon enterprises, veterans sponsorship;
- 2.4. Funding of junior sports events;
- 2.5. Funding of different charitable activities – support of a children care home, sponsorship of different events, etc. – by the enterprise;
- 2.6. Delivery of equipment to schools and government institutions, repairs of equipment, etc.;
- 2.7. In 2010 the enterprise has started Mayetok social project: rural households have been given piglets, fodder and technology. As distributing piglets, Pan Kurchak agroindustrial group signs an agreement undertaking to purchase produced pork at a fixed price. In this way, many rural households gained additional income;
- 2.8. “As a private entrepreneur, I’ve participated in most marathons held by Volyn oblast organisation of the visually handicapped. The last was run under the slogan “A blind child wants a tactile book”. The raised funds were used to print two books of the Harry Potter series (using braille code). My money became a part of money raised for this good purpose”;

- 2.9. “We closely co-operate with and provide assistance to a retirement home, deaf-mutes school, church, orphan school, rehabilitation centre for drug addicts”.

These positive examples of co-operation suggest that, for active participation of business enterprises and entrepreneurs in civil society development, the state needs to interest them and provide direct benefits, by legally giving more reliefs to the business supporting civil society organisations. The business endeavours to support socially oriented activities directly (without mediation of the state because it uses money ineffectively), and the state should only define a list of activities and types of organisations the reliefs will apply to.

3. *Positive examples of funding from international donors:*

- 3.1. Countrywomen’s union, Zinkiv credit union, Zinkiv union of farmers and private land owners were repeatedly given union development grants;
- 3.2. Grant funding from the EU-UNDP Community-Oriented Local Development project aimed at fostering sustainable socio-economic development at the local level;
- 3.3. “2002-2006 saw the Country People’s Welfare Improvement Programme working in our (Velyka Mykhaylivka) rayon to give powerful impetus to the development of civil society organisations, first of all, youth and women’s ones, within the rayon”;
- 3.4. The School Of Tomorrow programme funded by the Netherlands Embassy in Ukraine proved to be very beneficial;
- 3.5. Provision of refundable assistance to small producers (especially, in rural areas) aimed at the development of their business fostered self-employment, creation of new workplaces, replenishment of the local and central budgets;
- 3.6. Inviting informal activist groups to tender for mini grants to solve social problems within rural communities. Limited funding of mini projects made it possible to mobilise rural activists to tackle their own problems. Over time, some of these activist groups grew into officially working civil society organisations;
- 3.7. Heifer Project International. The project is aimed at assisting rural people provided that they will subsequently help others. This allows even ordinary country folk to be donors. Furthermore, relatively modest funding can provide assistance to a lot of people, because the programme is quick to encompass all the villagers;
- 3.8. The most widespread examples of funding of civil society organisations in our rayon include funding from international donors, for example, the European Union. As successes in our rayon, I could cite the two examples: the Tarutyne steppe preservation project and rural travel development project;
- 3.9. Our rayon has a few civil society organisations actively working with young people. They receive main funding from projects funded by foreign foundations. Unfortunately, local or central funding of these organisations is minimal or is lacking almost altogether;
- 3.10. Countrywomen’s Union of Ukraine and Nadiya women’s organisation were funded within the framework of international projects, the state did not provide any money;
- 3.11. Project funding by the Swedish Farmers Association. The project includes mapping out and adoption of the CSO development programme, setting up oblast and rayon farmers centres;
- 3.12. Poland-Ukraine-Belarus neighbourhood programmes;
- 3.13. The main donor of the All-Ukrainian Network of People Living with HIV is the Global Fund to Fight AIDS, Tuberculosis and Malaria. Using money of this fund, Ukraine has implemented most programmes aiming at overcoming HIV/AIDS epidemic; the donor closely monitors the use of funding, and it is devoted to fighting epidemic. It is very important that work of the civil society is the responsibility of the government rather than international donors, as it is the case.

These examples show very significant influence of international donors on the development of CSOs in different areas in Ukraine. From the point of view of the development of civil society organisations, not less interesting option is combination of resources of different sources of funding.

4. Positive examples of mixed CSO funding:

- 4.1. Using financial support from the local government and business, a specialised library was set up for the disabled people civil society organisation. Upon requests of the country folk with disabilities, books are delivered by a local postman. Using the similar scheme, medications are made available;
- 4.2. Positive experience has been gained in the process of implementing the EU-UNDP Community-Oriented Local Development project jointly with local authorities of Bolhrad rayon (Odesa oblast) and participation in other tenders for grants;
- 4.3. Assistance from government bodies and the business contributes to holding national cultural events, festivals, cultural exchange (visits to and from Moldova and Romania), etc. It is especially important for education of youngsters, their coming to know traditions and customs of their ancestors;
- 4.4. Our villages have created people's self-organisation committees, written projects and received grants to replace windows in schools, kindergartens, supply hot water to medical institutions in some villages of the rayon. We reclaimed a number of sources playing an important role in supplying water to villages of the rayon, environmental organisations received grants aimed at improvement of the city recreation park, a social project that won the rayon tender was funded from the rayon budget through the entrepreneurship support programme;
- 4.5. The Nadiya association was awarded a project with funding of 100,000 hryvnias aimed at community-oriented local development. Medical out-patient equipment was purchased. The administration provided a 5,000 hryvnias' house free of charge (5,000 hryvnias are community money). A music centre was given to the school. A small school grant was awarded: 3 computers, 15 seats, 3 tables;
- 4.6. In Mykolayivka village (Bilhorod-Dnistrovsky rayon), Perlyna organisation is working rather successfully. It has implemented around a dozen of social projects. It has been funded by the Polish East European Democratic Centre, Foundation for Local Self-Government in Ukraine, Heifer Project International and other organisations, including local ones;
- 4.7. "In the city and the rayon, a few civil society organisations are working, that are funded by international donors, and partly from local budgets. The Entrepreneurship Support Fund is doing successfully, and a few organisations work in the area of rural travel development";
- 4.8. Civil society organisations can receive main funding from different international foundations. Moreover, in 2007-2008 civil society organisations received some funding from the rayon, but all similar programmes are currently wound up due to the recession;
- 4.9. Co-funding of projects driven by UNDP, the Community-Oriented Local Development project co-ordinating financial action of the community, oblast, rayon, village government and the project itself;
- 4.10. "The German "Memory, Responsibility, Future" project funded the project called "The Meeting Place Is Dialogue". The aim of the project is to bring activity into life of old people – former prisoners of concentration camps, Ostarbeiters. Project participants set up a club. A fundraising campaign is launched to raise money to conduct meetings of older former prisoners (every Wednesday), two trips are organised. The Advocacy Campaign Against Human Trafficking is under way. The project attracts attention of

Volyn people to human trafficking problems, establishes partner relationships with the government aiming at the development and adoption of the regional human trafficking prevention programme which will feed local funds to combating human trafficking. Active participation of journalists in attracting additional human resources considerably increased the project value”;

- 4.11. Joining of efforts of Zabrodivka village council, community, sponsors aimed at solving social problems of the countryside;
- 4.12. Positive experience of co-operation with the city council, Scandinavian mission;
- 4.13. Co-funding of water supply of Chesny Khrest village (Volodymyr-Volynsky rayon) by a foreign charity and the community;
- 4.14. Local deputies and other officials providing one-off and continual support to activities of trade unions and charities by funding their costs or purchases of assets they need.

The above positive co-funding examples show that combining different sources of funding both from local authorities, the business and international foundations is not only an example of beneficial co-operation between the government, business, international community and civil society, but also a powerful tool to facilitate socio-economic development of Ukraine. Joining of efforts of all those interested in creation of developed civil society is a vivid example of how to devise and implement an integral CSO funding model able to unite all those concerned about Ukraine’s future.

3.7. Proposals on improvement of CSO funding based on interviews and regional round table discussions

The respondents were asked for their views of strategic, inter alia, legislative actions needed to create an effective CSO funding model.

Formalised answers included:

- development and adoption of the government’s targeted Civil Society Development Programme;
- annual provision of CSO funding in state budget laws;
- approval of aims and criteria of CSO government funding;
- setting up the National Civil Society Development Foundation.

Fig. 3.16. shows distribution of the respondents’ answers to questions regarding strategic, inter alia, legislative actions needed to create an effective CSO funding model.

Conclusion. Attention should be paid to unanimity of the respondents’ views of strategic actions at large aimed at creation of an effective CSO funding model. Ninety per cent of the respondents think it to be expedient to develop and adopt the government’s targeted Civil Society Development Programme, and only 3.7% are against it. Ninety-one point seven per cent of the respondents think the approval of aims and criteria of CSO government funding to be needed, and only 2.3% are against it. Eighty-seven point seven per cent of the respondents believe that state budget laws should annually provide for CSO funding, and only 3% are against.

The respondents’ answers to the question regarding identification of setting up of the National Civil Society Development Foundation as a strategic action were also ambiguous, similarly to block 2: 61% said “yes” and 16.3% said “no”.

Given unanimity of the respondents’ views on this issue, it is needless to analyse distribution of views different reference groups have. We will focus on answers to open questions of the questionnaire about strategic actions aimed at creating an effective CSO state funding model.

Answers to the open question are partly explained by caution with which the respondents regard setting up the National Foundation for Entrepreneurship Development. One of the respondents explained his negative attitude towards setting up the foundation as follows: “*The assessment of the need to set up the National Foundation or other similar formations calls for a detailed analysis*

of their programme and statute”. Supporters of the idea of setting up the foundation motivate their view as follows: “Undoubtedly, the existence of such a foundation would positively influence unity and co-ordination of their activities, and would allow CSOs’ needs and demands to be tracked in a comprehensive and timely way”.

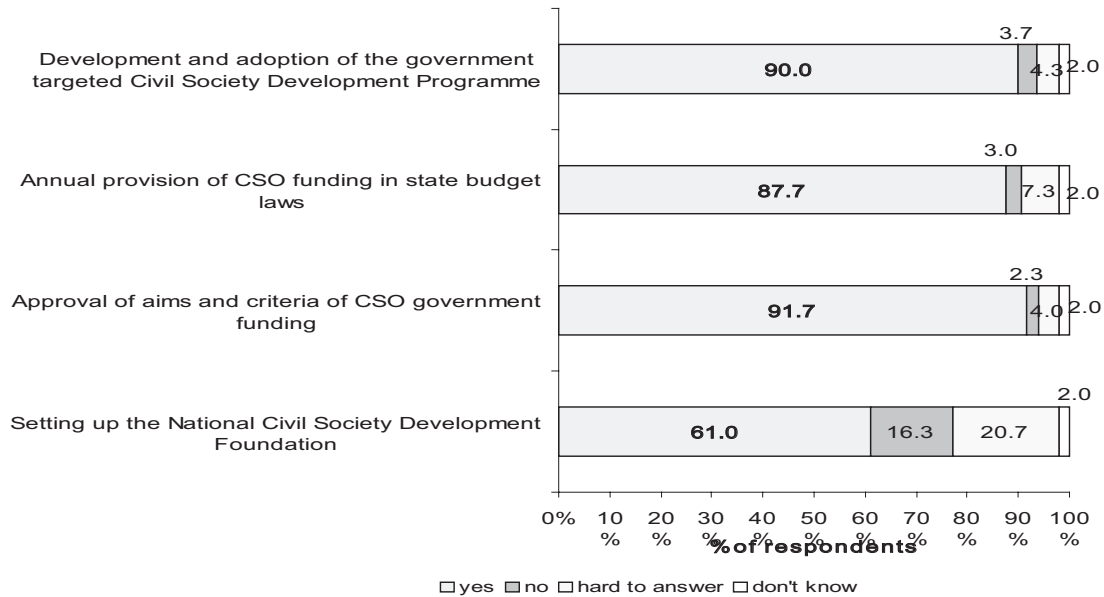


Fig. 3.16. Distribution of the respondents’ answers to the question: «WHAT STRATEGIC, INTER ALIA, LEGISLATIVE ACTION, IN YOUR VIEW, IS NEEDED TO CREATE AN EFFECTIVE CSO FUNDING MODEL?» (N=300)

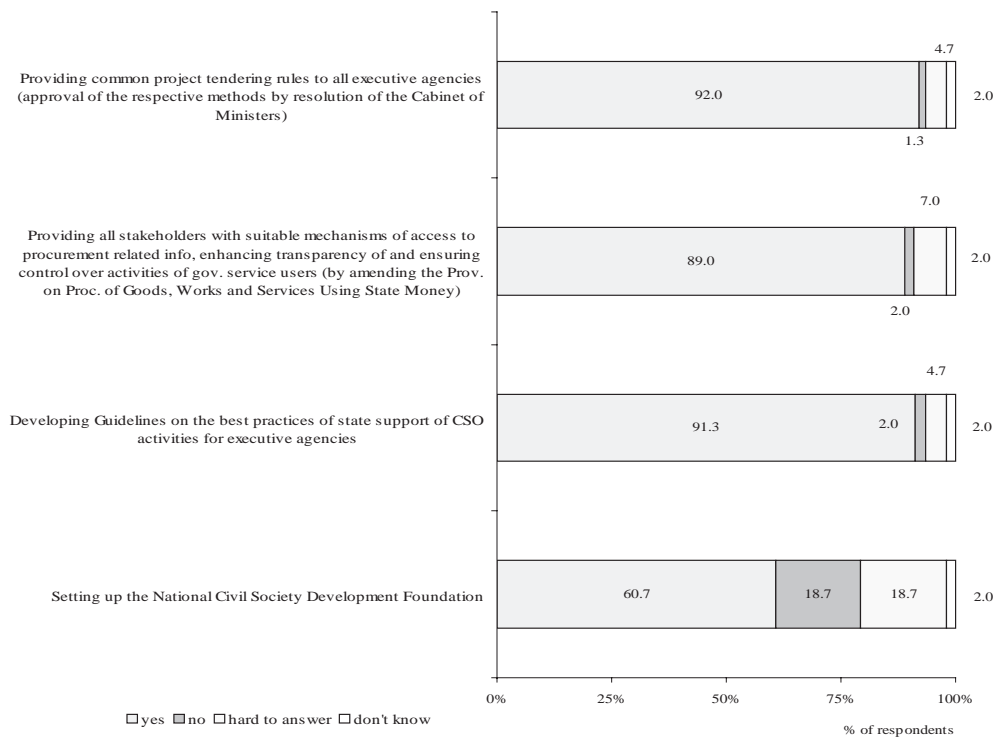


Fig. 3.17. Distribution of the respondents on the basis of their answers to the question: «WHAT PRIMARY STEPS, INCLUDING THOSE AIMED AT CREATING THE LEGISLATIVE FRAMEWORK, NEED, IN YOUR VIEW, TO BE UNDERTAKEN TO CREATE AN EFFECTIVE CSO FUNDING MODEL?» , % OF RESPONDENTS (N=300)

The respondents' proposals include *“allowing CSOs to engage in business activities”*, *“making Ukraine more interested in cross-border co-operation”*, *“giving tax reliefs to donors”*.

Most proposals concern the CSO development foundation and, in general, are as follows: *“adopting the state's CSO development programme and setting up its fund with donors' money”*, *“setting up regional divisions of the National Civil Society Development Foundation”*, *“programming the use of funding”*.

Besides strategic actions aiming at effective CSO funding, the respondents were asked to assess primary steps needed to be undertaken to create an effective CSO funding model. The results are shown in fig. 3.17.

Conclusion. Data from fig. 3.17. show that the respondents are almost unanimous in saying *“yes”* to the following primary steps: *“providing common project tendering rules to all executive agencies (approval of the respective methods by resolution of the Cabinet of Ministers)”* (92% said *“yes”*, and 1.3% *“no”*); *“providing all stakeholders with suitable mechanisms of access to procurement related information, enhancing transparency of and ensuring control over activities of government service users (by amending the Provision on Procurement of Goods, Works and Services Using State Money)”* (89% said *“yes”*, and 2% *“no”*), *“developing Guidelines on the best practices of state support of CSO activities for executive agencies”* (91.3% said *“yes”*, and 2% *“no”*). However, the *“setting up the National Civil Society Development Foundation”* proposed in the questionnaire (this time as a time-scaled, not strategic step) received *“cautious”* support again (60.7% said *“yes”*, and 18.7% *“no”*).

Given almost complete unanimity of answers to the question regarding primary CSO state funding steps and distribution of the respondents' views of the foundation similar to previous questions, it would be unreasonable to look into views had by the main reference groups in detail.

Instead, let us analyse answers to non-formalised (open) questions. The respondents' only two proposals meet the general context of questions formulated in the questionnaire and are about the development of rural areas and creation of regional subdivisions of the National Foundation: *“developing the long-term Civil Society Development Programme (for rural areas), identifying priorities”* and *“setting up regional divisions”*.

In November, within the framework of the two projects – *“Civil Society International Best Practice Research”* and *“Developing Institutional Framework of Funding Civil Society Organisations in Ukraine”* – the OSCE office in Ukraine conducted five regional round table discussions in Simferopol, Odesa, Lviv, Kyiv and Donetsk. The aim of these was:

- to present preliminary results of three researches undertaken within the framework of the above OSCE projects on the following topics:
 - ✓ research into and analysis of existing Ukrainian laws regulating funding of civil society organisations by government bodies, local authorities and the private sector;
 - ✓ the best international practices and experience in the area of funding of civil society organisations by government bodies, local authorities and the private sector;
 - ✓ foreign experience in enhancement of confidence between government bodies and the public in the process of their co-operation (dialogue);
- to discuss the existing forms of funding of civil society organisations in regions, and issues of their *putting into practice*.

Participants in round table discussions represented local executive agencies responsible for civil society development, civil society organisations and business circles. Participants in each round table discussion representing the three above sectors were invited from the oblast where the event took place and neighbouring oblasts, in particular, Crimean representatives went to Simferopol; representatives from Odesa, Mykolayiv, Kherson and Kirovohrad oblasts went to Odesa; those from Lviv, Transcarpathian, Volyn, Chernivtsi, Ivano-Frankivsk, Ternopil, Rivne and Khmelnytsky oblasts went to Lviv; those from Kyiv, Chernihiv, Sumy, Poltava, Cherkasy, Zhytomyr

and Vinnytsya oblasts went to Kyiv; those from Donetsk, Luhansk, Zaporizhzhya, Kharkiv and Dnipropetrovsk oblasts went to Donetsk.

Round table discussions saw participants put forth a number of helpful proposals as to improving mechanisms of funding of civil society organisations and provided comments on the existing situation, from among which the following can be cited:

- enhancing the list of CSOs entitled to state funding in the Budget Code;
- providing access to funding for local organisations, especially, from subsidised regions;
- funding of CSOs that have demonstrated their implementation capacity based on previous examples;
- CSOs' providing training in CSO capacities at the local level in rural communities;
- international donors, fundraising, social contracting regulation should be in place at the local level;
- more detailed analysis of passive income taxation (especially, bank deposits) and clarification of the situation;
- imposing criminal or administrative liability for ignoring civil society organisations;
- maximum preferences for CSOs' capacity to earn money independently, maximum assistance in attraction of funding from tax laws;
- simplifying the process of liquidation of civil society organisations with legal personality;
- developing sponsorship and patronage traditions. Drafting the volunteering law anew, because the existing law is, in fact, abnormal – there are volunteer responsibilities and no incentives. A list of school children volunteer work should be introduced through the department of education, in order to allow a child to choose, as before, between helping the elderly, sports promotion, neighbourhood area cleaning, etc. Children that engaged in any sponsored activity will become sponsors themselves when grown-up, because they know where such money goes from childhood;
- increasing funding of youth organisations, because on the ground they receive residual funding;
- developing a local level environmental protection programme (for particular recreation areas);
- amending the law “On Charity and Charitable Organisations” where it covers donor incentives;
- social entrepreneurship: regulatory framework needs to be improved;
- organisations entitled to government funding (social contracting) should be as loyal to the government as possible, those in opposition can not receive funding a priori. The state imposes its outdated CSO funding approaches, it should use other approaches;
- the state would not fund the organisation that does not suit it any more;
- social entrepreneurship should move to the foreground (the Law “On Social Entrepreneurship” should be passed) – they could help CSOs in attracting and using money and become the state's partners;
- centralisation of CSO funding controlled by the state is out of place, this would deteriorate funding and lead to corruption – this is a wrong way. This results in manipulation of civil society organisations and their use to achieve one's own ends.

3.8. Interim conclusions derived from the analysis of interview and round table discussions

1. There are three most important problems of CSO government funding (ranked in order of importance):

- inadequate government funding;
- lack of programmes to tender for project funding;

- legislative uncertainty of aims and criteria of CSO state funding, government's lacking respective techniques to select competing programmes.

2. Half-hearted CSOs' attempts at receiving government funding are 'provoked' by several problems: lack of CSO state funding tradition; problems with reporting on the use of budget funding; CSOs' low prestige among government bodies; lack of the government funding information system; weaknesses in the government funding process, especially, uneven funding within the year; lack of a legislative provision requiring planning of (oblast, rayon, village) budget spending on CSOs' projects or events.

3. Given unanimity of views of subjects and objects of CSO funding process, one might expect a constructive dialogue between the government and civil society aimed at solving these problems.

4. CSO members living in rural areas regard proposals as to concentrating CSO state funding, for example, in the National Civil Society Development Foundation, with caution. Such an attitude is explained by the fact that rural respondents do not believe that funding from centralised sources would be accessible to rural CSOs, and therefore, insist on setting up regional divisions of such a foundation. However, a two-level (all-Ukraine and regional) CSO funding model using mechanisms of funding from the central, local budgets, business/private sector, membership subscriptions and grants is supported in every way.

5. In isolated cases, for some reason or other, including a political slant, local authorities do not support civil society development "on the ground" and have their own, rather uncertain view of specific local community development problems solution of most of which can be delegated to civil society organisations.

6. Because of rather small local budgets and their deficiency, local authorities (including village and small town areas) have very limited resources to fund CSOs and support social projects.

7. Complexity of the funding process pursuant to applicable budget law. The existing practice of social contracting is encumbered with some objective factors – the need to go through complex formal processes of opening treasury accounts for getting budget funding and reporting, and subjective ones – in some cases, the decisive role in securing a contract is played by having personal relationships with a manager making decisions.

8. Non-transparency, and consequently, low awareness of opportunities to attract financial resources from the local budget among civil society organisations. Information on winners of government and local procurement tenders and outcomes of projects or delivery of procurement services is unknown to a wide group of stakeholders.

9. Lack of typical rules regulating tenders launched by government bodies and local authorities to fund projects of/contracts with CSOs and reporting requirements.

10. Development strategies for urban and rural communities supported by socio-economic development programmes and identifying funding priorities are mainly lacking. Scant community funds combining different sources of funding.

11. Inadequate expertise of the staff and managers of CSOs. Lack of professional skills in developing projects and setting their budget for tenders for all types of funding.

12. The state does not give reliefs to the business funding CSOs virtually at all. The business tax system is not aimed at the development of civil society. It is not friendly to the development of sponsorship and patronage in the Ukrainian society.

13. Lack of co-ordination among donors. Sometimes, donors' priorities fail to meet interests of communities.

14. Unanimity of views of the respondents (from all reference groups) and participants in round table discussions on the need for changes in CSO funding processes and opportunities and mapping out strategic actions in order to create an effective CSO funding model.

Participants in the field research almost unanimously supported the following primary steps: "providing common general project tendering rules to all executive agencies (approval of the respective methods by resolution of the Cabinet of Ministers)"; "providing all stakeholders with

suitable mechanisms of access to procurement related information, enhancing transparency of and ensuring control over activities of government service users (by amending the Provision on Procurement of Goods, Works and Services Using State Money)”; “developing Guidelines on the best practices of state support of CSO activities for executive agencies”. However, the proposed “setting up the National Civil Society Development Foundation” received “cautious” support as a result of concern about excessive control and passing of the existing government funding problems into the new structure.

Instead of this, representatives of civil society proposed another, in their view, more transparent and democratic model – the Public Monetary Fund that we will consider below.

4. IMPACT OF THE TAX CODE OF UKRAINE #2755 AS OF 2 DECEMBER 2010 ON FINANCIAL STATE OF CSOS

The research into the existing legislative framework of Ukraine regulating funding of civil society organisations (CSOs) by government bodies, local authorities, the business sector and from other sources, as well as experience in the area of government and non-government CSO funding has been done in September-December 2010. However, on 1 January 2011 the Tax Code came into force (excepting its particular provisions) that had been approved by the Verkhovna Rada of Ukraine pursuant to Law of Ukraine 2755 dated 2 December 2010⁸⁷. The Code became the main legislative instrument that regulates paying taxes and charges by natural and legal persons to the central and local budgets of Ukraine.

Though our research was conducted before the above document came into effect, considering its importance, we will see whether the situation in CSO funding changed in light of the Tax Code of Ukraine.

Having come into effect, the Tax Code repealed basic Laws of Ukraine such as laws “On Enterprise Profit Tax”, “On Personal Income Tax”, “On Value Added Tax” and many other laws and by-laws.

In general, this document must positively influence the taxation system in Ukraine, in particular, with respect to CSOs. Before passing of this document, tax laws of Ukraine could be said to be haphazard and even chaotic, and thus tax relationships were regulated by instruments of different levels – laws, resolutions of the Cabinet of Ministers of Ukraine, decrees of the President of Ukraine, ordinances of ministries and departments and so on, which significantly complicated activities of both business entities and civil society organisations.

The Tax Code of Ukraine has effected a number of changes positive to CSOs the most significant of which are:

- tax reliefs on charitable contributions from legal persons to NGOs (section 138.5.3 of the Tax Code);
- lifting previous limitation of the minimum amount of legal persons’ charitable contributions to 2% of income gained in the preceding year (Tax Code, section 138.10.6, paragraph “a”);
- lifting previous limitation of the minimum amount of natural persons’ charitable contributions to 2% of total taxable income gained in the preceding year (section 166.3.2 of the Tax Code);
- exemption of incomes from charity tours (section 170.10.5 of the Tax Code);
- providing for charitable assistance in the form of endowments (section 170.7.5 of the Tax Code);
- exemption of free-of-charge transfer of securities by way of endowments from VAT (section 197.1.15 of the Tax Code).

Now, civil society organisations registered as legal persons can pay 6 national taxes and charges, and the two more in special cases identified in article 9 of the Tax Code, in particular:

- enterprise profit tax;
- personal income tax;
- value added tax;
- initial vehicle registration fee;
- land tax;
- duty;
- excise (in special cases, as importing motor cars into the customs area of Ukraine);
- special forest use charge (when forest resources are used to hold cultural, recreation, travel industry, sports, educational events and do researches).

⁸⁷ Tax Code of Ukraine 2755 dated 2 December 2010, <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2755-17>

Since 1 January 2011, CSOs can pay tax charged on real property other than a land plot and will not pay such taxes as advertisement and public service taxes that caused a lot of trouble to these organisations.

The non-profits status in Ukraine currently exempts an organisation from only enterprise profit tax in general, or tax charged on particular types of income of such organisations. However, the status itself does not give any reliefs on other taxes and charges.

Most civil society organisations in Ukraine having the status of non-profits are not given any reliefs on taxes charged on land or other real property, they are not exempt from value added tax in the event of their receiving goods by way of assistance.

Article 157 of the Tax Code identifies requirements for civil society organisations to be given the status of the non-profit:

- the organisation should be a resident for tax purposes;
- the organisation's statutory aim should not imply profit making;
- assets of the organisation should not be used for the benefit of its individual members;
- in case of liquidation of the organisation, its assets should be transferred to one or more other civil society organisations or go to the budget;
- the statute of the civil society organisation should contain a comprehensive list of activities it engages in;
- exempt incomes should not be used to conduct business⁸⁸.

The status of the non-profit is given to an organisation based on the decision of state tax agencies to put the civil society organisation on the Register of Non-Profit Institutions and Organisations.

It should be noted that the procedure of making a decision on giving the status of a non-profit, similarly to keeping the register of non-profits, is not regulated by the current Tax Code, therefore, these relationships will continue to be regulated by agencies of the State Tax Inspectorate based on provisions issued by them. Therefore, as before, we may still have problems resulting from one-sided interpretation of provisions of applicable legislation by the Inspectorate agencies, not giving the non-profit status or unjustified taking it away, as well as controversies in this respect in courts.

To our knowledge, current Law of Ukraine 2460 "On Citizens' Associations" dated 16 June 1992 allows only international or all-Ukraine civil society organisations to establish separate tax-paying subdivisions including those with legal personality. At the same time, the Tax Code requires separate registration of separate subdivisions of civil society organisations for taxes. This raises the question, can such subdivisions get the status of non-profits today?

The status of separate subdivisions of foreign civil society (non-governmental) organisations also remains uncertain. They are non-residents (section 14.1.22 of the Tax Code), which rules out the possibility of their being put on the Register of Non-Profit Institutions and Organisations. Nevertheless, such subdivisions are subject to registration (accreditation or legalisation) in Ukraine. Thus the question of possible application to them of article 157 of the Tax Code saying that the organisation should be a resident for tax purposes remains open.

The Civil Code of Ukraine (article 85) generally requires non-business companies not to pursue making profit to be distributed between members. Provisions of the Civil Code are akin to article 157 of the Tax Code, furthermore, the Tax Code's section 165.1.4 says that any payments to members of governing bodies of civil society organisations, as well as their direct relatives (associated persons), other than money paid for works and services under labour or civil contracts, are taxable.

It should be noted that the Law of Ukraine "On Citizens' Associations" leaves disposal of the civil society organisation's property exclusively to its chief governing body – general meeting of

⁸⁸ Round table discussion "Achievements and perspectives of the reform of charity law", <http://blagozakon.org.ua/?p=907>

members or to their representatives (delegates). Should such a body not fix official salaries for members of other governing bodies of the organisation or delegate this capacity to respective bodies (presidium, board, etc.), fixing their salary appears to be doubtful.

As before, contributions by members of civil society organisations are non-taxable provided that they are irreversible, that is, do not imply receiving any goods or services by way of compensation.

Also as before, any activity of civil society organisations aimed at making profit is identified as business and is taxable at the standard rate. The Tax Code enhances the list of community benefit organisations to some extent:

- civil society organisations established in order to deliver rehabilitation, social and sports services to persons (children) with disabilities, provide legal aid, engage in environmental, recreation, amateur sports, cultural, educational and research activities;
- disabled people civil society organisations, associations of disabled people organisations and their local groups set up pursuant to the respective law (Tax Code, section 157.1, paragraph “b”).

Currently, such organisations receive non-profit code 0006, which allows the list of exempt incomes to be enhanced. They do not pay undistributed profit tax.

Instead, civil society organisations given non-profit code 0011 should spend at least 75% of the total annual income by 1 April of the next year. If an organisation with code 0011 spends a lesser percentage of its annual income, this difference becomes its undistributed profit taxable at the standard rate.

Article 157.14 of the Tax Code says that the use of exempt incomes to conduct business is the ground for taking the status of a non-profit away from the civil society organisation.

A ground for taking the status of a non-profit away is also unintended use of assets. Therefore, spending to achieve aims not identified by laws covering civil society organisations or Statutes of such organisations can be considered as unintended use of money pursuant to section 157.14 of the Tax Code. Unintended use of assets can also be deemed to be use by the civil society organisation of money or other property given for a specific purpose, that consequently can result in the organisation’s ceasing to be a non-profit.

In general, these provisions of the Tax Code agree with section 54 of Recommendation CM/Rec(2007)14 that restricts non-governmental organisations’ capacity to use property, purchase of which was exempt, for taxable purposes.

Let us see how the Tax Code will influence CSO funding:

Enterprise profit tax

Article 157 of the Tax Code lists incomes for non-profit organisations of each type. Incomes other than those identified by article 157 for non-profits of each type are liable to enterprise profit tax at the standard rate.

The standard rate of enterprise profit tax is 16% (article 151 of the Tax Code, section 151.1). It will be reduced to this level gradually, subject to the Tax Code’s Section 20 “Transitional Provisions”, paragraph 10, in the following way:

- 25% rate will apply from 1 January to 1 April 2011
- 23% rate will apply from 1 April to 31 December 2011
- 21% rate will apply in 2012
- 19% rate will apply in 2013
- 16% rate will apply since 1 January 2014.

The Tax Code has not brought any significant changes in this tax for civil society organisations.

Charitable contributions and other gifts. These contributions are exempt from income tax in case of civil society organisations given non-profit code 0011, if they come from founders, members or other participants of such organisations (section 157.5 of the Tax Code). Civil society

organisations under non-profit code 0006 can receive such contributions from any persons (section 157.3 of the Tax Code).

Passive (investment) incomes. As before, “passive incomes”, that is, those gained by CSOs from the use of their money and other property by other legal or natural persons, are exempt from income tax. These incomes include interest, dividends, insurance payments and royalties. Passive incomes are defined in section 14.1.268 of the Tax Code.

Civil society organisations’ having corporate rights (holding chartered capital of enterprises or their shares) is not considered to be business activity, regardless of shares or other property or non-property rights to chartered capital of enterprises.

As before, income from hiring out property will not be placed among passive incomes. The Tax Code identifies income from leasing as interest. Therefore, when a CSO hires out its property under section 14.1.97 of the Tax Code, a part of income (excepting that earned as a compensation for value of object of leasing) is exempt.

Incomes from principal activities. Provisions of the Tax Code give rise to a lot of questions especially in the area of taxation of incomes from principal activities of civil society organisations.

As pointed out above, there is an insurmountable obstacle to independent conduct of business by civil society organisations imposed by article 24 of the Law of Ukraine “On Citizens’ Associations” that allows them to engage in such activities only by establishing separate business entities. The Tax Code neither solves this problem, but imposes a number of obstacles to free engagement in such activities. Pursuant to section 157.15 of the Tax Code, the term “principal activities” includes activities of civil society organisations identified as principal by respective laws, including delivery of rehabilitation and sports services to persons (children) with disabilities, provision of charitable assistance, educational, cultural, research, social and other similar services for social use, creation of citizens’ social self-help systems.

Statutory documents of civil society organisations should list all their activities not aimed at making profit pursuant to provisions of laws regulating their activities. Therefore, this requirement does not enhance the list of principal activities and refers to those expressly allowed by laws covering particular types of civil society organisations.

Pursuant to applicable law, principal activities also include the non-profits selling goods, performing works and delivering services that promote principles and ideas advocacy and promotion of which was the aim of creation of the non-profit, that are closely linked to its principal activities, provided that a price for such goods, performed works and delivered services is below the standard price or is regulated by the state. This rules out the possibility of earning income, since the standard price is either a contractual price or cost of making the above goods.

Civil society organisations under non-profit code 0011 are subject to additional restrictions, only selling goods and services to their participants (founders or members) being identifiable as their principal activity. Furthermore, the Cabinet of Ministers of Ukraine can impose temporary restrictions on application of provisions of this section to selling particular goods or services by civil society organisations, if such a sale jeopardises or conflicts with competition in the market of the above goods, provided that such a violation is duly evidenced by taxed persons that deliver the similar goods, works, services. However, these authorities over other legal persons are given by laws of Ukraine to the Antimonopoly Committee rather than the Cabinet of Ministers of Ukraine.

Government funding. Alongside subsidies and grants from the central and local budgets, as well as special funds, exemption covers incomes of civil society organisations gained within the framework of technical or charitable, including humanitarian assistance provided to such non-profits under international treaties that were given assent by the Verkhovna Rada of Ukraine.

Incomes from non-principal activities. Legislation has not changed significantly compared to the previous situation, incomes from non-principal activities are taxable as income of civil society organisations: section 157.10 of the Tax Code requires a non-profit earning income from sources other than those specified in sections 157.2-157.9 of the Tax Code to pay income tax identified as a sum of incomes gained from other sources less a sum of costs associated with gaining such incomes, however, not exceeding the sum of such incomes (which is akin to provisions of the previous Law of Ukraine “On Enterprise Profit Tax”).

As calculating a sum of incomes in excess of costs pursuant to section 157.10 of the Tax Code, paragraph one, and estimating sums of taxable income pursuant to paragraph two of this section, depreciation expense is ignored.

Value added tax

Impact of this tax on financial position of civil society organisations is hard to underestimate, since value added tax paid on goods and services purchased by these organisations is unrecoverable. This provision of the Tax Code took up the baton from provisions of the previous law “On Value Added Tax”.

The Tax Code says that persons referred to in article 180 of the Tax Code, similarly to requirements of the previous law, need not to register for value added tax (VAT) any more, provided that their income from selling goods and services not exempt from VAT has not exceeded 300,000 hryvnias within last 12 calendar months (section 181.1 of the Tax Code). As can be seen, there are no changes in the value or interpretation of the timeline of selling goods and services by law.

Article 193 of the Tax Code reduces VAT rate from 20% (current rate) to 17% (since 2014) (Tax Code’s Section 10 “Transitional Provisions”, subsection 2, paragraph 10).

While these changes favour civil society organisations to some extent, there is no further reduction of VAT rate, and exemption covers value of educational and social services delivered by only particular types of institutions (especially, when nonschools provide their pupils and students with paid services in the area of extracurricular education (section 196.1.8 of the Tax Code) which infringes upon the principle of taxation neutrality.

Other taxes civil society organisations can pay

Land tax. Sections 282.1.6 and 282.1.7 of the Tax Code exempt disabled people civil society organisations and their health resorts, recreational and rehabilitation facilities, as well as sports organisations using sport facilities for purposes identified by law from land tax (section 282.1.9 of the Tax Code).

Other civil society organisations pay land tax fixed based on regional/local rates and purpose of land plots.

Tax on real property other than a land plot

Pursuant to section 265.5 of the Tax Code’s article 265, premises used by civil society organisations to accommodate natural persons are taxed at the following rates:

- 1) at a rate of 1% of the minimum wage payable on 1 January per square meter of living area of a flat in a block of flats not exceeding 240 square meters
- 2) at a rate of 1% of the minimum wage payable on 1 January per square meter of living area of houses not exceeding 500 square meters
- 3) at a rate of 2.7% of the minimum wage payable on 1 January per square meter of living area of a flat in a block of flats exceeding 240 square meters
- 4) at a rate of 2.7% of the minimum wage payable on 1 January per square meter of living area of houses exceeding 500 square meters.

Pursuant to section 265.2 of the Tax Code, civil society organisations do not pay this tax only on rooms of hostels or family type children care homes owned by them.

Initial vehicle registration fee. In Ukraine, all civil society organisations should pay initial vehicle registration fee (on wheeled vehicles, ships, helicopters, etc.). Applicable laws do not give any registration tax reliefs to civil society organisations.

Duty. Civil society organisations should pay duty in case they import humanitarian or other charitable assistance. Customs Rules currently in force do not give any duty reliefs (except for ambulances).

The Law of Ukraine “On Humanitarian Assistance” currently in force allows civil society organisations to receive humanitarian assistance without paying duty only based on a special decision of the Cabinet of Ministers of Ukraine’s Humanitarian Assistance Commission. Reliefs can also be given on import of vehicles that still account for a significant part of goods received as humanitarian assistance.

Taxation of natural persons donating to civil society organisations

Section 166.3.2 of the Tax Code entitles natural taxpayers to a tax relief on charitable and other non-repayable contributions to non-profits including civil society organisations.

The tax relief should not exceed 4% of the natural person’s total taxable income gained in the preceding year (section 166.3.2 of the Tax Code). This amends previous legislative provisions that gave relief on contributions amounting to minimum two and maximum five per cent of the total taxable income earned within the preceding year and were repeatedly criticised by Ukrainian and international experts.

Contributions can be in the form of money and other property. At the same time, the tax relief does not cover value of services and works delivered by a natural person to a civil society organisation or free-of-charge use of the natural person’s property by the civil society organisation.

The amount of tax relief is fixed subject to availability of documentary evidence at the time the natural person submits the person’s annual tax return, that is, by 1 April of the year following the reporting one. Entitlement to tax relief is not summed up and carried forward.

Yet it should be noted that restriction of the size of tax relief to the amount of income earned by the natural person as wage is extremely unfavourable to donating natural persons and, consequently, civil society organisations. As before, the provision applicable in Ukraine does not give tax reliefs to citizens that do not earn wages (private entrepreneurs, the retired, students, etc.), as it was in previous laws and remains in the Tax Code.

Taxation of legal persons donating to civil society organisations

Legal persons registered in Ukraine for enterprise profit tax are entitled to incorporate their charitable and other contributions to civil society organisations not exceeding 4% of taxable income earned within the previous year into their total costs (section 138.10.6 of the Tax Code). In contrast to donations by natural persons, the above contributions can be made to civil society organisations both in the form of money or other property and works or services.

In general, cancelling the “minimum threshold” fixed for donating legal persons at 2% of income gained within the previous year that will apply until 1 April 2011 is a positive change in the Tax Code benefiting especially major enterprises. On the other hand, reduction of the maximum size of donations from 5% to 4% appears to incentivise corporate donors. This becomes especially obvious from the fact that reliefs given in 2009 were used by less than 500 of 700,000 legal persons registered in Ukraine⁸⁹.

⁸⁹ O. Vinnikov, “Reform of Taxation of Civil society organisations in Ukraine”

Charitable contributions, sponsorship and patronage. As before, the Tax Code does not solve the sponsorship problem, though section 14.1.121 of the Tax Code identifies patronage as a principle activity of non-profit organisations.

Section 138.10.6 of the Tax Code additionally entitles enterprises to incorporate their contributions aimed at protection of cultural heritage and production of national films and other audiovisual products (not exceeding 10% of profit gained within the preceding year) into their total costs.

Targeted government expenditures for the benefit of civil society organisations. The Tax Code does not require the use of part of revenue from certain taxes or privatisation of state-owned property, gaming business, government lotteries, etc. The Tax Code neither has any “percentage philanthropy” provisions requiring tax agencies to give a part of personal income tax to non-profit organisations identified by the law or donor.

5. RECOMMENDATIONS AS TO IMPROVEMENT OF THE EXISTING REGULATORY FRAMEWORK OF UKRAINE IN THE AREA OF FUNDING OF CIVIL SOCIETY ORGANISATIONS

In the above sections, we provided interim conclusions that were based on the results of two components of our research: the desk top component that contained the analysis of the legislative framework of Ukraine as far as CSO funding is concerned and a lot of additional sources on the topic, and the field component that contained results of the interview including answers to open questions of the questionnaire about the existing experience in the area of CSO funding by government bodies, local authorities and the private sector, and results of five regional round table discussions.

The analysis of laws of Ukraine covering CSO funding showed that their provisions mainly meet criteria established in the Fundamental Principles on the Status of Non-governmental Organisations in Europe. However, the field research proved that there is a very significant difference between the theory and practice of application of law at the national and local levels, that can be dealt with by introducing appropriate changes into legislation, government policy that would promote sustainable development of CSOs, foster partner relationships with government on all levels, and support independent public monitoring of CSO funding processes.

The interim conclusions provided us with a secure basis for identification of problems and provision of consolidated recommendations as to improvement of the existing CSO funding mechanisms. Whereas on 1 January 2011 the Tax Code⁹⁰ (except for some of its provisions) as well as the Budget Code⁹¹ of Ukraine (No. 2456-VI as of 08.07.2010) came into force and considering their importance for CSOs funding, we have amended some of our interim conclusions regarding improvement of the existing regulatory framework of Ukraine in the area of funding of civil society organizations in the light of the aforementioned Codes.

5.1. Funding from government bodies and local authorities

Problems:

- Discrimination provision of the Law of Ukraine “On Citizens’ Associations”, article 8, part 3, saying that statutory activities of a civil society organisation may be supported from the State Budget only in case it has the all-Ukraine status;
- Inadequate CSO funding by government bodies and local authorities, lack of programmes to tender for project funding, limited long-term funding;
- Government funding of CSO projects significantly differs from procedures prescribed by law and is departmentally specific on such important issues as payment timelines, CSO contribution requirements;
- Legislative uncertainty of aims and criteria of CSO state funding, government’s lacking a unified respective technique to select competing programmes;
- Budget allocations are, in general, rather conditional, that is, amounts provided for in the budget can virtually decrease, advances are not applied as a rule, funding is uneven in time;
- No ministry funds 100% of CSO costs, requiring a contribution by the CSO that often should be only in the form of money;
- Government support given to CSO programmes and projects does not belong to protected expenditures, therefore, the State Treasury can delay payments to CSOs for rather long periods. There are many unjustified restrictions of uses of money;

⁹⁰ Tax Code of Ukraine No. 2755 as of 02.12.2010, <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2755-17>

⁹¹ Budget Code of Ukraine No. 2456-VI as of 08.07.2010

- Bias against competing newly created CSOs that are lacking implementation or state funding experience;
- Lack of an “one-stop shop” to help drawing budget funding documents. There are wide differences in departmental practices of reporting, control, monitoring and assessment of CSO projects;
- Unjustified requirements for amending statutory documents of CSOs not expressly set out by law; requirements for special government authorisations (licenses, special registrations, approvals, etc.), unless expressly stated by law;
- Charging income tax on recipients of targeted assistance in the form of social services;
- Charging tax on advertisement informing the public on social services delivered by CSOs;
- Budget funding is often accessible to a limited number of “pocket” CSOs or civil society organisations showing allegiance to the current government and loyalty to individual officials, and as a rule, the state would not fund a CSO that does not suit it any more.

Proposed solutions:

- Amending the Law of Ukraine “On Citizens’ Associations” or enhancing the list of CSOs entitled to state funding by the new Law “On Civil Society Organisations”;
- In the Budget Code it is necessary to expand the list of CSOs entitled to direct funding from the state budget;

The Budget Code of Ukraine recognizes only three types of CSOs to which the state funding can be provided, in particular:

- state support for disabled people and veterans civil society organisations having the all-Ukraine status;
- state support for youth civil society organizations for implementation of the national programmes and activities targeted at children, youth, women and family;
- state support for cultural and artistic NGOs having the national status.

While providing funding, state authorities are guided by other applicable legislative norms, for instance, almost every Law “On State Budget of Ukraine for...(year)” pledges certain funds, in particular, the State Veterans Committee of Ukraine provided 11,256.40 thousand hryvnias in 2010 to support veterans organizations and visits to military cemeteries and memorials (Appendix 3 to the Law of Ukraine “On State Budget of Ukraine 2010”) whereas in 2011 this Committee provided 11,500 thousand hryvnias for such purposes.

For expanding the list of CSOs entitled to direct state funding from the State Budget it is necessary to make changes and additions to the Budget Code of Ukraine providing for a definition of the term “state funding of civil society organizations” as well as to extend the list of civil society organizations qualified for state funding, in particular:

1. Article 2, section 1, subsection 38 – to read as follows: “a budget funds recipient is an economic agent, a civil society organization (irrespective of its status) or other organization that does not have a status of a state-funded organization, authorized by a budget funds administrator to carry out activities envisaged by a state-funded programme, and receive state funds for carrying out thereof”;

2. to amend Article 87, section 9, paragraph “c” to read as follows: state funding for civil society organizations of disabled people and veterans irrespective of their status;

3. to amend Article 87, section 9, subsection “e” to read as follows: state funding for youth and children civic organizations (irrespective of their status) which participate in carrying out national programmes and activities targeted at children, youth, women, family, in line with the list approved by the Cabinet of Ministers of Ukraine;

4. to amend Article 87, section 10, subsection “c” to read as follows: state funding for cultural and artistic NGOs, irrespective of their status.

Making the above amendments is closely connected with the need of introducing respective changes to the frame Law “On Citizens’ Associations” (part 3 of Article 8) which defines that the Verkhovna Rada of Ukraine shall approve a list of all-Ukraine civil society organizations to whom the state provides the material assistance.

- Revision of amounts of government funding (both at the national and local levels) by programming more tenders for CSO project funding;
- Development and approval of a clear procedure for the State Treasury to fund projects or services delivered by civil society organisations using budget money, simplifying the process of opening of treasury accounts of the above CSOs;
- Amending the Law of Ukraine “On Citizens’ Associations” or including provisions lifting restrictions on possible State Budget’s support given to statutory activities of civil society organisations based on their status, using tenders in the new Law “On Civil Society Organisations”; cancelling division of CSOs on the basis of territorial status as an obstacle to access to budget funding and earning incomes from principal activities;
- In order to solve the problem of restricted access of CSOs to long-term funding, budget law needs to be amended so as to ensure long-term state funding for CSOs, for example, through specially created government funds;

For the purpose of implementation of the aforesaid recommendation the following actions need to be taken:

1. Mapping out and approval of overall objectives and criteria of long-term government funding for CSOs made by a resolution of the Cabinet of Ministers of Ukraine (except for those that have been already set by separate state targeted programmes);
2. At the level of the Cabinet of Ministers of Ukraine an approval of a standardized (or unified) methodology of CSOs funding by executive authorities that sets state funding priorities ;
3. Development and adoption of the State targeted civil society development programme that provides for establishing an effective body for CSO funding (PMF – the Public Monetary Fund);
4. Amending the Law of Ukraine “On Targeted Government Programmes” so as to stipulate directly the need of engaging CSOs in implementing activities within the framework of the targeted government programmes.

At present funds provided by the state should be used and the expenditures should be reported by the end of a calendar year. However, greater number of projects or tasks that are funded could enhance better impact if they had a continuous funding and duration for example, over several years. Therefore a mechanism of funding for such projects through the PMF is being proposed.

The issue of making any amendments to the Budget Code is premature as primary grounds for ensuring long-term funding as described above have not been established so far.

We will provide a more detailed clarification on the issue of funds in the respective section below.

- In order to eliminate some restrictions related to the CSO funding due to unfavourable regulatory policy, it is necessary to extend actions regarding deregulation of business activities towards main risks associated with CSO funding, in particular, requirements for amendments to statutory documents of CSOs not set forth by law; requirements for special government authorizations (licenses, special registrations, agreements, etc.), unless prescribed by law;

A solution of the aforementioned issue should be reflected in the following legislative instruments:

1. The Law of Ukraine “On Citizens’ Associations”: to make direct provision for the right of a CSO to carry out economic activity having no purpose of either profit generation or profit distribution among its members (participants), in relation to that to make respective changes to the Tax Code related to the tax exemption of the income obtained as a result of such activity (respective sections of Article 157 of the Tax Code);

2. The Law of Ukraine “On Procurement of Goods, Works and Services using State Money”: to determine a comprehensive and definitive list of documents that participants of the procurement process or of simplified procurement procedures can submit upon a service buyer’s request in order to prove
 - Providing all the ministries with a common technique to invite CSOs to tender to be based on common approved priorities, while preventing duplication of departmental functions;
 - Targeted assistance in the form of social services provided within the framework of state standards and provisions should be tax exempt from personal income for beneficiaries of this assistance coming both from budget-funded institutions as well as from CSOs;

In order to resolve the above issue it is necessary to make respective changes and additions to the Tax Code of Ukraine:

Article 197.1.7. of the Tax Code provides for the tax exemption of the income obtained as a result of supplying the following services:

b) providing accommodation for people at homes for senior and disabled citizens, boarding schools for children, rest homes for war veterans and veterans of work, geriatric centers, rehabilitation institutions, social territorial centers (established to supply social services);

c) providing meals and sleeping accommodation and supplying other social services for homeless citizens at registration centers, social protection institutions for homeless people as well as persons released from penitentiary institutions at centers for social adaptation of persons released from penitentiary institutions.

Issues of granting tax exemption to social assistance recipients (individuals) are regulated by Article 165 of the Tax Code “Incomes That Shall Not Be Included In Total Monthly (Yearly) Taxable Income”.

However, the issue of targeted assistance provided in the form of social services within the framework of state standards and provisions is not specified in the Code. Thus, it is proposed to supplement section 165.1.49 of the Tax Code so as to prescribe the following: “incomes gained by a taxpayer in the form of social services supplied within the framework of state standards from both budget-funded institutions and organizations as well as from other suppliers of such services are not included in the total monthly (yearly) taxable income of a taxpayer”. In connection with the above it is proposed to rename section 165.1.49 into section 165.1.5. Developing new mechanisms of social contracting by government bodies and local authorities to be based on the principles of equality, transparency and reciprocal responsibility for outcomes.

In our opinion, it is necessary to engage the public in discussion and thorough consideration of this issue (possibly, in the framework of a round table discussion). As separate measures, the following can be suggested:

At the level of the Cabinet of Ministers the following instruments are necessary:

- a procedure for the assessment of the needs of certain social services recipients (with compulsory engagement of the public and CSOs for mapping out such a procedure), on the basis of which normative principles of state funding for supplying such services are defined;
- approval of a list of social services to be paid for by recipients of such services on the basis of normative principles;
- approval of criteria and a procedure for state audits and public financial reporting for legal entities of all forms of ownership and subordination which supply social services included in the list;

On the legislative level:

- to make a provision for the right of local self-government authorities to establish additional services that may be funded from revenues coming into local budgets on the basis of normative principles;

- to acknowledge the right of CSOs that supply social services to rent state and community-owned property without compulsory participation in tenders (amendments to the Law of Ukraine “On Renting State and Community-Owned Property”), or to provide compensation for the expenses incurred whilst renting state and community-owned property in the terms of tenders or in the instruments regulating state funding for CSOs on the basis of normative principles;
- Developing a mechanism that would ensure equal access to state funding for local civil society organizations, especially children’s and youth organizations (and newly created CSOs that are lacking project implementation or state funding experience, but have the respective capacities and can prove it);

A solution to the aforementioned issue can be found by addressing the following two aspects: ensuring equal access of the CSOs to state funding by eliminating restrictions based on status or other criteria, for example, experience.

Article 8 of the Law of Ukraine “On Citizens’ Associations” contains a controversial statement that endorses the priority of some CSOs over other CSOs based on their status: “the state approves a list of all-Ukraine civil society organizations to which it provides material assistance”.

The Law defines that a civil society organization may receive support for its statutory activities only in the case that it has an all-Ukraine status. It does not mention support for all other civic organizations as the main type of civil society organizations. The majority of lawyers interpret such a provision with the sense that the state provides material assistance through the mechanism of approval to those CSOs whose activities are necessary for the state and coincide with its interests. Thus, the basic provision of the Law fails to establish the necessary grounds for broad cooperation between the state and CSOs or provide a basis for the tender mechanism development.

In order to abolish such a restriction it is necessary to make respective changes to Article 8 of the aforementioned Law.

A status-based restriction is also applied to CSOs at the level of the regulatory instruments. Thus, a tender for funds distribution among youth and children’s civic organizations is conducted on the basis of and pursuant to the procedure prescribed by the Resolution 1062 of Cabinet of Ministers of Ukraine “On Approval of Tender Procedure for Programmes Drafted by Civil Society Organizations Aiming at Children, Youth, Women and Family” dated 25 July 2002. This Resolution contains discriminatory provisions that prevent youth organizations having international and local status from participating in such tenders, contravening in this way the provisions of the Law of Ukraine “On Youth and Children Organizations”.

The aforementioned Resolution requires respective changes to Article 8 that will rectify such a situation.

The restriction of the CSOs access to state funding at the level of specific criteria, for example, their experience, lies in the following. On the state level there are a few models of tender conduct which can give CSOs access to state funding: tenders for draft programmes mapped out by civil society organizations aimed at children, youth, women and the family (Resolution 1062 of the Cabinet of Ministers of Ukraine dated 26.07.2002); tendering for budget funds to deliver social services (Resolution 559 of Cabinet of Ministers of Ukraine dated 29.04.2004); tenders launched for projects and programmes of civil society organisations in the area of informing the public about European integration (Resolution 956 of the Cabinet of Ministers of Ukraine dated 30 October 2008). The aforementioned regulatory instruments have a drawback in that they define a tender procedure in a simplified form and prescribe that a respective executive power body may adopt separate instruments regulating their implementation (evaluation criteria, application forms etc.). Among the criteria of evaluation one can find, for example, experience in implementing state funded projects that newly created, youth or children civil society organizations may lack.

The above issue can be resolved by the Cabinet of Ministers adopting an instrument that will clearly define and regulate procedural issues uniformly for all state funding providers and that will contain criteria to be applied to the newly created, youth or children’s CSOs, and that

such organizations are able to meet, for example, a number of events or projects carried out by an organization on a voluntary basis or at the expense of philanthropists' funds, qualification requirements to an organization's personnel etc.

Incidentally, even the draft "Tender Procedure for Defining Programmes, Projects (Events) Mapped Out by Civil Society Organizations for Implementation of Which State Funding Will Be Provided" currently being mapped out by the Cabinet of Ministers of Ukraine contains a ban in Article 5 as follows: "A tender application may not be accepted from a civil society organization that did not carry out programmes and projects (events), the implementation of which received state financial support in previous years".

- Considering low awareness of the public and a function being other than that of commercial advertising, informing the public on social services delivered by CSOs shall be deemed social advertising;
- Developing a government training programme aimed at improving professional skills of managers and members of CSOs in delivering services needed by the state and society.

5.2. Funding from the private sector and individual citizens

Problems:

- Value of money or property delivered to CSOs free of charge that may be incorporated into total costs of enterprises paying profit tax at the standard rate is limited by law to 2-5% of taxable profit gained in the previous reporting year, as well as to 10% of taxable profit in case of providing assistance to enterprises of all-Ukraine associations of Chernobyl victims in which employment of such persons is at least 75%, and charitable activities of such associations;
- Insignificant tax relief equal to 2-5% of annual taxable income available to natural persons. Minor reliefs given by the state to the business supporting civil society and CSOs. The newly passed Tax Code would, perhaps, improve CSO funding by the private sector on the ground to some extent, but it virtually puts small and medium business liable to single tax out of the "game", because enterprises will not be able to incorporate money paid to single-taxed entrepreneurs into their total costs, which makes it unreasonable to work with such entrepreneurs that thus will have no income;
- Discrimination of CSOs of particular types receiving non-refundable financial assistance from private donors, based on their status and other characteristics;
- Discrimination of CSOs of particular types in receiving funding, based on their status and other characteristics;
- Competition between budget-funded institutions and CSOs for non-refundable financial assistance from private donors;
- Undeveloped charity, sponsorship and patronage traditions in the society;
- Inadequate co-ordination among international donor organisations in the sector that results in duplication of support and its not meeting actual needs of the society.

Proposed solutions:

- Setting a special quota for non-refundable assistance provided to budget-funded institutions and CSOs in the Law of Ukraine "On Enterprise Profit Tax" (section 5.2.2) and the Law of Ukraine "On Personal Income Tax" (section 5.3);

The aforementioned laws have become invalid. The above issue is largely regulated by the Tax Code. Section 157.2 of the Tax Code granted tax exemption to the incomes of the institutions and organizations gained as irrevocable financial assistance, if they are:

- a) state authorities of Ukraine, local authorities and institutions or organizations established thereby that are funded from respective budgets;

b) charitable foundations and charitable organizations established pursuant to the procedure prescribed by law to carry out charitable activities; civil society organizations established for the purpose of supplying services in the area of rehabilitation, physical culture and sports for disabled people (disabled children) as well as social services, aid and advice in legal matters, activities in the area of environmental protection, health improvement, amateur sports, culture, enlightenment, education and science, as well as creative groups and political parties, civil society organizations of disabled people, unions of civil society organizations of disabled people and their local branches established pursuant to the respective law; research institutions and higher education institutions of III-IV levels of accreditation registered in the State Register of Academic Institutions for which the state support is provided; reserves, museums and reserve museums;

f) religious organizations registered pursuant to the procedure prescribed by law;

h) trade unions, their associations and trade union organizations, as well as employers' organizations and their associations established pursuant to the procedure prescribed by law.

However, there is no way of accepting the lack of subsection "d" in the above list of this Article, as a good deal of civil society organizations fall into this particular category: "legal entities, others than specified in subsection "b" of this section, the activities of which are not aimed at obtaining profit, in accordance with the provisions of the respective laws". Therefore we find it necessary to supplement section 157.5 with a paragraph "funds or assets that come without pay or in a form of irrevocable financial assistance or voluntary donations" that regulates the procedure of taxation of incomes of CSOs other than those directly mentioned in section "b" of Article 157.2 although they may not differ from the latter in essence.

- Exempting one-off and periodic donations from founders and members of CSOs referred to in the Law of Ukraine "On Enterprise Profit Tax", section 7.11.1, paragraphs "b", "c" and "d", from enterprise profit tax and VAT.

The Law has become invalid. Issues pertaining to non-profit organizations, activities of which do not provide for obtaining profit and which were mentioned in paragraphs "b", "c" and "d" of section 7.11.1 of the Law of Ukraine "On Enterprise Profit Tax" are regulated in the Tax Code.

According to the Tax Code, there is a direct provision now stating that one-off or periodic contributions paid by founders and members of such organizations are granted tax exemption (section 157.5, 157.6).

In addition, tax exemption was granted to assets and services received by a primary trade union from an employer, on the basis of the provisions of a labour union contract (section 157.9).

- On the grounds of constitutional guarantees of equality of civil society organizations before the law, exempting non-refundable assistance provided to CSOs stipulated in the Law of Ukraine "On Enterprise Profit Law", section 7.11.1, paragraph "c" and "d" from income tax.

The Law has become invalid. The above issue is largely regulated by the Tax Code. Section 157.2 of the Tax Code granted tax exemption to the incomes of institutions and organizations gained as irrevocable financial assistance, if they are:

a) state authorities of Ukraine, local authorities and institutions or organizations established thereby that are funded from respective budgets;

b) charitable foundations and charitable organizations established pursuant to the procedure prescribed by law to carry out charitable activities; civil society organizations established for the purpose of supplying services in the area of rehabilitation, physical culture and sports for disabled people (disabled children) as well as social services, aid and advice in legal matters, activities in the area of environmental protection, health improvement, amateur sports, culture, enlightenment, education and science, as well as creative groups and political parties, civil society organizations of disabled people, unions of civil society organizations of disabled people and their local branches established pursuant to the respective law; research institutions and higher education institutions of III-IV levels of accreditation registered in the State Register of Academic Institutions for which the state support is provided; reserves, museums and reserve museums;

f) religious organizations registered pursuant to the procedure prescribed by law;

h) trade unions, their associations and trade union organizations, as well as employers' organizations and their associations established pursuant to the procedure prescribed by law.

However, there is no way of accepting the lack of subsection "d" in the above list of this Article, as a good deal of civil society organizations fall into this particular category: "legal entities, others than specified in subsection "b" of this section, the activities of which are not aimed at obtaining profit, in accordance with the provisions of the respective laws". Therefore we find it necessary to supplement section 157.5 with a paragraph "funds or assets that come without pay or in a form of irrevocable financial assistance or voluntary donations" that regulates the procedure of taxation of incomes of CSOs other than those directly mentioned in section "b" of Article 157.2 although they may not differ from the latter in essence.

- Developing a regulatory framework aimed at introducing in Ukraine the so called "percentage philanthropy" already in place in many European countries where a natural person may ask tax agencies to deduct a percentage (for example, 1%) of a tax charged on the person's income in favour of community benefit organisations recognised by law.

This is concerning the development and adoption of the Law of Ukraine "On Percentage Philanthropy". Similar legislation is already in place in many European countries, and it provides for the deduction by tax agencies of a certain percentage (for example, 1%) of a tax charged on the person's income in favour of community benefit organizations recognized by law on the basis of a natural person's wish.

Thus, the main idea of the proposed Law (this is mentioned in the report) is a deduction by tax agencies, upon a natural person's wish, of a certain percentage (for example, 1%) of the tax charged on the person's income in favour of community benefit organizations recognized by Law.

While developing the draft Law "On Percentage Philanthropy", it is necessary to prepare in parallel the draft Law "On Making Changes and Additions to Tax Code, Chapter 4 "On Personal Income Tax" which regulates the respective procedure as well as Article 157 "Taxation of Non-Profit Institutions and Organizations". Otherwise it is necessary to regulate the issue of changes in the taxation system in view of passing the Law "On Percentage Philanthropy" in the Final Provisions of this Law.

- Improving co-ordination and effectiveness of the use of donors' funding by amending the regulatory framework regulating provision of technical assistance to Ukraine, enhancing responsibilities of sectoral government bodies in the area of contracting international technical assistance in order to avoid its duplication and meet actual needs of the society.

The question here is the international technical assistance granted pursuant to intergovernmental agreements. At present the raised issues can be resolved and these processes can be regulated by the adoption of the Law of Ukraine "On International Technical Assistance", the need for which has been indicated in the works of the leading experts in the area of CSOs, and attempts at passing which have already been made in 1999 and in 2001.

- Drafting the law "On volunteering" aimed at maximum incentivising of citizens engaged in volunteering;
- Amending the law "On Charity and Charitable Organisations", the Tax Code, in order to incentivise donors and popularise charitable activities and patronage in the state more effectively.

1. To make changes and additions to the Law of Ukraine "On Charity and Charitable Organizations" as follows:

- this Law (Article 1) does not fully clarify the term "patronage", in particular, it does not specify for which purposes such assistance may be directed.
- the Law lacks definitions of such notions as "patron" and "grant", it does not recognize the existence of patrons associations, and it does not define charity agents (for example, "philanthropists" and "charitable foundations").

- When going through state registration, a charitable organization is obliged to pay related costs: it would be fair, taking into account the nature of such an organization, to free it from such a burden by making respective additions to Article 8 of the Law, which should ensure that no fees shall be charged on such an organization's registration.

2. It is advisable to provide for additional incentives for sponsors and patrons, such as Honorary Titles, state awards, etc. in the Law of Ukraine "On State Awards of Ukraine".

Certain changes concerning the provision of tax incentives to philanthropists have been already made, in particular, Article 170.7.4 of the Tax Code which specifies that targeted charitable assistance to any sum (value) provided by resident legal entities or natural persons is not included in their taxable income, as well as providing for tax rebates on charitable contributions from legal entities in favour of non-governmental non-profit institutions and organizations (Section 138.5.3).

5.3. Funding at the expense of providing paid services

Problems:

- Contradictory CSOs' capacities to conduct business independently contained in current law:
 - ✓ The Law of Ukraine "On Citizens' Associations" (article 24) allows civil society organisations to engage in business and other commercial activities only by establishing self-governing institutions and organisations with a legal personality;
 - ✓ At the same time, the Economic and Civil Codes of Ukraine allow CSOs to engage in those directly, subject to the use of gained profit for the purpose of statutory activities;
 - ✓ Furthermore, special Laws allow civil society organisations to directly engage in independent business activities. These are not only disabled people or Chornobyl victims' organisations. This capacity, in particular, is affirmed by laws "On Co-Operation" (article 23), "On Professional Artists and Artistic Unions" (article 9), "On Employer Organisations" (article 11), "On Credit Unions" (article 21), as well as "On Charity and Charitable Organisations" (article 20).
- Complicated procedure of registration and liquidation of CSOs with legal personality that is too burdensome to most small organisations;
- Administrative restrictions on CSOs' capacity to use and dispose of their property and property rights in some cases; restriction of CSOs' access to financial services and imposition of administrative financial sanctions for minor or not duly proven breaches;
- The provision of the Law of Ukraine "On Value Added Tax" covering value of goods or services delivered by CSOs "within 12 calendar months" to be equal to 300,000 hryvnias limits financial capacities and social activity of a civil society organisation within a calendar year.

Proposed solutions:

- Contradiction between provisions of articles 8 and 24 of the current Law of Ukraine "On Citizens' Associations" allowing civil society organisations to engage in business activities not only through subsidiaries, but also directly needs to be resolved. CSOs' capacity to engage in independent entrepreneurship, subject to the use of gained profit for the purpose of statutory activities should be brought in line with provisions of the Economic and Civil Codes;
- Developing a mechanism of legislative incentivising of CSOs to earn money independently.
 1. In the Law of Ukraine "On Citizens' Associations" – to make direct provision for the right of a CSO to carry out economic activities not aimed at either obtaining profit or its subsequent distribution among CSO members (participants), under the condition that these funds will be used for achieving statutory goals.
 2. In connection with changes to section 1, to make respective changes to the Tax Code concerning granting tax exemption to the incomes gained as a result of such activity (respective sections of Article 157 of the Tax Code).

- Improving regulatory framework for social entrepreneurship. Social entrepreneurship and social partnership between the state and CSOs should move to the foreground. The Law “On Social Entrepreneurship” should be developed and passed which would help CSOs to attract and spend earned money on social projects and be the state’s partners;
- Given the complicated procedure of registration and liquidation of legal persons in Ukraine, it is needed to simplify the process of registration and liquidation of civil society organisations with legal personality by correspondingly amending the Law of Ukraine “On State Registration of Legal Persons and Natural Persons Conducting Business”, and the Law of Ukraine “On Citizens’ Associations” (or the draft Law of Ukraine “On Civil Society Organisations”) and respective by-laws;
- Setting forth main provisions on CSO funding and tax administration in respective laws and resolutions of the Cabinet of Ministers of Ukraine; establishing clear and generally understandable criteria of compliance of CSOs’ principal activities with non-profit status (in respective laws);

It has been regulated by the Tax Code of Ukraine.

- Establishing clear and generally understandable criteria of compliance of the CSOs principal activities with non-profit status (in respective legislative instruments);

The section 14.1.121 of the Tax Code stipulates that non-profit enterprises, institutions and organizations are such enterprises, institutions and organizations the main purpose of activities of which is not to obtain profit but to carry out charitable activities and patronage and other activities envisaged by law.

It is proposed to supplement this Article with a definitive list of respective criteria, which, if present, allow an organization to obtain a status of a non-profit organization without any restrictions applied thereto.

- Amending the Law of Ukraine “On Value Added Tax” where it fixes the worth of delivery of goods or services, by replacing the sentence “within 12 calendar months” with “within calendar year”;

The Tax Code envisages that henceforth persons indicated in Article 180 of the Tax Code, in the same manner as required by the former applicable legislation, are not obliged to register themselves as value-added tax (VAT) payers, in the case that their income from the sale of goods and services not exempted from VAT does not exceed 300,000 hryvnias received during the last 12 calendar months (section 181.1 of the Tax Code). As we can see, there was no change either in the total amount or in the legal interpretation of the time period for the sale of goods and services.

For the sake of ensuring continuous development of civil society organizations it is suggested to make the following changes to Article 181.1:

181.1. In the case that the total sum of proceeds from operations for supplying goods/services taxable in accordance with this chapter, including proceeds from operations based on the use of a local or global computer network, charged in favour of (paid to) such a person during a calendar year exceeds 300,000 hryvnias in total (less value added tax) such a person is obliged to register as a tax payer with a state tax agency at the place of their location (place of residence), pursuant to requirements envisaged by Article 183 of this Code, except for a person that is a single tax payer.

- In order to solve the problem resulting from restricted access of CSOs to long-term funding, establishing a special legal status of endowments of private donors and CSOs (the issue is partly addressed by the newly passed Tax Code);

The issue is partially regulated by the Tax Code. The subsection 170.7.5 of the Tax Code envisages that a recipient of targeted charitable assistance provided in the form of money shall have the right for its use during the time period established by the conditions of granting such assistance, but not exceeding 12 calendar months following the month that such assistance was received, except for receiving charitable assistance in the form of an endowment.

If targeted charitable assistance provided in the form of money is not used by its recipient during such a time period and is not returned to a philanthropist by the termination of the time period, such a recipient is obliged to include the unused sum of such assistance in the amount of their total annual taxable income and pay the respective tax.

The term “endowment” means a sum of money or securities deposited by a philanthropist into a bank or a non-banking financial institution, which enables a charitable assistance recipient to use the interest or dividends accrued on the sum of such an endowment. Such a recipient shall have no right to spend or to alienate the main sum of such endowment without a philanthropist’s consent.

The Tax Code does not regulate the future “fate” of an endowment and neither does it determine a clear procedure of “work” with this type of source of financial resources for CSOs. It is suggested to highlight the notion of an “endowment” in Article 14 of the Tax Code which outlines all the notions used in the Tax Code.

To regulate the issue of charitable assistance in the form of endowment in subsection 170.7.5 where a separate paragraph should state that “Charitable assistance received (provided) in the form of an endowment shall be neither taxed nor included in the total monthly or annual taxable income of a taxpayer for the duration of the whole time period during which such assistance is provided”.

- It is to be stated legislatively (in order to avoid ambiguous interpretation by tax agencies on the ground), what incomes are passive, where they come from and under what conditions they are considered as such;

The above issue is partially regulated by the current Tax Code. The Tax Code outlines a notion of passive incomes: section 14.1.268. passive incomes are incomes received in the form of interest, dividends, insurance compensations and indemnifications as well as royalty.

However, when granting a non-profit status to civil society organizations, there are still some cases of disputes with tax agencies caused precisely by the lack of a comprehensive list of such incomes. Therefore it is suggested to make the following additions to the Tax Code:

157.2 Tax exemption is granted to the incomes of non-profit organizations defined in subsection “a” of section 157.1 of this Article obtained in the form of PASSIVE INCOMES, namely: incomes received as a result of securities ownership (securities income), real estate ownership (renting out real estate), incomes gained by such an organization as a founder, or a co-founder of economic agents, a shareholder (dividends, corporate payments, payments per shares and any other incomes received from such economic agents that were generated without direct active engagement of non-profit organizations in the business activity of such economic agents), incomes obtained from copyrights (royalty) including books, works of art or science, computer programmes, other records on information carriers, video- or audiotapes, motion pictures films or tapes for radio or television broadcasts; payment for purchase of any patent, registered mark for goods and services or trademark, design, secret drawing, model, formula, process, right for the information pertaining to industrial, commercial or scientific experience, as well as incomes obtained as a result from placing funds owned by such organizations in banking establishments, credit unions, other financial institutions that have the right for supplying such services, and incomes received by such organizations in the form of insurance compensations and indemnifications.

In connection with the above it is also naturally required to provide an extended definition of the notion “passive incomes” in section 14.1.268 of the current Tax Code. It is advisable to provide the same definition also in sections 157.2-157.9, as tax agencies on the ground often refer to these very sections when refusing to grant a non-profit status to an organization because of ambiguous interpretation of the notion “passive incomes”.

- Introducing the “one-stop shop” principle for registration and liquidation of CSOs with legal personality;

A “one-stop-shop” format provides for the submitting by an applicant of a package of documents necessary to receive certain administrative services to an authorized representative of a sole licensing office (at the place of such an applicant’s registration, for example). Henceforth, the interaction between all the necessary agencies goes on without the participation of an applicant until finally, an applicant receives from the hands of the same authorized person the full set of documents necessary to carry out the applicant’s activities.

The question is the possibility for CSOs to register their activities (including state registration (receiving a state registration certificate), registration with tax agencies, pensions’ fund, etc., in one place). The same issue also applies to the termination of their activities. The need for such a service is conditioned by the current complicated, time-consuming and often obscure procedure of the state registration for ordinary citizens. Does any rural community, for instance, have any possibility (including a financial one) to hire a relevant expert in the case of a need to register a civil society organization? Apparently not. However, without such an expert it is impossible to understand all the twists and turns of the state registration of civil society organizations in its current format. After all, it is communities that have the greatest need to establish such organizations, but as the matter currently stands, it is often bureaucratic obstacles that impede the organization’s creation.

This issue is controversial and requires a comprehensive approach. At present the issue of the registration of civil society organizations is regulated by Resolution 140 of the Cabinet of Ministers of Ukraine “On Approval of Guidelines for Procedure of Citizens’ Associations Legalization” dated 26 February 1993 and the Law of Ukraine “On State Registration of Legal Entities and Natural Persons Entrepreneurs” and some other regulatory instruments.

Obviously, it is necessary to introduce respective comprehensive changes to these regulatory instruments with the purpose of simplifying the registration procedures for CSOs, for example, in the form of a “one-stop-shop” at the place of a CSO registration where CSO founders submit the necessary documents and receive by the indicated deadline the registered documents and certificates on CSO registration from all the respective agencies, in particular, tax agencies, social fund, pensions fund and others.

- Amending the Law of Ukraine “On Enterprise Profit Tax” by clearly stating that membership subscriptions of CSOs of all types are not taxable.

The Law became invalid. Although the issue is partially regulated by Article 157 of the Tax Code, it would be appropriate to make additions to this Article by stating the following general rule: “Incomes of a non-profit organization of any type gained by such an organization in the form of subscription fees, membership fees and target contributions, if such contributions are envisaged by the statutory documents of such an organization, are non-taxable”.

5.4. Public Monetary Fund

Development of civil society and comprehensive and systemic solution of CSO funding problems require mapping out and adoption of a strategy and the state’s targeted civil society development programme creating an effective CSO funding agency; a regulation establishing aims and criteria of CSO government funding. Besides enhancing the list of CSOs entitled to direct funding from the State Budget, the size of civil society funding set by state budget laws should be increased.

In order to foster civil society development and effective CSO funding, it is needed to devise a mechanism of CSOs’ centralised access to funding that comes from different sources: the state and local authorities, international technical assistance and private donors. However, centralisation of CSO funding controlled by the state is out of place, because, according to many respondents and most participants in round table discussions, this would deteriorate CSO funding and lead to corruption and manipulation of civil society organisations.

Based on the field research and results of round table discussion of the model and mechanisms of funding, a two-level (national and regional) CSO funding model is proposed, that will combine CSO funding from all possible sources: central and local budgets, business/private sector, membership subscriptions and international technical assistance grants – the Public Monetary Fund.

The Public Monetary Fund (PMF) has regional divisions given a status of Associations of Citizens (civil society organisations) (article 10 of the Law of Ukraine “On Citizens’ Associations” currently in force) with legal personality.

PMF aims at supporting the civil society development programme and other projects/programmes CSOs implement on the national level. It provides CSOs with qualified help in receiving grants from international donor organisations (legal aid in fundraising, business planning, accounting, training, etc.).

Money comes to PMF from different sources: state budget, business/private sector, CSO paid membership fees by regional divisions, international technical assistance. Regional divisions support development programmes and other projects/programmes CSOs implement on the regional level. They receive funding from PMF in order to carry out all-Ukraine projects/programmes in the region, from local budget, business/private sector, CSO membership fees.

Management of PMF activities:

1. The management is elected at the CSO meeting (conference, meeting of representatives) every two or three years. It is composed of the board of directors and chief executives (of the fund and divisions). The board of directors includes representatives of the government, CSOs, business/private sector working on a parity basis.
2. The executive body is composed of permanent staff hired pursuant to the Labour Code.
3. Activities of the fund and its divisions are monitored by Supervisory Boards composed of representatives of the government, CSOs, business/private sector.
4. Audit commissions (checking and controlling financial and business activities of the fund and its divisions) are also working that can initiate ad hoc conferences/general meeting, should any misuses/financial violations be uncovered.

PMF reporting takes place annually, at a conference/general meeting. Reports appear in national publications and are posted in the Internet. Online access to information on earnings/expenditures of the fund and its divisions is free. It is accessible online. In this way, transparency of all PMF activities is achieved.

REFERENCES**Laws of Ukraine**

1. Civil Code of Ukraine 435-IV dated 16 January 2003
2. Budget Code of Ukraine 2542-III dated 21 June 2001
3. Economic Code of Ukraine 436-IV dated 16 January 2003
4. Tax Code of Ukraine 2756-IV dated 2 December 2010
5. Decree of the President of Ukraine 945/99 “On Grants for Gifted Youth” dated 2 August 2000
6. Decree of the President of Ukraine 854/2004 “On Encouraging Wider Participation of the Public in Making and Implementation of Government Policy” dated 31 July 2004
7. Law of Ukraine 2460-XII “On Citizens’ Associations” dated 16 June 1992
8. Law of Ukraine “On State Budget of Ukraine 2010” dated 27 April 2010
9. Law of Ukraine 875-12 “On the Principles of Social Protection of the Disabled in Ukraine” dated 21 March 1991
10. Law of Ukraine 281 – XIV “On Youth and Children Organisations” dated 1 December 1998
11. Law of Ukraine 554/97-VR “On Professional Artists and Artistic Unions” dated 7 October 1997
12. Law of Ukraine 2117-XII “Principles of Culture Legislation” dated 14 February 1992
13. Law of Ukraine 1621-IV “On Targeted Government Programmes” dated 18 March 2004
14. Law of Ukraine 334/94 “On Enterprise Profit Tax” dated 28 December 1994
15. Law of Ukraine 889-IV “On Personal Income Tax” dated 22 May 2003
16. Law of Ukraine 2289-IV “On Government Procurement” dated 1 June 2010
17. Law of Ukraine 1759-IV “On Amending Some Laws of Ukraine Aimed At Simplifying Conduct of Business in Ukraine” dated 15 December 2009
18. Law of Ukraine 2269-12 “On Renting State- and Community-Owned Property” dated 23 December 1997
19. Law of Ukraine 168/97-VR “On Value Added Tax” dated 3 April 1997
20. Law of Ukraine 531/97-VR “On Charity and Charitable Organisations” dated 16 September 1997
21. Law of Ukraine 966-IV “On Social Services” dated 19 June 2003
22. Law of Ukraine 1087-IV “On Co-Operation” dated 10 July 2003
23. Law of Ukraine 554/97-VR “On Professional Artists and Artistic Unions” dated 7 October 1997
24. Law of Ukraine 2436-III “On Employer Organisations” dated 24 May 2001
25. Law of Ukraine 2908-III “On Credit Unions” dated 20 December 2001
26. Law of Ukraine 280/97-VR “On Local Self-Government in Ukraine” dated 21 May 1997
27. Law of Ukraine 2625-III “On People’s Self-Organisation Bodies” dated 11 July 2001
28. Resolution 1302 of Cabinet of Ministers of Ukraine “On Additional Actions Aiming to Promote Engagement of the Public in Making and Implementation of Government Policy” dated 26 November 2009
29. Resolution 236 of Cabinet of Ministers of Ukraine “On Approval of the Procedure of Use of State Funds As Financial Support for Organisations of the Disabled in 2008” dated 26 March 2008
30. Resolution 285 of Cabinet of Ministers of Ukraine “On Procedure of Use of State Funds As Financial Support for Veterans Organisations and to Visit Military Cemeteries and Memorials in 2008” dated 2 April 2008
31. Resolution 32 of Cabinet of Ministers of Ukraine On Procedure of Use of State Funds to Carry Out Particular Programmes in 2009” dated 14 January 2009

32. Resolution 411 of Cabinet of Ministers of Ukraine "On Procedure of Use of Funding Allocated under Some Budget Programmes to the Ministry of Labour and Social Policy in 2010" dated 9 June 2010
33. Resolution 1062 of Cabinet of Ministers of Ukraine "On Approval of Tender Procedure for Programmes Drafted by Civil society organisations Aiming Children, Youth, Women, and Family" dated 25 July 2002
34. Resolution 636 of Cabinet of Ministers of Ukraine "On Measures In Order To Solve Political, Legal, Socio-Economic and Ethnic Problems in the Autonomous Republic of Crimea" dated 11 August 1995
35. Resolution 1570 of Cabinet of Ministers of Ukraine "On Creation of the All-Ukraine Culture Information Centre in Simferopol" dated 28 December 1996
36. Resolution 559 of Cabinet of Ministers of Ukraine "On Approval of Rules of Tendering for Funds to Deliver Social Services" dated 29 April 2004
37. Resolution 956 of Cabinet of Ministers of Ukraine "On Approval of Civil society organisations Tendering to Carry Out Projects and Programmes In the Area of Informing the Public on European Integration" dated 30 October 2008
38. Resolution 10 of Cabinet of Ministers of Ukraine "On the Procedure for Engaging Citizens in Making and Implementation of Government Policy" dated 6 January 2010
39. Decree 232 of the State Tax Administration of Ukraine "On Approval of the Form of Report on the Use of Money of Non-Profit Organisations and Institutions and the Guidance on Filling It Out" dated 11 July 1997
40. Decree 89 of the State Treasury of Ukraine 'On Approval of the Procedure of Servicing State Budget Expenditures, Lending and Repayment of Loans" dated 25 May 2004
41. Decree 367 of the Ministry of Economy of Ukraine "Guidelines on Development of Targeted Regional Programmes, Implementation Monitoring and Reporting" dated 4 December 2006

Other sources

42. Government policy and the level of development of civil society in Ukraine, M. Latsiba, Ukrainian Centre for Independent Political Research, Ukraine, Kyiv, 2006
43. O. Vinnikov, D. Kovryzhenko, A. Krasnosil'ska, M. Latsiba, K. Rubanovsky, O. Solontay, L. Chorniy, "Government funding of civil society organisations. How will European standards be implemented?", Ukrainian Centre for Independent Political Research, Kyiv, 2010
44. Papers of all-Ukraine conference "Government funding of civil society organisations. How will European standards be implemented?", Kyiv, 2010
45. The level and the dynamics of development of non-governmental organisations in Ukraine. 2002-2006: Research report / Counterpart Creative Centre. L. Palyvoda, O. Kikot. – Kyiv: Makros, 2006. – p. 35
46. Shevchuk T. Non-governmental organisations in social life of Rivne area, <http://postua.info>
47. Stepanenko I. Conceptual uncertainty of civil society in Ukraine: Possible ways to overcome / Development of democracy in Ukraine: International science conference papers (Kyiv, 29 September-1 October 2000). – Kyiv: Centre for Education Initiatives, 2001. – p. 593;
48. Derzhalyuk O. The dynamics and expansion of the scope of activities of civil society organisations as a component of democratisation of Ukrainian society, <http://www.niss.gov.ua>
49. Reva S. Participation of the public in the process of making and implementation of government policy // Political management, 2006. – No. 3 (18). – p. 7
50. Assessment of the system of government funding of civil society organisations in Ukraine: Analytical research report, UNITER/PACT, Kyiv, 2010

51. The level and the dynamics of development of non-governmental organisations in Ukraine. 2002-2006: Research report / Counterpart Creative Centre. L. Palyvoda, O. Kikot. – Kyiv: Makros, 2006. – p. 35;
52. Freedom House report 2009, <http://tsn.ua/ukrayina/.html>
53. The number of EDRPOU entities by legal forms as assessed on 1 January 2009, <http://www.ukrstat.gov.ua>
54. The level and the dynamics of development of non-governmental organisations in Ukraine. 2002-2009: Research report, Counterpart Creative Centre, 2009, <http://ccc-tck.org.ua>
55. “Percentage philanthropy” as a guarantee of the development of civil society, a way toward involvement of citizens and civil society support, a resource of and for civil society in Ukraine. Analytical note on analysis of government policy in the area of funding of civil society organisations. S. Kuts, Centre for Philanthropy, <http://philanthropy.org.ua>
56. In-depth interview “Assessment of the system of government funding of activities of civil society organisations”, Ukrainian Centre for Independent Political Research, 2009, <http://www.ucipr.kiev.ua>
57. Private Entrepreneur newspaper, http://www.chp.com.ua/persp_43.php
58. Analytical report “Funding of Civil Society Organisations (CSOs) in Ukraine”, 2006, <http://www.ucipr.org.ua/>
59. Whether percentage philanthropy is possible in Ukraine, Centre for Philanthropy, <http://philanthropy.org.ua>
60. Laboratory for Legislative Initiatives. Legislative regulation of activities of non-profit organisations: Global experience and recommendations for Ukraine, 2001, <http://www.parlament.org.ua>
61. National Institute for Strategic Studies. Interaction of government bodies and civil society organisations, 2007, www.niss.gov.ua
62. Interaction of government bodies and civil society organisations. National Institute for Strategic Studies, <http://www.niss.gov.ua>
63. Analytical report “Funding of Civil Society Organisations (CSOs) in Ukraine”, 2006, <http://www.ucipr.org.ua>
64. Civil society in the EU-Ukraine Association Agreement, www.eu.prostir.ua
65. Civil Society Journal, Issue 2(13), 2010, p. 28, <http://www.eternityclub.kiev.ua>
66. Comparative charts of foundation laws (2009). European Foundation Centre, 2010.
67. O. Vinnikov. Memo on NGOs’ capacity to engage in independent business activities, <http://www.ucipr.org.ua/>
68. T.O. Slavko. The role of civil society organisations in development of civil society, www.nbu.gov.ua
69. Socio-legal portal, <http://www.pilga.in.ua/node/763>
70. Round table discussion “Achievements and perspectives of the reform of charity law”, <http://blagozakon.org.ua/?p=907>
71. O. Vinnikov, “Reform of Taxation of Civil society organisations in Ukraine”

INSTITUTE OF RURAL DEVELOPMENT

Number in the sequence

RESEARCH OF EXISTING PRACTICES OF GOVERNMENT AND NON-GOVERNMENT FUNDING
OF CIVIL SOCIETY ORGANISATIONS (CSOs)

DEAR INTERVIEWER,

GREET THE RESPONDENT, WITHOUT ACCENTUATING THE LANGUAGE OF THE GREETING, IN ORDER TO FIND OUT
IN WHAT LANGUAGE THE RESPONDENT WOULD LIKE TO SPEAK WITH YOU:

Good afternoon (evening)

IF THE RESPONDENT ANSWERS THE GREETING:

...in Ukrainian, ASK:

...in English, ASK:

Скажіть, будь ласка, Вам легше розмовляти українською мовою, или, может быть, Вам легче разговаривать на русском языке?

Tell me please, would you like to speak English or, perhaps, Ukrainian?

Ukrainian....1

→

TAKE THE UKRAINIAN QUESTIONNAIRE, MARK THIS ANSWER AND CONDUCT INTERVIEW IN UKRAINIAN

English.....

→

MARK THE ANSWER AND CONDUCT INTERVIEW IN ENGLISH

однаково, не має значення

all the same, it doesn't matter

↓

↓

А якою з цих двох мов Ви розмовляєте більше – українською чи російською?

Which of these two languages do you speak more – English or Ukrainian?

Ukrainian.....3

→

TAKE THE UKRAINIAN QUESTIONNAIRE, MARK THE ANSWER AND CONDUCT INTERVIEW IN UKRAINIAN

важко сказати, мабуть однаково.....4

MARK THE ANSWER AND CONDUCT INTERVIEW IN ENGLISH

English.....

→

don't know, probably, equally.....

Good afternoon, my name is (INTRODUCE YOURSELF). **I represent** (NAME YOUR ORGANISATION). **The Institute of Rural Development is doing a research into funding of civil society organisations. Please spare me a little of your time.**

(IF THE RESPONDENT WOULDN'T TALK) **Could I speak with you tomorrow, the day after tomorrow? Thank you for your participation in the interview.**

START OF INTERVIEW __HR__MIN

INTERVIEW QUESTIONNAIRE

BLOCK 1. TO BEGIN WITH, A FEW QUESTIONS ABOUT YOU PERSONALLY

1. ARE YOU:

1.1. *civil society development expert?*

1 – yes 2 – no

Proceed to question 2.

1.2. *representative of the government?*

1 – yes 2 – no

1.2.1. *If YES, PLEASE NAME YOUR TITLE AND INSTITUTION* _____

Proceed to question 2.

1.3. *representative of the business/private sector?*

1 – yes 2 – no

1.3.1. *If yes, please tell me, did you or your organisation provided funding to CSOs?*

1 – yes 2 – no 3 – hard to answer

1.3.1.1. *If YES (YOU FUNDED THEM), PLEASE GIVE YOUR MOTIVATION* _____

1.3.1.2. *If NOT, PLEASE DESCRIBE CONDITIONS UNDER WHICH YOU'D PROVIDE ASSISTANCE TO CSOs* _____

Proceed to question 2.

1.4. *REPRESENTATIVE OF A LOCAL AUTHORITY*

1 – yes 2 – no

1.4.1. *If YES, PLEASE NAME YOUR TITLE AND INSTITUTION* _____

Proceed to question 2.

1.5. *MANAGER OR MEMBER OF A CSO*

1 – yes 2 – no

1.5.1. *If yes, please give:*

1.5.1.1. *FULL LEGAL NAME OF YOUR ORGANISATION* _____

1.5.1.2. *Type of your civil society organisation:*

- 1 – charity
- 2 – professional association
- 3 – other

1.5.1.3. *number of members of your organisation:*

- 1 – 1-10
- 2 – 20-50
- 3 – over 50

1.5.1.4. *status of your organisation:*

- 1 – local
- 2 – all-Ukraine
- 3 – international

1.5.1.5. *your organisation's budget in 2009:*

- 1 – below 10,000 hryvnias
- 2 – 10,000-50,000 hryvnias
- 3 – 50,000-100,000 hryvnias
- 4 – 100,000-200,000 hryvnias
- 5 – over 200,000 hryvnias

1.5.1.6. *sources of funding in 2009:*

- 1 – state
- 2 – business
- 3 – community
- 4 – international foundations
- 5 – domestic charity foundations
- 6 – membership subscriptions
- 7 – other (please specify)

1.5.1.6.1. _____

BLOCK II. PROBLEMS OF CSO FUNDING BY GOVERNMENT BODIES

2. Please assess the main problems of the existing CSO government funding system and their importance for development of CSOs (show the respondent table 2.1-2.8)

	Very important	Important	Unimportant	Hard to answer
2.1. Inadequate government funding	1	2	3	4
2.2. Ineffective use of state funding	1	2	3	4
2.3. Non-transparency and complexity of government procurement processes	1	2	3	4
2.4. Legislative uncertainty of aims and criteria of CSO state funding, government's lacking respective techniques to select competing programmes	1	2	3	4
2.5. Lack of programmes to tender for project funding	1	2	3	4
2.6. Weaknesses in tax reliefs given to CSO funders and CSOs	1	2	3	4
2.7. Other (please specify):				
2.8. Other (please specify):				

3. What, in your view, should be the CSO state funding model? (show the respondent table 3.1-3.8)

	Yes	No	Hard to answer
3.1. Setting up the National Civil Society Development Foundation	1	2	3
3.2. Predominantly competitive funding of CSO activities	1	2	3
3.3. Possible participation of CSOs of all types in project tenders	1	2	3
3.4. Possible funding to cover administrative costs	1	2	3
3.5. Simplified processes of government procurement of services and works for CSOs	1	2	3
3.6. Other (please specify)			
3.7. Other (please specify)			
3.8. Other (please specify)			

BLOCK III. PROBLEMS OF CSO FUNDING BY LOCAL AUTHORITIES

4. Please assess the main problems of the existing CSO local government funding system (show the respondent table 4.1-4.3)

	Very important	Important	Unimportant	Hard to answer
4.1. Unstable and limited local budget funding	1	2	3	4
4.2. Non-transparency, subjectivity and complexity of project selection process	1	2	3	4
4.3. Other (please specify):				

5. What, in your view, should be the CSO local government funding model? (show the respondent table 5.1-5.5)

	Yes	No	Hard to answer
5.1. Mapping out medium-term (2-3 years) CSO funding programmes	1	2	3
5.2. Inviting non-governmental organisations to open project tender	1	2	3
5.3. Possible participation of CSOs of all types in project tenders	1	2	3
5.4. Possible funding to cover administrative costs	1	2	3
5.5. Other (please specify)			

BLOCK IV. NON-GOVERNMENT CSO FUNDING

6. Please assess the main problems of the existing CSO non-state funding system and their importance for development of CSOs (show the respondent table 6.1-6.13)

	Very important	Important	Unimportant	Hard to answer
6.1. Inadequate non-government funding	1	2	3	4
6.2. Many civil society organisations not having fundraising activities	1	2	3	4
6.3. Lack of donor motivation	1	2	3	4
6.4. Donors' striving to gain benefits in spite of interests of civil society organisations, local community or society in general	1	2	3	4
6.5. Abstractedness and "ineffectiveness of legislative provisions that cover gaining income from principal activities of civil society organisation, social entrepreneurship	1	2	3	4
6.6. Weaknesses in tax reliefs given to CSO funders and CSOs	1	2	3	4
6.7. Many small and medium businesses liable to single tax becoming unable to reduce taxes by providing assistance to the non-profit sector	1	2	3	4
6.8. Unprofessional staff of non-governmental organisations	1	2	3	4
6.9. Lack of sponsorship and patronage traditions	1	2	3	4
6.10. Creation of "unreal" third sector organisations to "solicit" money, favour particular "projects" and individuals and so on	1	2	3	4
6.11. Lack of co-ordination among foreign donors	1	2	3	4
6.12. Other (please specify):				
6.13. Other (please specify):				

BLOCK V. PROPOSALS AS TO IMPROVEMENT OF CSO FUNDING

7. *What strategic, inter alia, legislative action, in your view, is needed to create an effective CSO funding model? (show the respondent table 7.1-7.7)*

	Yes	No	Hard to answer
7.1. Development and adoption of the government targeted Civil Society Development Programme	1	2	3
7.2. Annual provision of CSO funding in state budget laws	1	2	3
7.3. Approval of aims and criteria of CSO government funding	1	2	3
7.4. Setting up the National Civil Society Development Foundation	1	2	3
7.5. Other (please specify)			
7.6. Other (please specify)			
7.7. Other (please specify)			

8. *What primary steps, including those aimed at creating the legislative framework, need, in your view, to be undertaken to create an effective CSO funding model? (show the respondent table 8.1-8.7)*

	Yes	No	Hard to answer
8.1. Providing common project tendering rules to all executive agencies (approval of the respective methods by resolution of the Cabinet of Ministers)	1	2	3
8.2. Providing all stakeholders with suitable mechanisms of access to procurement related information, enhancing transparency of and ensuring control over activities of government service users (by amending the Provision on Procurement of Goods, Works and Services Using State Money)	1	2	3
8.3. Developing Guidelines on the best practices of state support of CSO activities for executive agencies	1	2	3
8.4. Setting up the National Civil Society Development Foundation	1	2	3
8.5. Other (please specify and explain)			
8.6. Other (please specify and explain)			
8.7. Other (please specify and explain)			

9. Do you know any cases of civil society organisations being controlled?

1 – yes 2 – no

9.1. If yes, please describe them in detail _____

10. Do you know any positive examples (to follow) of CSO funding? (For interviewer's attention. This is a very important point in the research. Please ask the respondent to provide as much detail as possible and note down the answer.)

1 – yes 2 – no

10.1. If yes, please describe them in detail _____

Interviewer: THANK YOU FOR SPARING YOUR TIME FOR THE RESEARCH.

END OF INTERVIEW _____ hr _____ min

QUESTIONS TO THE INTERVIEWER (TO BE ANSWERED AFTER THE INTERVIEW)

1. DAY/MONTH WHEN THE INTERVIEW IS CONDUCTED: _____ 2010

2. REGION THE INTERVIEW IS CONDUCTED IN:

Kyiv oblast... 1

Odesa oblast... 2

Donetsk oblast... 3

Volyn oblast... 4

Poltava oblast... 5

Kyiv... 6

3. The interview was conducted in:

Urban area... 1

Rural area... 2

6. The interviewer's name _____, signature

INTERNATIONAL PRACTICES
ON FUNDING CIVIL SOCIETY ORGANIZATIONS

BALAZS SATOR, OSCE EXPERT

ABBREVIATIONS

- CAF – Charities Aid Foundation
- CEE – Central and Eastern Europe
- CIS – Commonwealth of Independent States
- CSDf – Civil Society Development Foundation
- CSO – Civil Society Organization
- CSR – Corporate social responsibility
- ECNL – European Center for Not-for-Profit Law
- ERNOP – European Research Network on Philanthropy
- EU – European Union
- ICNL – International Center for Not-for-Profit Law
- JHU – Johns Hopkins University
- NESsT – Nonprofit Enterprise and Self-sustainability Team
- NGO – Non-Governmental Organization
- NMS – New Member State
- OMS – Old Member State
- TOR – Terms of Reference
- USAID – United States Agency for International Development

EXECUTIVE SUMMARY

This Study aims to present results of a comprehensive research of successful international practices that would be most applicable in Ukraine concentrating on the specific subjects of funding civil society by the state, local authorities, business and other sources as well as forms of contractual relations between state authorities and civil society organizations as required for the implementation of the research component of the project “Civil Society – International Best Practice Research”.

The Study provides a framework for understanding CSO finances and it analyses six European countries¹; three of them were subjects to complex contextual and technical assessment that have direct relevance to the Ukrainian situation, while the others provide useful models and examples. The countries included have introduced in the past decade one or more successful mechanisms to fund civil society, and as such, present good practices in ensuring sustainability of civil society organizations. The Study provides a comparative analysis of these models and mechanisms; presents the key elements in designing a successful institutional framework for CSO funding and finally, it offers recommendations for consideration by Ukrainian stakeholders.

Based on the research of international best practices from these six countries, the following findings are of key importance in developing an institutional framework for CSO funding in Ukraine:

There is a need of a “from the vision to the mechanism” approach to link funding mechanisms to be introduced with the vision and purpose of CSO development: the legislator needs to determine what functions it envisions for the CSOs; then to develop the appropriate tools to achieve the results. Developing a strategy for CSO development is typically the primary element that envisions a clear role for CSOs vis-à-vis the government. However, preparing the strategy itself means little in terms of the impact of governmental measures. Equally (if not more) important is the relevance of the strategy to the desired impacts; and the relevance of funding policies to the strategy.

- There needs to be sufficient data and information available to make informed evidence based policy decisions in this field. This is important, as the CSO field is often neglected as a policy area and basic data are missing.
- There needs to be an ongoing and systematic effort to trace the practice and impact of the implementation of the strategy.
- The CSO sector cannot be financed through one main mechanism. Funding streams have to reflect the diverse functions, organizations and needs of the sector. There can be a different funding strategy for larger service providing and for small community based CSOs. Both direct and indirect means of support can be effective.
- The funding streams have to come from long-term sustainable resources (public and private) so that CSOs can predict the levels of funding and can plan long-term. Some creativity may be needed to identify those – but based on the findings of the research it is possible.
- The funding mechanisms should be complementary rather than competing; e.g. re-granting or intermediary organizations should not be in a competition with the CSOs they are supposed to support.
- While certain income sources are less significant in terms of the total revenues of the sector, their absence or presence can dramatically change the conditions for CSO sustainability (the principle of «less is more»).
- The strategy should take a long-term view (8-10 years) and consider a gradual development of the various mechanisms, building on each other (e.g., introduction of tax benefits after redefined public benefit status).

¹ Countries analyzed: Bulgaria, Croatia, Czech Republic, Germany, Hungary, Poland, the UK; Bulgaria was finally not included into the study for lack of evidences available for the purpose of the document.

- It is essentially the culture and historic traditions that determine the behavior of taxpayers, CSOs and the state in any country. However, intelligent tax policy can capitalize on the opportunities presented by the ever changing environment and introduce incentives which can successfully change behaviors.
- Government needs to invest into the capacity development of the CSO sector. Even in the most developed countries, CSOs need support in delivering the expected increased contribution to the public good.
- Government should also ensure that there are resources that finance the ongoing development of the CSO sector – startups, innovations, service development etc. These are usually more effectively funded from private sources; where there is a lack of these, government can undertake this role or provide incentives to private actors to pursue it
- The challenge for governments in fiscal hardship is how to make private money work for the public good.

Building on the above findings, the Study recommends the following key steps in the development of an institutional framework for funding CSOs in Ukraine:

- A redefined public benefit status that can serve as the basis for several fiscal incentives.
- The creation of a fund to support civil society in order to boost the capacity of key CSOs and to catalyze local processes in CSO development.
- The (gradual) introduction of a normative system of financing CSOs that provide social services approved by the state.
- The introduction of a serious tax incentive to encourage the establishment of privately endowed public benefit foundations.
- The introduction of a «toll» on green-field and other investments, including privatization, which should be spent to support public benefit purposes; in addition to consider deductibility of a percentage of the turnover for donations.
- Increase, but most of all simplification and streamlining of the tax deduction for individual donors.
- Allowing full tax exemption of mission related economic activities of public benefit organizations, and a partial exemption of their unrelated economic income.

These recommendations are based only on the comparative research and analysis carried out within the framework of the project. The primary focus of the analysis was to map the feasibility of various models. In case there will be political decisions reached on any of the recommendations, the next phase will be the business planning of the chosen methods (e.g. to determine the fiscal consequences of the introduction of the mechanisms). Therefore, more research needs to be made to compile data and information that will allow the decision-makers to make informed decisions on the introduction of these mechanisms.

I. INTRODUCTION

This Research Study has been developed under the project “Civil Society – International Best Practice Research” with the view to assist policy- and decision-makers in Ukraine in developing a comprehensive financial support framework for the CSOs.

Over the past decade, an increasing number of countries in Western Europe, as well as Central and Eastern Europe (CEE) have undertaken a comprehensive evaluation of the roles and functions of civil society organizations (CSOs)². This was prompted primarily by the dual pressure of financial restrictions and an increasing level of contribution by CSOs to social and economic development³. Whether the UK and Germany or Hungary and Croatia, governments have redefined their relations with the nonprofit sector to ensure a more efficient participation of CSOs in social service delivery and the advancement of government policies in many other fields from fighting unemployment to improving education. As part of this re-definition of the roles and responsibilities between the state and the nonprofit sector (as well as the private sector), various mechanisms to facilitate state financing of CSOs were introduced to support CSOs in addressing their social functions.

This Study aims to explore some of the working examples – good practices and lessons learned – in CSO financing from Europe, with a view to their applicability in Ukraine. CSOs have been playing an important role in the development of Ukraine in the past two decades. From providing assistance to the needy to providing expert advice to the government, they engage in a wide range of activities that benefit a larger or smaller part of the country’s population. CSOs are private, autonomous entities that until now have been financed mostly from foreign aid. This financing has proved extremely helpful in the first stages of the development of Ukrainian CSOs – but it is clear that it will not continue for a very long time. The sustainability of CSOs and of the valuable services they are providing will depend largely on whether the Ukrainian people and the Ukrainian government find them worthy of support.

There are already good examples of government support of CSOs both at the central (e.g. through government programs) and local levels (e.g. the practice of the “social order”)⁴. Furthermore, CSOs do engage in fundraising and economic activities to raise additional funding; and many CSOs enjoy the support of volunteers from their communities. However, in order to ensure CSO sustainability, **a strategic and systematic approach to CSO funding is needed**, which takes into consideration the needs of CSOs for optimal operation as well as the possibilities offered by the cultural context and the fiscal environment.

This Study aims to assist in the development of such a systematic approach by analyzing a number of successful international practices on a comparative basis that could be applicable in Ukraine. The research examines the specific subjects of funding civil society by the state, local authorities, business and other sources as well as forms of contractual relations between state authorities and civil society organizations. It also provides concrete recommendations for consideration to the Ukrainian decision-makers.

Framework for the Research

The following framework was developed for this particular research. The methods and characteristics of each type of interaction listed in the first and second columns have been

² For the purposes of this Study, CSOs are understood as private, independent, nongovernmental, nonprofit organizations, which primarily are organized in the form of civic associations and foundations, but also in other legal forms, such as nonprofit corporations or institutions, depending on the jurisdiction.

³ See, e.g. Nilda Bullain and Katerina Hadzi-Miceva: Recent trends in the public and self-regulation of accountability and transparency of nonprofit organizations in the EU, European Commission, 2009

⁴ The “socialni zakaz”, or social order is a relatively wide spread form of supporting CSOs at the local level through targeted small grant programs.

assessed in connection with the thematic areas of the top row. For each country selected there is an analysis carried out according to the criteria listed in the table.

		Legal /Fiscal Framework	Historic/ cultural conditions	Country specific elements	Role of CSOs	Examples /Best Practices	Observations
Interaction with the state	Funding Mechanisms						
	Social contracting						
	Alternative financing						
Interaction with the private sector	Private giving-through institutionalized mechanisms						
	Private-corporate giving						
	Individual giving						
	Income generation						

Explanation:

- By funding mechanisms we mean direct budget support provided to the CSOs, primarily in the form of government grants but also subsidies and in-kind contribution, at both the central and the local level.
- By social contracting we mean the ways in which the government engages CSOs in the provision of welfare services, such as education, culture or social services, based on a regulated competitive procedure.
- By alternative financing mechanisms we mean methods of government financing that cannot be categorized in the traditional schemes of grants and contracts, such as the so-called percentage mechanism, or endowment of foundations from privatization or other governmental income.
- Private giving through institutionalized mechanisms includes various forms of foundations established to channel private resources to CSOs and other beneficiaries.
- Corporate giving encompasses a wide range of financial and non-financial support that companies provide to CSOs, as well as strategic partnerships and other forms of cooperation between the for-profit and nonprofit actors.
- Individual giving refers to a range of giving techniques by which individuals may provide financial and in-kind support to a CSO. We do not include volunteering in this research although it can be seen as part of individual philanthropy.
- Income generation refers to revenue of the CSO from membership fees, selling services and goods, renting space, investing assets and other economic or entrepreneurial activities.

The completed matrixes serve as synthesizing platform that makes the key characteristics of each country easy to compare. Based on this information, an analysis is made of the advantages and disadvantages or risks associated with the various funding mechanisms, considering also the contextual specificities; and conclusions and recommendations are drawn to assist their possible adoption in Ukraine.

Research methodology

Desktop research

During the research a review of currently available literature and information related to the financing mechanisms was conducted, in English, Hungarian, Czech and Slovak, including comparative studies and reports as well as materials related to the selected countries. This encompassed:

- national laws related to CSO funding;
- comparative legal analyses by expert organizations such as the International Center for Not-for-Profit Law and the European Center for Not-for-Profit Law;
- country indexes, reports and assessments provided by international organizations such as USAID, Civicus, Johns Hopkins University, European Network of Research on Philanthropy, European Foundation Center, among others;
- research reports and studies related to the various financing mechanisms;
- articles in relevant journals related to the topic, e.g. International Journal of Not-for-Profit Law, Alliance Magazine;
- statistical data where available.

A literature review is enclosed at the end of the Study.

Field visits

The expert of OSCE PCU carried out 5 trips to and within Ukraine where it met with over 225 individuals representing national CSOs, local government authorities and businesses and other stakeholders at regional forums to present research findings in the framework of the “Developing Institutional Framework of Funding Civil Society in Ukraine” ExB Project. The forums organized in the form of roundtable discussions were held in Simferopol, Odessa, Kiev, Lviv and Donetsk. These forums were extremely important in understanding the context and selecting relevant examples and recommendations. They showed the existing cultural biases (e.g. a certain level of mistrust and/or prejudice among the different sectors) as well as shed light on important principles that policy development must keep in mind, such as the need to analyze the effect of concrete measures that the government is taking to on CSO development. Overall, the forums underlined the importance of participation in policy development, which will result in higher quality and more implementable policy recommendations.

Countries assessed

We proposed to undertake the research in a mix of countries that represent enough differences in their various models and but all have relevant aspects for possible adaptation in Ukraine. The main criterion for the selection of countries was to have existing and well functioning mechanisms to support CSOs from public budgets; and/or mechanisms that encourage private philanthropy and own income generation through taxes and other innovative methods. Additional criteria included: Having a historical or cultural background that is similar to Ukraine at least in some aspects; representing both Eastern and Western Europe; and having enough data/information available for analysis.

Based on the above criteria, eight countries have been selected and examined, of which five are presented in the Study⁵. Four represent a continental European model of CSO sector development, in countries with a strong state orientation, therefore, they are akin to the Ukrainian historical-cultural context. In addition, the UK is included as a source of best practices and innovative ideas. Although they represent different levels of economic and CSO sector development as well as different stages in the development of the CSO funding system itself, in all the countries there are practices that can be considered for the current Ukrainian context.

⁵ In addition to the countries presented, Bulgaria and Estonia were also examined.

Three countries have been analyzed in-depth:

Hungary – Hungary has a nonprofit sector around the same size as Ukraine (65,000 organizations), and shares the past of socialism as well as the “bridge” position between East and West. Among the CEE countries Hungary has the most well developed system of government funding (at all levels); as a consequence, it also has the most lessons learned in terms of the actual operation of these funding mechanisms.

Croatia – Croatia is a small Balkan country but with similar cultural features to CEE states. Like Ukraine (and unlike Hungary), it received large amounts of foreign funding which also supported its CSOs; therefore the CSO sector in Croatia is currently more or less at the same level of development as in Ukraine. At the same time, Croatia offers a well functioning good practice mechanism to fund and help develop CSOs through a strategic approach.

Germany – Germany is in many ways a unique example due to its historical development; however, it resembles Ukraine culturally in its ongoing attempt to reconcile the interests of a progressive but strong central state, and bottom-up citizen initiatives. The recent initiatives in Germany to address the financial setbacks of the welfare state through increasing private philanthropic engagement offer an interesting example to Ukraine as well.

United Kingdom – The UK is a common law country and as such, it has different practices and historical roots than continental European countries. However, it has always been the leader in introducing good practices in regulation, philanthropy and entrepreneurship, which served as a model for Western Europe and CEE. If not all the practices, the principles underlying the practices should be examined and followed.

Czech Republic – The Czech Republic has in many ways followed a different route than its neighbors in CSO development. This led to introduction of practices that may prove more effective than the “typical” CEE solution (e.g. the introduction of a domestic grant-giving foundation sector or vouchers in social contracting).

Structure of the Study

The Study consists of five main Chapters following the Introduction.

Chapter II provides a framework for understanding the financing mechanisms for CSOs. It: (a) describes the different European models of CSO sector development, and their relationships with the state; (b) provides an overview of the financial viability of the CSO sector; (c) presents a mapping of resources to assess income sources of CSOs; and (d) describes in more detail the specificities of the three main categories of CSO income: public funding, private funding and earned income.

Chapter III includes the most important general findings its author identified through the comparative research, in relation to the effectiveness of CSO financing mechanisms. These represent learning points from the countries analyzed and provide a background understanding for the country chapters.

Chapter IV consists of five sections, each providing a detailed analysis of a country (Hungary, Croatia, Germany, UK, Czech Republic), based on the research framework described above.

Chapter V summarizes the key conclusions based on the country descriptions and provides a basis for the recommendations.

Chapter VI provides concrete recommendations for the consideration of Ukrainian policy-makers.

II. UNDERSTANDING THE FINANCING FRAMEWORK OF CSOS

II. 1. Models of CSO sector development in Europe⁶

The European scene is not unilateral in terms of the development of CSOs and their embeddedness within their societies. Based on cultural traditions⁷, religious traditions, legal and fiscal framework, global and regional role⁸, etc. various states follow a rather individual approach in terms of what is current and envisioned role and function of CSOs.

In terms of the current assessment this question is going to be the major challenge for Ukraine as well: **what is the vision for the role of the CSO sector in the development of the country?** The answer to this question may influence choices of relevant mechanisms of funding. It will be also critical to decide, how much role the state will want to or will have to play in this development process and how much role other sectors and stakeholders should play. This section aims to provide some examples of how European countries have approached the role and financial sustainability of CSOs.

While there is wide range of CSO financial sustainability models applied in various European countries, we can find the common factors that are necessary to assess before the models themselves are being analyzed. The legal framework is rather influential in terms of how widespread certain mechanisms are (such as tax incentives to promote new philanthropy in e.g. Germany – see below). Historical and cultural traditions can be as influential in a positive (general level of individual giving and individual responsibility within the Dutch population⁹) as in a negative direction (such as general expectation of the public in Hungary towards the state to provide generous services as it used to be during the period of socialism¹⁰). Obviously the economic and political situation in the countries will also have influence on the activities of CSOs as well as their interaction with various players (in countries that are economically stronger there is a decreasing tendency of violation of human rights as compared to those in a worse economic situation¹¹).

The following section analyses various European models from the point of view of two key aspects, the level of independence and the aspect of institutionalization. The European Center for Not-for-Profit Law (ECNL) model to categorize CSO sectors by these characteristics was chosen to make the choice of Ukraine specific interventions easier.

The scale of **independence** is related to the autonomous self-governance of CSOs vis-à-vis the government or other actors (e.g. church, political parties); reflected in the CSOs capability to mobilize themselves and their constituencies, obtain financial support needed to carry out their mission, ability to deliver services that are not or partially subsidized, develop competitive expertise etc. In essence, it refers to the extent to which CSOs are able to set priorities and operate based on needs and their mission rather than based on priorities set by the government or other power structures.

Institutionalization refers to the capacity of the nonprofit sector to undertake projects and services for the government, i.e. the potential of the sector to be a reliable and accountable

⁶ This section is based on information from the European Center for Not-for-Profit Law (ECNL), including a draft study under publication “Public Financing of Non-governmental Organizations in Europe”. The information has been provided by Nilda Bullain and Katerina-Hadzi Miceva from ECNL. Quotes are taken with permission from the authors.

⁷ For example, in the UK the charity sector goes back to several hundred years and the first charity legislation was adopted in 1601 in order to protect private property that was dedicated to a public purpose.

⁸ For example, former colonial states have a greater inclination to encourage CSOs to undertake a role in international development.

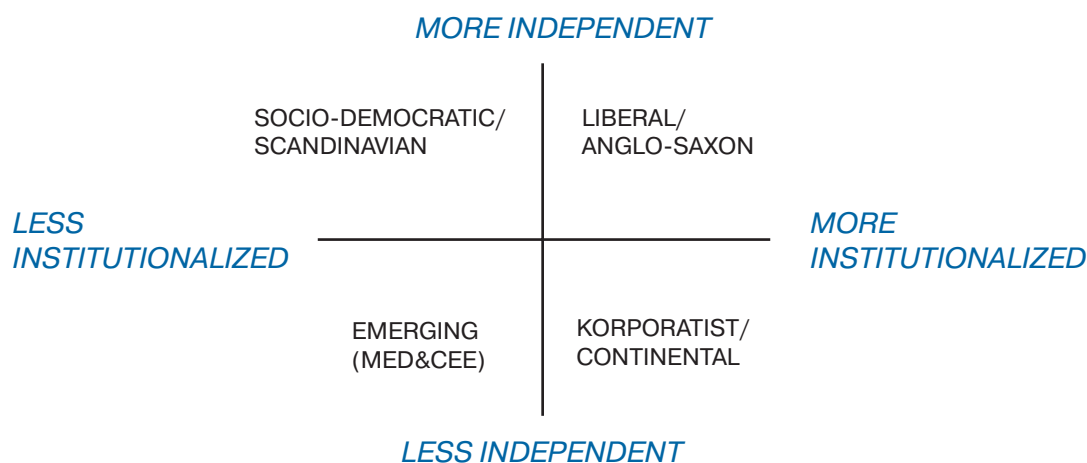
⁹ <http://www.giving.nl/>, GINPS data

¹⁰ Figyelő – Hungarian weekly, issue 50/2010, G bor Lambert The characteristics of Hungarians and willingness to re-start

¹¹ Inglehart, Ronald F. and Christian Welzel. 2005. Modernization, cultural change, and democracy : the human development sequence

partner to the government in providing public goods and services. This includes for example, the number of registered organizations, their average budgets, the proportion of CSOs who are of public benefit, their physical infrastructure as well as their human and financial resources etc.

European Models of CSO Sector Developer



Source: European Center for Not-for-Profit Law

Corporatist (Continental): in this model CSOs are actively involved in the provision of social services and may be the main providers – as in the case of Germany where the principle of subsidiarity entails the primacy of community-based services. At the same time the state undertakes financing of the services in whole, typically through third party payments or subsidies to major providers and their interest groups. State funding thus represents well over half (usually 55%-75%) of the income of the sector. Therefore the CSO sector is highly institutionalized and also highly dependent on the government for ongoing support. Since the government also needs the CSO sector, there is a kind of interdependence, termed “hierarchical interdependence” by ECNL¹², between the two sectors. A variation of this model is in France where the government also only recently started to revise its policies of subsidizing the CSO (associational) sector for its function of “solidarity”, introducing grants and contracts based on performance in delivering projects and services.

Liberal (Anglo-Saxon): this is a model typical of Anglo-Saxon countries (in Europe, primarily the UK; see also Canada), although elements of it, especially the principle of contracting, have spread to the continent (e.g., Netherlands). In this model, CSOs are also highly involved in social services’ provision; however, they are less dependent on the state. Even though they receive financing through contracts, they have strong roots in the communities; and their own assets, philanthropic and self-generated income make them able to keep also a strong advocacy role. The relationship between CSOs and the state is based on the so-called Compact, an overall policy agreement, and contracting plays a key role in delivering social services as well. In the liberal model the principle of the best value service delivery¹³ makes the CSO sector very professional and competitive. Various models of management, accountability and transparency standards are applied; sophisticated management schemes are widespread to increase trust and confidence

¹² “Public Financing of Non-governmental Organizations in Europe” ECNL (under publication)

¹³ Sample definition from the UK “Under best value, each local authority has a duty to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. This improvement involves consideration of costs, making the most of money spent, and making sure that services meet the needs of communities and authorities’ priorities.” <http://www.idea.gov.uk/idk/core/page.do?pagelId=5184420>

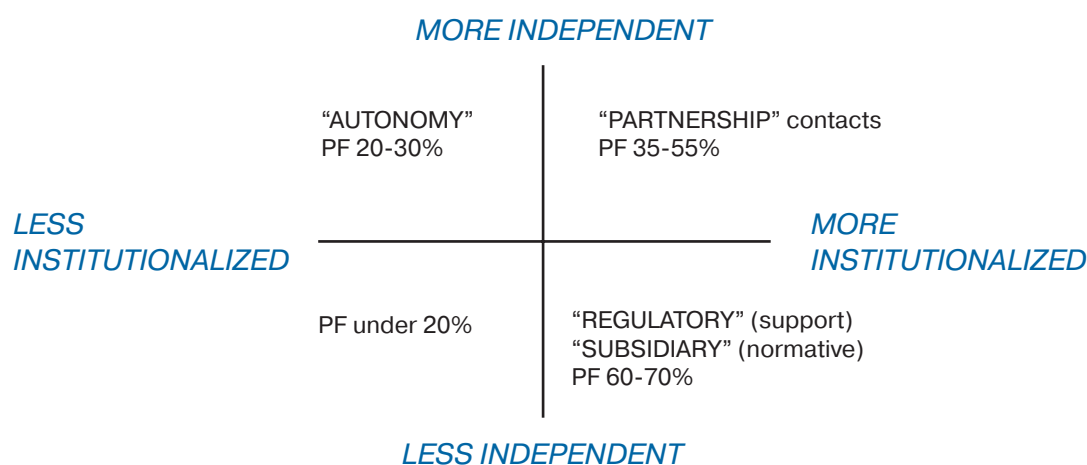
of all stakeholders. While there is a significant level of public financing applied in these countries (35-55%), the level of other resources is high which makes the sectors more relevant in terms of partnership for the government.

Social-Democratic (Scandinavian): this is the typical model in Scandinavian countries. Here, the state is the main service provider; CSOs are not typically involved in provision of social services but rather fulfill “expressive” functions (i.e. cultural, sports, hobby organizations that primarily serve their members’ and their communities’ interests). Even though almost everything in welfare provision is financed and delivered by the state, in contrast to the “statist” model of the former Soviet bloc, there is a high level of social capital and engagement in civil society (volunteering reaches the highest levels in Europe in these countries). The relationship between the two sectors can be characterized by the “live and let live” philosophy and consequently a low level of public funding of CSOs (25-35%). At the same time citizens and CSOs are extensively and directly involved in policy making both at local and central levels (increasingly through IT tools). In regard to institutionalization these sectors are less established, as they don’t need massive operations that are needed for services, while due to inclusive democratic practices there is less need for such capacity even in case of advocacy operations.

As can be seen, the two more independent European models, the Scandinavian socio-democratic and the liberal Anglo-Saxon have a major difference between them. In the liberal model countries the CSO sector is ready not only for recognizing the particular need but has a certain capacity to satisfy the need as well. In the Scandinavian Model it is the primary role of the state to satisfy justifiable needs, the CSO sectors tend to be more of a watchdog and advocacy character, their funding is strongly based on private giving and membership support.

Emerging (Mediterranean and CEE): in the Mediterranean countries (e.g. Greece, Cyprus, Portugal) and most Central and Eastern European countries the relationship between the state and CSOs is still evolving. It has been characterized by low levels of public funding; either neglect of CSOs or dependency relationships; traditions or nepotism or political interest in funding and involvement of CSOs in service provision. Welfare models are typically residual as well as rudimentary as much of the care remains with the family and social nets. However, as the countries’ economy and CSO sector develop, they will be likely to converge towards one of the other three models¹⁴.

European Models of CSO Sector Developer



Source: European Center for Not-for-Profit Law

¹⁴ E.g., Hungary and the Czech Republic seem to be moving towards the corporatist model; while Estonia and Slovakia tend toward the liberal model, and Slovenia and Latvia towards the Scandinavian model.

II.2 Financial viability of CSOs in Europe

Regardless of their field of activity, effective CSOs are managed based on similar operating and organizing principles, which in general resemble those of businesses. Strategic focus and long term planning enhances better impact and strategic use of funds; systems and well defined management are guarantees for effectiveness and reduced risk for the donors; a predictable and financially solid operation entails less fluctuation and increased quality of work. In most of the old EU member states such systems are generally more developed, while in the case of new member states there is a lower level of institutional readiness for effective operation by CSOs – even when significant development has taken place.

Several new member states have realized this weakness of their third sectors and over the last decades invested systematically into the development of their civil societies. Why have they done so? In these countries CSOs contributed to resolving serious social problems such as homelessness, unemployment, disability care or child protection. CSOs set up services where the state did not have the capacity to do so, and they developed innovative models that proved more effective than existing services. CSOs often undertake social innovation in the fields of education, child care, disability care, elderly care, etc, taking over the risk of the reform initiatives for the central and local governments. The government then often helped scale up and disseminate successful innovations: the services become the basis for mainstream governmental reform. In sum we can say that investments into the development of civil society have been made most often with a view to increase effectiveness and efficiency of state provided services nationally and locally.

Furthermore, in some cases, e.g. in the case of Croatia, the government also appreciated the importance of developing civil society in terms of active citizenship, recognizing that conscious and active citizens are vital for peaceful democratic development. Thus, the vision of the Croatian National Foundation for Civil Society Development reads: *“Through its activities the National Foundation strives to achieve active citizenship in the development of a modern, democratic and inclusive society in the Republic of Croatia.”*¹⁵

There are yet other motivations for governments to have developed their governmental strategies towards CSOs and to have introduced various mechanisms to increase CSO infrastructural capacity. Countries that are further from the EU accession do so usually to increase external funding for state services (as CSOs can attract a significant volume of private funding to match service delivery costs); in case of countries in the pre-accession phase as well as among those that are already members there is a strong motivation to have relevant infrastructure and capacity (including CSOs) to successfully access and absorb European funds (in case of members the success ratio of applicants may help states to win funding from the EU budget that is more than their contribution or at least equal to it).

Some countries followed a rather creative approach in their support for civil society development, which represented significant innovations even compared with the old member states. These include the Czech endowment model, the Hungarian percentage designation scheme, or the Estonian or Croatian National Civil Fund concepts, all of which are described in this Study. The document also aims to analyze to what extent these approaches truly contributed to the strengthening of civil society and how effectively they contributed to achieving the relevant and targeted results.

The governmental support for CSOs also addresses a key problem, namely the lack of institutional or administrative funding (funding that the CSO can use to pay its running costs, such as salaries and rent, and the costs of organizational and service development, e.g. IT, staff training, fundraising etc.). In most NMS but also other European countries, the project based restricted funding is the most typical, while the level of unrestricted funding is rather low¹⁶.

¹⁵ <http://zaklada.civilnodrustvo.hr/category/180/subcategory/182>

¹⁶ Restricted funding refers to funds that can only be used in relation to the funded project and is therefore not suitable to fund administrative and development costs; while unrestricted funding has no such limitations.

Such funding could come from any of the sources, however there are impediments: the lack of transparent and effective giving mechanisms – in case of governmental and municipal donors; the lack of widespread philanthropic culture in case of individuals; the low level of corporate citizenship – in case of businesses. The low level of such funding is a key struggle for most CSOs as unpredictable changes in the environment (e.g. changes in taxation, frequency of calls for application, reporting requirements, etc.) may result in financial losses that the less- or non-solvent CSOs have difficulties to finance).

Another problem from the point of view of CSO sustainability in the new member states is a general public expectation towards NGOs¹⁷ and CSOs¹⁸ that they have to provide services for free, work for their organizations on a volunteer basis or below the average wage. Usually the public opinion is less accepting of competitive salaries (even in the public sector) despite the tendency that the first CSOs to have contractual relationships with their governments and corporate sectors beyond charitable giving have been those with very specific know-how and high quality expertise. In order to enhance the sustainability of CSOs, it will be necessary to achieve a shift in public opinion towards a more nuanced view of CSOs and their needs.

II.3. Mapping the Funding Sources for CSOs

The following chart lists most potential funding sources for CSOs. A general principle applies here: the more balanced the income from various sources of a given CSO is, the more sustainable it is¹⁹.

Each of the sources in the Table might be characterized by different parameters. One general distinction is whether the source is domestic or foreign. From the side of the CSOs this may mean a very different modus operandi and fundraising-communications strategy.

Foreign sources can include foreign governmental and private sources. These two are usually referred to together as “international donors”²⁰. However, from the point of view of the CSO, raising funds from bilateral and multilateral funding agencies, i.e. government sources, requires a somewhat different approach than raising funds from foreign private donors (e.g., foreign foundations).

Private foreign donors tend to develop less but longer-term relationships. At the same time, accessing foreign governmental funds (such as EU funding) requires a high level of administrative capacities, project and financial management systems that are compatible with the donor requirements. The strategic approach usually is more important in this case than bureaucratic requirements. In case of such donors mostly the “elite” of CSO sector has access to and capacities of accessing these funds.

¹⁷ Lester M. Sallamon: *Global Civil Society: Dimensions of the Nonprofit Sector* (with S. Wojciech Sokolowski and Associates), Volume II.

¹⁸ World Bank definition: “the term civil society refers to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations”.

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html>

¹⁹ Based on the analysis of several thousands (approx. 15.000) of CSOs who participated in CSDF Hungary’s programs over the past 15 years, it can be concluded that ideally a CSO should have income from at least 6 different sources, with a minimum of 10% from each.

²⁰ In the case of re-granting programs like Pact, NDI, OSI etc., it can be debated whether they should be categorized as foreign or domestic. As long as decisions are made by local experts within the country, we consider them domestic sources.

CSDF Resource Map

Income Resource	Domestic			International			Total
	Restricted	Unrestricted	Total	Restricted	Unrestricted	Total	
State Support							
	Central						
	Regional						
	Local						
Private Support							
	Institutionalized (charitable donors)						
	Corporate Donors						
	Individuals						
Earned income							
	Governmental Contracts						
	Municipal Contracts						
	Corporate Contracts						
	CSO Contracts						
	Incomes from financial transactions						
	Membership Fees						
	Other Earned Income						

In general, it is rather challenging in the case of foreign funding, for the CSO to comply with a dual legal and fiscal system, including a dual reporting scheme so as to be in line with the national regulations as well as with the donors' home country regulations.

Domestic funding is usually attractive for a broader spectrum of CSOs as there are no language barriers²¹, the conditions might be culturally easier to follow and the initial fundraising investment is usually shorter. However, the sources may be rather limited. In the following, we focus on domestic sources only.

In relation to the vertical scale of the chart, there are three major categories included: governmental sources, private sources and earned income. These three types of sources are quite different in terms of how they affect CSO sustainability and how the CSO needs to behave in order to successfully raise the funds.

State support includes all forms of financing CSOs from public funds, whether at the central or local level. This includes grant support, contracts and third party payment schemes (see section II.4.). It could be argued that governmental contracts are in fact earned income for the CSO as they represent fees for services supplied by the CSO to or on behalf of the government. However, the practice of government funding in CEE has shown that a) there is no clear distinction between grants and contracts and so CSOs are often supported by contracts rather than grants when the function of support is in fact project or institutional funding; and b) even when there is a fee-for-service relationship behind the contract, in almost every case the CSO will need to comply with the terms set by the government, i.e. there is not much opportunity to set prices, deadlines or other contractual terms. In short, while technically government contracts (including municipal contracts) may be seen as earned income (fees for services), in practice, the CSO is not free to set the terms of its service and in fact needs to fundraise in similar ways to obtain a government contract as to obtain a government grant.

Private funding includes three main types of sources: institutional funding, i.e. private foundations; companies and individuals. We include the so-called percentage mechanism²² as a funding source under individual funding, even though it is actually public funds that are being transferred to CSOs. The reason is that this source "behaves" like private giving: it is the – individual or corporate – taxpayer who decides on whether and to whom to "give" his or her tax assignment. Therefore the CSO has to raise the tax percentage in a similar way as when asking for a donation from the company or the person.

Regarding earned income, there are many forms of it but most of all they comprise of the fees for services and goods that the CSO charges to its customers. Furthermore, it can include e.g. rent for space leased, income from investments, income from license fees and many others. It is important to note that this type of income behaves in a slightly different way than the type where the CSO is asking an outside source (i.e., the government, the international donor, the company or a private individual) for support. Here the CSO has a tangible and immediate value to offer regardless of its mission – even when the service or good offered for sale is directly related to the mission. Therefore the "behavior" of this type of a source is much closer to the regular market mechanisms and it requires different management skills to make it profitable and sustainable.

Also in this category there is a special source, namely the membership fees, which could be questioned based on the logic above as membership fees are usually not associated with market based for-profit operations. However, from the point of view of managing and raising the income, membership fees are similar to other fees for services: they also reflect a *quid-pro-quo* situation in which the member pays in exchange for becoming part of an association that has something to offer. Of course, there are many problems in practice with membership fees, but that does not change the basic relationship between the CSO and its members.

²¹ EU and other foreign funds often accept English or French proposals only, the communication related to the project is also expected to be in these languages. Most CSOs still lack staff and volunteers fluent in such languages.

²² The percentage mechanism enables an individual or corporate taxpayer to assign 1 or 2% of its taxes to a qualifying NGO. This mechanism has been introduced in Hungary, Slovakia, Poland, Lithuania and Romania.

From the point of view of CSO sustainability, all three main types of sources have their added value as well as their challenges. State support is often seen as a stable large scale source especially if the funding model is determined by law or decree. The tendency to bureaucracy is the highest here, as various sets of requirements are applied to ensure a transparency of the use of public funds. The largest difficulties traditionally appear when European funding is re-distributed by a national state or quasi-state distribution mechanism where double set of bureaucratic requirements is applied (those of the EU and national level ones). It typically finances mainstream operations rather than innovations and high risk pilots, as the expectations with public funding don't allow for such actions.

Private funding is usually more flexible. In emerging CSO markets this usually represents the source that might be used for fast response, tailored assistance and finance higher risk projects, e.g. less developed or start-up CSOs often have such donation first on their track record. On the other hand, raising funds especially from individuals is still difficult for most CSOs due in part to a lack of skills and in part to a lack of belief in the effectiveness of asking people for money. Yet, the experience from developed countries shows that the only most reliable source of funding for an NGO that can help ensure long term sustainability is the support of committed individuals: people who believe in the organization.

The question of earned incomes is trickier. Earned income can help a CSO finance its administrative or developmental needs and as such plays a very important role in CSO sustainability. In fact, in most countries earned income represents the major part of the income of the CSO sector. However, in countries where the state controlling mechanisms are not functioning well and/or there is a high degree of tax avoidance, the CSO enterprise form might be misused by some players for the tax exempt status as hidden businesses, which is a general fear from the side of the legislator. On the other hand, in most of the NMS's as well as OMS's relevant measures were introduced to eliminate the risks of such dealings. Other forms like membership fees, interest earned²³, etc. usually represent the most flexible funding source in the financial scheme of CSOs.

II.4. State Financing of CSOs²⁴

There are three main mechanisms used to finance CSOs by the state in European countries. This can happen through providing **direct budgetary support**, i.e. subsidies or grants; **contracting out** a service; or providing so-called **third party payments** (see Table I.). The purpose of each of these forms is somewhat different. Grants and subsidies are usually used to promote implementation of a government policy, and they often serve also to support the organizations receiving the funds. In the case of contracting, the government "orders" a specific service, ideally through a procurement or another competitive tendering mechanism. In the case of third party payments, the government essentially delegates the provision of the service to an outside provider based on set prices, quality and other criteria.

Direct budget support

The most widespread form of financing CSO activities is that of providing **direct budget support**. The two main forms of monetary support are subsidies and grants (there can also be in-kind support provided, e.g. premises to house the service)²⁵.

²³ In the Czech Republic there is a specific investment scheme to deal with CSO investments (Balancovany Fond Nadací) – Pioneer investment.

²⁴ This section is based on information from the European Center for Not-for-Profit Law (ECNL), including a draft study under publication "Public Financing of Non-governmental Organizations in Europe". The information has been provided by Nilda Bullain and Katerina-Hadzi Miceva from ECNL. Quotes are taken with permission from the authors.

²⁵ Read more: alternative state funding in Hungary

Subsidies are dedicated for certain civil society organizations, often provided as institutional support. In the case of subsidies there is usually no competition and the recipient CSO is entitled to the support as defined in law. In many countries of Europe and the CIS subsidies are given to different unions as representative organizations of social groups, e.g. Union of Blind People, Union of Deaf People and others, due to historical reasons. (It has to be noted that the subsidy model is less favored from the point of view of transparency and accountability of public funding, as it lacks open and fair competition as well as any performance measures accompanying the funding that would ensure “value for money”.)

Grants are a form of support to CSOs from the state or local budgets. In contrast to subsidies, grants usually imply competition for funding. CSOs are typically funded to carry out a specific project which has strictly listed activities, deadlines for execution and an itemized budget, i.e. reporting is based on whether money was spent in accordance with the proposed budget. In the case of grant-making, the state sets out a certain amount available for the CSO grant projects under certain conditions. The government states only the goals, not the means; in fact it invites CSOs to come up with the best ideas on how to achieve the goals. Many CSOs can apply and several may win grants for their projects. CSOs will structure their costs according to the grant application form, usually differentiating between direct and indirect costs of the project. CSOs, grant-inners, are accountable to the government (like in the case of any other donor).

Contracting / service procurement

The other main form is procurement, or contracting a CSO. In this case, rather than a donor-donee relationship, there is a relationship between contracting parties. The purpose here is to provide a concrete government service with the help of the CSO. In this case, the government knows exactly what needs to be done, sometimes even to the detail of procedural specifications (e.g., minimum standards of the service), and is looking for someone who will deliver the service at the highest quality and for the lowest price, so CSOs have to compete with other providers. Therefore, while there is usually (and as a matter of good practice) a tender procedure, CSOs are supposed to provide bids (not applications) and there is only one winner. The cost structure of the bid is usually based on fees for some kind of unit (e.g., a fee is charged per beneficiary or per day) and the fee includes both direct and indirect costs.

Third party payments

Another way of transferring social services to non-state providers is the so-called **third party payments**²⁶. In the third party payment scheme, the government is the “third party” who pays for the cost of the service provided by the CSO to the beneficiary – either directly to the CSO as in **per capita** payments, or through the beneficiary, as in voucher payments. These amounts are also paid for performing a government service; however, the terms of these contracts are very concretely specified in the law. In this case, the government determines a certain type of service (e.g., day care provision for the homeless), as well as the standards and costs of this service. Thus, the service fee is not a subject of negotiation or bidding but regulated in law. Thereafter, every provider who meets the conditions or criteria set in the law will receive a set amount of compensation for a service provided to every client or beneficiary. (When a CSO meets the

²⁶ There is some debate in the terminology relating to this concept as most CIS and CEE governments consider it a subsidy rather than a compensation (i.e. payment) for services provided. This determination stems from the Soviet times when government provided exclusively subsidy type support to both lower levels of government and non-governmental entities. In many countries legislation still refers to this type of payment as a subsidy support. In our view, however, the “third-party payment” terminology needs to be promoted in order to help change the way government views non-state providers.

conditions it may also receive a license to perform the service.) In this arrangement indirect costs are usually not included in the service fee and there is a general overhead percentage calculated which may be fully or partially paid to the organization.

The **voucher mechanism** is a method of third party payment as well. It focuses on the choice of the beneficiaries or clients. In this system potential beneficiaries receive vouchers that entitle them to use certain services free of charge. The beneficiaries are the ones who choose to which service provider they go to. There is usually a preliminary approval of all specialists who are licensed/approved to provide these services. Based on the vouchers collected by each provider, the state transfers a fixed fee for each client served.

Main forms of public financing of CSOs

	Grants and support	Procurement and contracting	Third party payments
Aim	Implementation of government policy	Providing services to the government	Providing a gov't service
Terms of contract	Set by the government	Set dominantly by government	Set by law
Key selection principle	Best ideas and project plans	Highest quality at the lowest price	Fulfillment of legal requirements
NGOs funded	Several applicants	One bidder	Several licensees
Cost structure	Project budget	Free based budget	Budget according to regulations
Indirect related	Percentage of project budget	May be fully covered in fees	General overhead% set by law

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II.5. Private Funding of CSOs

The importance of private and (within that especially individual) funding is often underestimated by both governments and CSOs. The general direction countries in CEE have been taking was towards increasing the public funding of CSOs and improving a little the conditions for private funding, without much consideration to its potential impact.

One reason why the government should be concerned with the possibilities of CSOs to raise private funds is social innovation. From both government and CSO perspective there is a need for unrestricted or less restricted funding for social innovation. This is especially relevant in countries in transition, where the welfare system has to be transferred into a model that is more efficient, qualitative and also of a personalized character. Such social innovation has a high level of risk (in the early phases comparable to risk of venture investments) and is usually financed by private sources, where the possibility of failed attempts is more acceptable. In case the results are demonstrable, the model is easier to adopt by the state welfare system. This happens on many occasions and thus, the government benefits from the fruits of private funding of CSOs. While in Ukraine currently it is foreign donors who undertake the risk and responsibility of funding social innovation, domestic potential needs to be built by the time they start leaving the country.

The other important aspect where private funding plays vital role is financing advocacy and expert groups that are monitoring and reflecting on policymaking and its impact. This is a vital function to any modern state (as these groups often substitute for missing or not well functioning systems within the state) and it can be partly financed from state sources²⁷. However, besides taxes collected and used to finance the functions of the state, private funding should be considered as additional responsibility taken by individuals, companies and private donors that is materialized in additional volunteer contributions. This is important so that policy analysis remains independent.

When discussing private funding we have to make a clear distinction between corporate funding, charitable institutional funding and individual donations.

In terms of corporate funding the two main categories to analyze are **institutionalized** and **non-institutionalized** funding mechanisms; and there is also a principle difference between **ad-hoc** and **strategic** giving.

Charitable institutional funding might be of **domestic** or **foreign** origin as well as might be categorized as **re-granting**, **sinking funds** or **endowed funds**.

Individual giving may be categorized by frequency: **one time** or **regular/planned** giving as well as by the size of the donations like **small donations** and **large gifts**.

Corporate funding

In terms of corporate funding there are various motivations of companies to give. It is noteworthy that available reports do not consider financial motivations such as tax benefits as the primary factor in making the decision to give. Emphasizing responsibility towards society, personal motivations of the leaders/owners are more frequent answers. While the statements of reasons given in a survey might be largely influenced by the public perception on companies and general expectations towards them, there is an increasing volume and quality of such donations Europe-wide.

Institutionalized corporate grant making

Over certain volume of donations and in case the company perceives grant making as a strategic intervention, corporate donors tend to institutionalize their grant making in forms of in-house policies, tendering procedures, or setting up a separated grant making unit or an administrative body within the corporation.

These options are often steps of development taking place over years. There are a number of advantages of institutionalized grant making that companies come to realize over time: there is larger transparency of expectations of the donor; funding streams are more predictable; and in the end companies can better link such activities with their communications and branding.

Corporate foundations represent a special category within the framework of institutionalized corporate grant making. On the one hand there is an accusation that these foundations are to pursue the interest of the company and to serve the benefits e.g. of employees; on the other hand there is a much more typical pattern, when actually the company can support cases that are not fully or at all in line with their business interest. In the second case the company is acting as a socially responsible player but also not harming its own business interest (e.g. support of the Roma issues is not necessary helping the company's market interest within the public at large in CEE, still the company can deal with racism by distancing the support through a corporate foundation). Such Foundations often utilize CSO experience, by subcontracting preparation of the decision making to CSOs, or involving them as expert board members, that results in smart "know-how import".

²⁷ Boris Strecansky, *Obcianska advokacia a mimovládne organizácie*, 2006

Non-institutionalized forms of grant making

The non-institutionalized form is more typical in case of corporate players, which either don't have large volumes of funding or don't consider it as a strategic intervention in case of their markets. The main motivation in such cases to donate is some level of connection with the case. Such non-formalized grant-making may also be long term (e.g. local shop owners supporting local schools, cultural events repeatedly for years), and often there is a high level of accountability – especially at the local level – as the donation is given based on previous experience. In case there is no such prior connection, then emotional aspects, psychological factors, good timing, etc. determine whether the donation is agreed²⁸. Therefore, when SMEs suffer financially, like during a crisis period, that makes a significant impact on the performance of local CSOs incomes as well.

As in most countries the procedures of claiming tax credits are rather simple²⁹, usually there is no separate incentives or administration systems for institutionalized or non-institutionalized funding. From the CSO perspective it seems to give more guarantees, if the funding is done through an institutionalized channel, since it helps defining goals in a better way, and to think strategically – counting on the company's long term support.

There is another big difference between understanding the ways and importance of grant making between western and local organizations, especially in the early stages of market economy development. Based on experiences from CEE, local companies learned in a couple of years how to incorporate such activities into their business, while western donors practically entered the market with models in which charitable giving was part of their business model.

Charitable institutionalized funding

Re-granting

In most European countries the model of re-granting to CSOs exists, but in CEE it had a vital role in the development of civil society. In old member states re-granting is usually related to government funding and is used as an attempt to make state funding more independent from the state (such organizations are often semi-independent so-called “arms length” agencies). In Eastern Europe they were created and funded mostly to have relevant distribution mechanisms in channeling foreign funding to recipient countries for projects of national and local interest. A new “class” of so-called intermediary organizations was created, which are seeking grants to pursue their strategies in the form of giving subgrants. They don't usually have endowments; in business terms they provide services to larger international donors by identifying the need and distributing grants to address it.

After the decline of funding available from the western charitable donors most of these organizations struggle to stay alive and some have closed – even though the needs continue to exist. There was a network of re-granting foundations set up to distribute funds before the EU accession in the new EU member states – after the accession, some of these organizations became redistributors of EU funding at the national level (Structural Funds, Norwegian and Swiss funding mechanisms)³⁰. In countries like Hungary, a local network of resource centers was created with the same intention, but it was difficult to justify the cost of another interim player towards the foreign donors (since there were not enough funds to redistribute locally, the size of the country does not require such de-centralization, and their know-how advantage was not significant compared to central, national systems).

²⁸ Kuti, Eva ed. *Vállalati adományozás Magyarországon Tanulmányok 2005* (Corporate giving in Hungary)

²⁹ In case of Hungary the CSO has a right to issue a statement, how much was donated by which company, the company can use this simple statement to submit to the tax office

³⁰ For example, in Romania, the Civil Society Development Foundation (FDSC) manages part of the Social Fund, while in the Czech Republic the same foundation (NROS) became the national contracting partner for civil society development related funds.

Another, hopefully more sustainable example is the network of community foundations where the funds are sought for both internationally, nationally and locally, strongly involving local businesses, municipalities, CSOs and citizens. Unlike most re-granting organizations, some of these foundations have built an endowment, which serves the long-term local needs.

Endowments

Classical charitable grant making with endowments has an advantage compared to other types of funding, as the funds distributed are secured long term. Examples from both “old” Europe and “new” Europe show, that such funding significantly contributes to the sustainability of the sub-sector it is supporting as the reliability of the strategies of these funds as well as ongoing availability of sources make the CSOs become more long term and impact oriented. Both the German and the Czech models analyzed below are interesting examples from two totally different cultures.

Sinking funds

Sinking funds represent an interesting model of charitable giving. Sinking funds mean that the donor, or donors, establish a fund to be spent down (distributed in grants) over a longer period of time, typically 10 years. The funds are calculated to be enough to finance the program over the given period of time. In case there is a significant but – seemingly – resolvable societal problem, by determining the amount needed to deal with the challenges as well as determining a realistic time frame needed to achieve results, it is possible to calculate the volume of funding needed.

Examples from around the region include the Trust for Civil Society in Central and Eastern Europe (CEE Trust); the Baltic-American Partnership Fund, the Balkan Trust, the Black Sea Trust. These Trust Funds have been established with pooled funds of several western charitable donors, sometimes including also bilateral ones (USAID). As can be seen, these are mostly regional constructs, and have been part of the “exit strategy” of donors: after they discontinued their own program, they could still contribute to the support of their former grantees and to the achievement of results in the areas funded. (The idea was created in response to the claim from NGOs that there is “unfinished business” in building democratic societies in the region when the donors were already planning to leave.)

Sinking funds are interesting from CSO point of view as the impact required is usually clearly defined, the funds are available for a relatively longer term, still, it motivates and pushes all players to achieve results within the available period of time. Although the current examples are regional, this idea can well be adapted to a national level as well.

II. 6. Individual funding

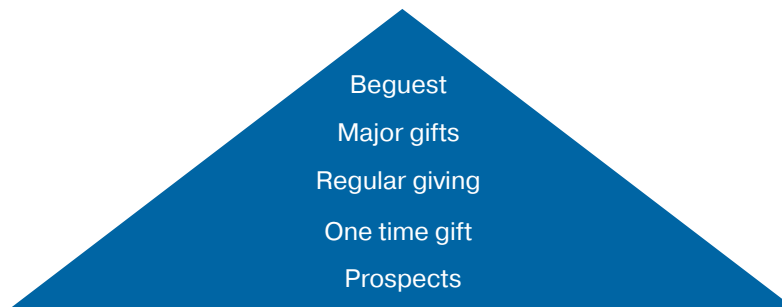
Fundraising needs investment

In order to understand the nature of individual giving from a regulator’s point of view we would like to introduce the so-called “Donor Pyramid”. This pyramid of individual donors shows how CSOs can think about and handle their individual donors. It has five levels:

1. At the bottom there are the people who have not yet given to the CSO but are potential givers, e.g. due to their place of living, age, gender, area of interest etc.
2. The second level is made of people who already gave once or twice occasionally.
3. The third level is made of people who became regular givers, i.e. they are making donations almost “automatically” in regular time periods. In the West this is mostly done through direct debits from the individuals’ bank accounts, but in Eastern Europe regular giving is more often done through postal payments. In any case, we are here talking about people who respond positively to the fundraising calls of the CSO and keep the CSO in their mind every time they give.
4. The fourth level is that of major gifts, i.e. donors who are very committed to and deeply trust the organization, and who contribute with a significant amount of money.
5. Finally, there are people who leave their legacy to the CSO (bequests).

The general idea is to start from the bottom and through various forms of communication make individuals become more and more committed and more reliable in terms of financial commitments. It is important to understand that only regular givers will ensure real sustainability to CSOs. However, nobody becomes a regular giver without first being asked and having given once. Therefore, the CSO has to invest in the first two levels and then also in maintaining communication with the top three levels. Without doubt, this costs money, even if it is done at a very basic level. As a donor is moving up on the chart, the Return on Investment (ROI) is increasing more and more.

***Pyramid
of individual donors***



From the regulator's point of view it is important to understand that such donor cultivation equals to the customers relationship building in the corporate sector. The investment is really high and predictability of its return is crucial. While in the business world such costs are easily justifiable, the general expectation towards CSOs is that they don't spend "too much" money on their communications and fundraising. However, given that a very low percentage of the expenses is often seen as "too much", this is not a realistic expectation for a sustainable CSO.

Understanding the fact that individual fundraising is a short term high cost – long term high return investment may help creating a legal and fiscal framework that promotes such giving.

In countries with a higher level of individual giving, the quality of CSO provided services is higher, as the funds donated by individuals well complement public funding, giving the flexibility to the service providing CSO to invest in higher standards; raise matching funds; and compensate for potential losses (such loss can be, e.g. if the government contract does not cover all the overhead costs of the NGO, which is quite typical case).

There is also a significant difference in observing the level of accountability and transparency between countries with higher level of individual giving and those with the lower one. In case a CSO has to communicate and maintain relations with a higher number of constituents, it is more motivated to remain transparent and accountable, even if the level of expertise of an individual donor on the cause is often lower than the same expertise with the governmental specialized donor. This is because through the individual donors there is a better level of constant monitoring and expectations for improving performance of the CSO.

In short, broad individual support of CSOs may result in a higher level of accountability, transparency and service quality than rigorous government regulation.

In order to enable CSOs to invest in fundraising, **government should not impose any specific percentage of administrative costs**, neither by law, nor by defining a ceiling in its grants and contracts. Administrative costs are different for every CSO and there is essentially no "industry standard" about them even in Western Europe or the US. In fact, there has been research that showed that lowering administrative costs due to donor pressure led to weaker performance. The best policy in relation to administrative costs is to ask CSOs to make public both the rate (percentage) and the method of calculating it.

From no-giving to regular giving

In CEE countries, the philanthropic culture is still in the making and the biggest question is how to develop it to a level where it can sustain a strong CSO sector.

The highest cost related to professional fundraising from individuals appears when the CSO is trying to segment and target potential donors (those who are as yet non-givers). Any technique and method applied here (like direct marketing campaigns, advertisements, street collections, etc.) have to target larger audiences to achieve some results as (1) only a portion of people will find the specific cause appealing (some prefer to give to children, some to animals etc.); and (2) even if people can associate themselves with the cause, there may be technical barriers to getting engaged (such as difficulties with the payment or action at the moment they receive the message, etc.).

In case there is a successful fundraising act, there is already a high probability that the donor has affection towards the cause. By sophisticated communication strategies, such donors are then targeted to become regular givers, to agree to a planned regular donation.

Once achieving the level of the planned regular giving, such funds become easy to calculate and income more predictable compared to e.g. the results of a governmental call for applications. The individual sums are obviously significantly lower and for this reason a high number of small donors is needed, but the so-called “donor lifecycle” is calculated in years³¹, as opposed to the usually one year “lifecycle” of governmental grants.

The government can encourage this process with the individual CSOs in two main ways:

- **Tax policy**, e.g., providing a higher level of benefit to donors who give regularly; and
- **Capacity building**, i.e. support through grant programs the spreading of professional fundraising (importantly, such program has to enable the import and adaptation of foreign experience: Western experience to get acquainted with the most up-to-date techniques and CEE experience to understand the adaptation processes).

Major gifts and Bequests

In case of major gift donors usually there is a long term donation history and therefore a well built relationship between the donor and the organization, before a commitment to a larger, usually specifically focused major gift donation is made.

Bequest or legacy is a special category. While in western countries, especially in North America such donation from average individuals represents an income source multiplying every year, in CEE countries such donations are usually accidental – but not rare. In the West, CSOs sensitively but consciously communicate to their donors about such opportunity; while in CEE CSOs are usually shy and feel inappropriate to ask for a major gift or a legacy. Regardless, people do give, which signals that there is willingness among the population to express their commitment to the cause and to the organization through a serious financial pledge. The German case below describes a European model that includes elements of dealing with legacies in a sensitive but socially beneficial way.

Needless to say, a major gift or a bequest greatly enhances CSO sustainability. It enables the CSO to make longer term plans, invest in infrastructural development, create a reserve fund, or scale up its services and reach more beneficiaries.

Government can endorse the idea of making major gifts and bequests through tax policy:

- by exempting such donations from gifts and inheritance taxes; and
- by allowing a special tax benefit above a certain value of the donation.

³¹ The donor lifecycle is the length of time during which one donor keeps supporting the same organization. In case of Hungary, the time a donor involved in a planned giving scheme spends supporting the organization is on average 6-7 years and increasing.

II.7. Earned Income of CSOs

Earned income refers to types of income which are derived from an “economic activity” of the CSO (also called entrepreneurial, business or trade activities). Essentially it means sale of goods and services that is conducted with regular frequency or continuity. In the section below we will not explore all the possible ways of generating earned income by CSOs, we will rather elaborate on the ones that to our best knowledge already exist in Ukraine.

Membership fees

In an optimal case membership fees are a relevant tool to assess membership cultivation of the given organization. Obviously members of a business association can allow themselves to charge higher membership fees than an association of parents with children with disabilities who have to fight for equal opportunities.

There are significant differences between certain groups of CSOs with membership in terms of their approach to the membership fees. While highly specialized and focused organizations for representing certain interest groups as well as most of the trade unions treat membership fees as their members’ strategic investment and commitment to the cause, for various reasons (especially in CEE countries) other significant groups of membership organizations don’t consider it as an important income source. On the one hand they consider that “people don’t have the money to pay the membership fee”. (This is actually only true in very limited cases when members come from the most marginalized populations.) On the other hand, there is also a governmental behavior in background to this attitude, as governments and municipalities often prefer to talk to bodies with the largest member support. Therefore CSOs are interested to claim the biggest membership possible in an effort to show legitimacy. That’s why CSOs often fail to collect membership fees or set it at a nominal level, not at one that represents a significant part of their budgets. Paradoxically though, if membership fees are not a significant source of income for the association, its leadership will have less motivation to be accountable towards the members (and more towards external donors and the government).

By insisting on “representation” as the main criteria to allow CSO participation in decision-making, government incentivizes less democratic and less sustainable practices in membership building in CSOs.

Service fees

CSOs often offer their experiences or expertise to their peers. Project planning, proposal writing advices or any direct business services are typical in such category. This opportunity is open to a large number of CSOs because the simplest know-how to “sell” is the experience. Although there is a general expectation that such experiences are shared for free, in case the CSO is able to develop its know-how further, it will often find its own market.

Professionally developed know-how in any field represents increasingly bigger value as many donors invest into the development of the organization and its programs over the years. When such know-how becomes relevant for policymakers, new markets are opening up with corporate clients as well as the public sector.

Goods sold

Charitable production and sales of goods seem an attractive opportunity for many CSOs. T-shirts, branded and creative mugs, etc. are the most often promoted income generation ideas. The fact is, at least based on CEE experience, that production and sales of such goods rarely contributes significantly to the incomes of the organization. In the end it is a highly competitive

market and even the “passion brand” segment³² of it (most CSOs operate with such ambitions) is penetrated. To be successful requires special marketing skills and often investment; usually there are only a handful of CSOs that can achieve that in a national market.

Another typical area of goods production is supported employment where there is a subsidy from a donor to produce the goods (for example setting up a workshop for people with learning difficulties). While this type of income can represent a bigger share in the CSO’s budget, it is important to acknowledge that it is subsidized, i.e. the risk is shared by a donor. Such production is usually much more beneficial in PR terms – but it will only help the sustainability of the CSO, if it is developed to be viable in the market without the subsidy.

When supporting production of charitable goods, e.g. through supported employment, government and donors need to make sure that there is a mid-to-long term business plan that will enable the CSO to maintain the production with a decreasing level of subsidies.

Renting of premises

One of the assets CSOs are increasingly taking advantage of is the offices or premises where they operate. As a typical example, those who offer capacity building services also offer space and equipment for rent. As internally it might be relatively easy to reschedule work (e.g. setting days for working from home) and free up space for trainings and workshops, more and more CSOs use this opportunity.

License fees

Some organizations with a well recognized brand may “sell” their name and logo for corporate use. Companies that want to get associated with good causes and can utilize the market benefits of licensing often pay high amounts to get permission from CSO brands. This type of income is unrestricted, and it is also recognition of the achievements of the organization, as the main reason the company is choosing such partners is the fact that significant part of the population is of high opinion of the given CSO.

Taxation of earned income

The most important issue when talking about tax policies regarding earned income is the **definition of “economic activities”**. Every country defines this term in its own way, reflecting the national circumstances. While there are some typical common elements, e.g. conducting the activity in exchange for payment or regularly, there are also many “gray areas” that leave room for national interpretations.

For example so-called thrift-shops or charity shops, which sell only donated materials, and outlets that operate on volunteer labor will in some jurisdictions be considered an economic activity, while not in others. Similarly, some forms of fundraising, e.g. selling branded T-shirts or charity postcards can be considered economic activity in one country but not in another one. Another ambiguous example is the charging of fees for services that are “intrinsically connected”³³ to the public benefit purposes of certain CSOs, such as tuition fee in a school or admission fee in a museum. Revenues from passive investments (e.g. bank interest) are also a questionable item. There is no blueprint in terms of deciding which of these activities should be considered as economic and therefore potentially subject to tax, but it is important to address them for legal clarity.

³² A passion brand is a brand that people identify with and it creates not only a positive impression but also ownership and loyalty in customers. In case of passion brands, people not only buy the product because it is good quality or reliable but because they express their belonging and identification with the values that the brand represents. Due to the possibility of identifying with their cause nonprofits are ideal candidates for passion brands.

³³ ICNL/ECNL/MCIC paper reference

Once the definition is made, the question of what tax policy to apply comes into play. European countries take five main approaches³⁴:

- Generally taxing all profits
- Not taxing any income from economic activities
- Taxing according to the destination of the income
- Taxing based on whether the activity is related to the mission of the organization
- Taxing above a certain threshold

Tax all profits: the main argument for full taxation of NPO economic activities is that if they are not taxed they may gain an unfair competitive advantage over for-profit organizations. (E.g. tax-free profits may also enable NPOs to maintain lower profit margins on their economic activities, which could even be used to reduce prices on goods and services below levels which are competitive, or even sustainable, on the part of for-profit organizations.) Full taxation is easy to administer and it minimizes the potential for abuse by organizations attempting to take advantage of NPO tax preferences. For this reasons, this approach is mainly used in countries where there is still a high level of corruption, i.e. Albania, Bosnia (Republika Srpska), Bulgaria. However, in most European countries there is some level of tax exemption ensured for CSO economic activities, and potential abuse is dealt with through other legal means.

Full exemption (no taxation): this approach is again only used in a few jurisdictions, e.g. Cyprus, Bosnia (Federation) or Croatia where CSOs as legal entities are not subject to income tax at all, and therefore also not subject to tax on their profit income. It has to be said that this approach leaves ample room for abuse.

Most countries apply some “intermediary” solution. This means that they recognize the importance of providing tax benefits for economic activities of CSOs. Such recognition has several reasons, including:

- CSOs often lessen the government’s burden to provide similar services. The government is compensated for the loss of tax revenue by its relief from this financial burden, and by the benefits resulting from the promotion of the general welfare.
- CSOs are often able to provide needed services at a lower cost and higher quality than for-profit organizations, which are bottom-line driven.
- Taxing NPOs depresses the development of the NPO sector. “This is a particularly apt argument under a tax regime which requires NPOs to pay tax on economic activities even when they are related to their public benefit purposes. In the latter case NPOs are limited in their ability to financially sustain their operations. Such an approach also fails to provide incentives for NPOs to engage in public benefit activities involving an economic component (e.g., an association for the blind selling walking canes) since these activities would be subject to full taxation.”³⁵

As to argument that giving CSOs preferential tax treatment results in unfair competition with the for-profit sector, it has been argued that empirically such concerns are largely unfounded and the negative impact on the for-profit sector overestimated³⁶.

³⁴ Id.

³⁵ ICNL-ECNL-MCIC

³⁶ “First, small businesses are often able to avoid profit taxes by means unavailable to NPOs. Large salaries and expensive offices may allow small businesses to substantially reduce paying income tax. Indeed, several countries have abolished small business profits tax due to their failure to collect. Second, small businesses are eligible to receive loans from lending institutions, whereas NPOs are generally ineligible for loans. Third, economic activities in which NPOs take part generally fall in the province and jurisdiction of the not-for-profit sector and therefore do not compete with for-profit entities. This is especially true when a country uses the “relatedness” approach to NPO tax exemption.” ICNL-ECNL-MCIC paper.

Destination of income approach: in this legislation, any income used for statutory or public benefit purposes is tax exempt; all other income is taxed. This is the case in Poland. It is based on the premise that tax exemptions should only subsidize activities which benefit the public, so only income actually spent in furthering statutory or public benefit purposes should be tax exempt. The main criticism of this approach is that it allows and even encourages NPOs to engage in income generating activities completely unrelated to their goals, and as such it creates unfair competition. While the US abandoned the destination of income approach due these problems, this seems to be not the case in Poland where the CSO sector is still weak and is in need of unrestricted resources.

Relatedness approach: This approach looks to the *source* of the income. Under this approach, NPO income is tax exempt, if it derives from economic activities sufficiently related to the statutory or public benefit purposes of the organization. Generally the activities that are considered as unrelated to the statutory goals will be taxed in the same way as other entities. This is the approach used in the US, and in CEE by Latvia. This is certainly the most “fair” method of determining when tax exemption is justified. However, it is also the most difficult to implement because the tax authority has to make a decision as to which activities are related or not to the mission or a public benefit purpose. For example, in case of an environmental CSO, selling awareness raising books on the protection of nature at various related events can be considered as related to its mission, but what if the CSO publishes attractive albums and sells them through commercial bookstores?

“It is difficult to draft laws or regulations which adequately codify the concept of “relatedness” and guiding principles must often be established on a case-by-case basis. After a body of decisions or norms concerning application of the rule exists, this is likely to be a less serious problem. But for countries in a state of transition, where guidelines for the not-for-profit sector are still being established, the concept of “relatedness” creates a degree of uncertainty concerning the tax treatment of income.”

Threshold approach: this approach places a ceiling on NPO tax exemptions in monetary terms, percentage terms, or both. Usually this approach is combined with another approach (and is also called a hybrid approach). For example, the Czech Republic, Serbia, and Montenegro combine this approach with the destination of income approach, while Hungary and Slovakia combine this with the relatedness approach. This is also a fair approach as it restricts the amount of tax free profits an NPO may generate and thus, alleviates fears of unfair competition or incentives for for-profit organizations to use the CSO form as a cover. For the government it is also advantageous as it can use it to limit the losses of tax revenue; and it is usually relatively easy to administer (although, as this approach is usually combined with another approach, administrative difficulties may remain). At the same time, this approach acknowledges the importance of earned income and provides justified tax benefits to CSOs.

Some examples (from 2007)

- For example **Hungary** combines the relatedness test with the threshold method by introducing a certain limit of exemption for income from unrelated commercial activities. As mentioned above, all economic activities that are included in the statute of the organization as supporting the mission are not subject to taxation. Income from commercial/entrepreneurial activities (those that are unrelated to the mission) is taxed only if such income exceeds the envisioned threshold. For example, all NPOs, regardless of whether they acquired public benefit status or not, may benefit from tax exemption on the income from commercial activities which does not exceed 10% of total income or 10 million HUF (€38,892). Further, the Hungarian law also creates two categories of public

benefit organizations, which are entitled to higher percentage of the exemption. Thus, organizations that have acquired public benefit status are exempt for commercial income that does not exceed 10% of total income or 20 million HUF (€ 77,785), and those who have obtained status of prominent public benefit organizations are exempt up to 15% of total income.

- In **Czech Republic**, income from economic activities related to the statutory purposes of an NPO is subject to a reduced tax. All related income is exempt from income tax up to CZK 300,000 (€ 11,203). In addition, revenues (i.e., incomes minus related expenditures) at the end of fiscal year over this amount are reduced before taxation by 30% or CZK 1 million (whichever is less), if the proceeds are used for public benefit purposes.
- In **France**, earnings from economic activities are exempt from tax, provided that they are not distributed and that other features are present to distinguish the organization from a commercial entity. Specifically, NPOs with annual revenue exceeding € 60,000 are eligible for tax-exempt status, if: (1) management does not have a financial interest in the NPO; and (2) the NPOs do not compete with the commercial sector. 20 NPOs with annual revenue below € 60,000 can receive tax-exempt status only if (1) not-for-profit activities are their predominant activities and (2) they do not distribute any income or assets to any private interests.
- In **Germany**, public benefit organizations (PBOs) may carry out business activities. Profits are free from corporate and commercial tax, as long as the business activities are necessary to pursue the PBO's statutory public benefit purposes (education, health care etc.). The same is true for charitable and church related purposes. Tax privileged purposes are listed in the law. In order to benefit from tax privileges, PBOs have to pursue these purposes and have to follow the principle of disinterestedness as defined in the law: they may not have as a prime aim the acquisition of income, they may use their resources only for statutory objectives, they may not distribute profits and may not pay disproportionately high salaries. They must use their resources within the year following the acquisition of the resources, but may build reserves within the margins mentioned in the law. Additionally, the organization must be set up exclusively for purposes that will make it eligible for tax exempted status and may compete with for-profit organizations
- In **Slovakia**, NPOs are generally exempt from taxation on income from statutory activities. The non-statutory economic activities of NPOs are taxed at the general income tax rate, except that income from selling NPO property is tax exempt below SKK 300,000 (€ 8,935).

III. GENERAL FINDINGS

Importance of a strategic approach

Many European countries analyzed have developed some kind of a long term action plan to reflect on the relationship of the CSO sector with the state and other societal players. In some cases it was done in a form of a strategy (Hungary, Croatia), in other cases in a form of a “compact” between the government and CSOs (UK) or the Parliament and CSOs (Estonia)³⁷. However, preparing the strategy itself means little in terms of the impact of governmental measures. Equally (if not more) **important is the relevance of the strategy to the desired impacts; and the relevance of funding policies to the strategy.**

The case of Hungary offers relevant learning. While the country’s legislators created pieces of modern supportive legislations, in some cases really unique ones, the strategy was created many years later (1998 and 2003 respectively), and focused largely on developing a centralized structure of government support for CSOs, without considering the broader vision of their role in society and the local communities. Although Hungarian public sector support to CSOs was historically one of the highest in Eastern Europe, the estimated impact has been relatively much smaller than that in less financed CSO sectors (See country report on Hungary.) As there has been essentially no assessment of the impact, it is hard to find objective and clearly identifiable evidence as to the reasons. However, it is likely that the decline of the once inspiring Hungarian model is strongly related to the lack of a single overarching long-term concept on the role of CSOs in the development of the country.

In contrast, in the UK there has been both a compelling vision on the role of the voluntary (CSO) sector vis-à-vis the government, and an ongoing and systematic effort to trace the practice and impact of the implementation of the Compact³⁸. The latter resulted in new policies and practices strengthening the implementation of the strategy that proved effective for both the government and CSOs.

One example is the efficiency of funding voluntary organizations (CSOs). The Compact encouraged local governments to increasingly contract with voluntary organizations in the delivery of public services. A study has been conducted to assess the extent and impact of this practice³⁹. It recommended that Treasury publish guidance to the government funders, to clarify what is and is not permitted under Government Accounting as it applies to the voluntary and community sector. The cross cutting review found that often there is a lack of consistency in the interpretation of Government Accounting Rules, and a widespread perception that so-called “Treasury rules” are inflexible.

The Government realized that getting the funding relationship right is increasingly important, if the financial stability of service delivery organizations is to be assured, and so that government can look confidently to the voluntary and community sector to deliver services⁴⁰. It therefore published

³⁷ Bullain, N. and Toftisova, R.: A Comparative Analysis of European Policies and Practices of NGO-Government Cooperation. In: The International Journal of Not-for-Profit Law (IJNL), Volume 7, Issue 4, September 2005.

³⁸ See for example: Hearts and minds: Commissioning from the voluntary sector, National Audit Commission, July 2007 (available at <http://www.audit-commission.gov.uk/nationalstudies/localgov/Pages/heartsandminds.aspx>); Research Study into the Compact and Independence, Commission for the Compact, September 2008; They are Champions: The role and impact of Local Compact Champions, Commission for the Compact, July 2009; Compact Baseline Survey 2009/10 – A study of the levels of awareness, knowledge, understanding and use of the Compact among Government and Non Departmental Public Bodies, Commission for the Compact, July 2010 (all available at <http://www.thecompact.org.uk/information/100023/140293/research/>).

³⁹ The cross cutting review of the Role of the Voluntary and Community Sector in Service Delivery, HM Treasury, 2002.

⁴⁰ http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm

the guide: *Improving Financial Relationships with the Third Sector: Guidance to Funders and Purchasers (2005)*. This set out four key points, messages:

- Stability in the funding relationship: moving from one year funding to longer-term funding arrangements where appropriate.
- Timing of payments and the balance of risk: recognizing that payment in arrears often results in the third sector bearing the upfront costs of borrowing and the risks that this entails;
- Full cost recovery: ensuring that funding bodies recognize that it is legitimate for third sector organizations to recover the appropriate level of overhead costs associated with the provision of a particular service; and
- Reducing the burden of bureaucracy: streamlining access and performance management requirements for multiple, and often very small, funding streams⁴¹.

The performance of public funders in implementing these and other recommendations was subsequently tracked in a number of studies. In the most recent Compact Baseline Survey Report (2010), the funding practices of governmental funders were also analyzed. An example of success is the issue of full cost recovery, which has long been championed by the voluntary sector in the UK and was supported by a wide range of awareness raising and capacity building programs. As a result, in the 2010 report 58% of governmental bodies and non-departmental public bodies (both significant actors in contracting CSOs) reported that they “sometimes” (23%) or “always” (35%) apply the principle of full cost recovery in their funding programs; placing it among the most widely implemented funding principles in the Compact.

Less is more?

Related to the importance of a strategic approach is the principle of “less is more”. **While certain income sources are less significant in terms of the total revenues of the sectors, their absence or presence can dramatically change** the conditions for the general sustainability of the CSO sector.

The targeted approach both in case of the Croatian and Estonian state fund to assist development of the CSOs clearly shows that a strategic approach makes even a smaller investment beneficial. This doesn't mean that the types, quality or quantity of sources would be necessarily satisfactory; it merely speaks to the importance of a strategic choice.

Private individual giving is a less developed source in CEE countries. Yet it is evident how much more professional are those CSOs that have larger individual donor bases in their communications, know-how development or advocacy work. These organizations learn the concepts of stakeholder and results focus through the development of private fundraising. Even though the income from individual giving is much smaller than that from other sources, the image of CSOs (“CSO brands”) and their professional capacity is influenced largely by these funds.

The 1% mechanism has a similar effect, although maybe not always the effect that was planned: in Hungary, while the income from the 1% designations represents only 2-3% in the total income of CSOs, it has played an unparalleled role in raising awareness about the existence and work of CSOs among the general public. (At the same time it was planned that it would significantly increase the role of private donations, which it did not seem to achieve.) (See Hungary country report.)

The Hungarian example may be educational in terms of setting priorities as well. While the Hungarian financing model is very diverse and takes into consideration many aspects of societal life, the fragmentedness of goals and strategies makes the complex and in details well thought system less functional.

⁴¹ Improving Financial Relationships with the Third Sector: Guidance to Funders and Purchasers, HM Treasury, May 2006, pp. 5-6.

A sustainable origin of funding

An important part of a successful approach to support civil society is to ensure sustainable sources of funding for the sectors. In the times when budget cuts are necessary due to economic reasons it is especially hard to relinquish funding for CSO support. Experience shows that with some creativity it is possible to identify funding sources that do not burden the annual budgets through direct spending but rather mobilize additional resources – whether from the governmental or private sector.

There are two important aspects of “sustainability” of an income source:

- Its guaranteed availability over the long-term, and
- Its ability to make grant decisions independently – based on needs of the CSOs and their beneficiaries (rather than based on governmental priorities).

Fundraising experts agree that the most sustainable source of income for CSOs is that raised from individual donors. Their commitment is to the organization, it is reliable and will last for long years. Private grant-giving foundations are another long-term and reliable source of income responsive to the needs of CSOs. Such community funding and charitable giving by individuals and corporations was most typical in the US and other Anglo-Saxon /liberal model countries till the end of the 20th century, but in the past two-three decades continental European practices started to follow this pattern as well (obviously to a different level in OMS's and NMS's).

Governments try to increase and motivate private philanthropy through different methods. Two of the examined countries offer interesting models to ensure that independent private grant giving foundations put their capital to work towards the long-term development of society.

- In Germany significant tax credits were offered to private individuals to contribute to the endowments of existing or new foundations. This is rather similar to the pattern of the US family foundations tradition, with the difference that in case of Germany this scheme was motivating not only for the traditionally wealthy but for the new generation of the upper middle class as well.
- In the Czech Republic the use of 1% of the privatization income to endow hundreds of CSOs across the country represented a creative approach and a great use of the opportunity raised by the transition from a state owned economy into the private economy. These funds still work in the interest of the country and from the CSO and citizens perspective became independent funding as the state doesn't have the right to determine for what and how the funds are being used, except maintaining and monitoring measures of responsible investing.

In two other countries, namely England and Croatia lotteries offer long-term support for CSOs. While there are many controversial issues involved in lottery funding – from moral considerations to questions of efficiency – it is undoubtedly a widespread form of government support to CSOs⁴². It is easier to devote some part of the usually highly profitable lottery income to support CSOs than to designate annual budget funds for this purpose; and at the same time, it will be a sustainable source that can be managed independently.

⁴² Other countries using lottery schemes to support and promote CSOs include Finland, Ireland, the Czech Republic, Macedonia, the Netherlands and others. For more see Katerina Hadzi-Miceva-Evans: *Lottery Proceeds as a Tool for Support of Good Causes and Civil Society Organizations: A Fate or a Planned Concept?* In: IJNL Volume 12, issue 4, November 2010. http://www.icnl.org/knowledge/ijnl/vol12iss4/art_5.htm

Whether through private or governmental schemes, it is important to ensure that there is long-term independent funding available for CSOs. This type of funding is the one that remains flexible and responsive to community needs; and importantly, it finances social innovation and financially risky social investments. Government funding is risk-averse; in lack of a reliable, flexible and long-term income source, the key added value of the CSO sector: its ability to develop innovative solutions to complex social problems and its ability to cater for the needs of the most marginalized, will quickly disappear.

Balancing the outreach of support

A typical dilemma in government funding for CSOs is the breadth of the outreach: should government support encompass the widest possible range of CSOs, or should it focus on just a smaller segment that is considered important to the government? The reason to reach out broadly is usually to support CSO sector development as such (in order to enhance democratic development or increase CSO capacity to assist in resolving social problems). The reason to concentrate the outreach is to make more effective use of the limited resources that are available.

Practice shows that there is no solution that meets the interest of every CSO – the Hungarian NCF is a case in point. It has tried to build “consensus” among too many CSO stakeholders, to the effect of leaving just a little to everyone. Spreading the support widely will inevitably result in smaller amounts of assistance for each CSO, which at one point is likely to lose its relevance.

The challenge in the Croatian model, which tends to focus on the more established CSOs, is that it may make the CSOs feel “too comfortable” and loyal to their main funding source, without the need to look for community and individual support. This is particularly a problem in CEE where such sources are underdeveloped and where CSO development would benefit greatly from the potential of private giving.

While there is no blueprint to this dilemma, the following can be recommended:

- It is wise to invest in the direct funding and capacity building of CSOs that are of “strategic” importance to the state and to CSO development (e.g. state service providers, CSO support centers, CSOs with special expertise etc.);
- At the same time, the government can multiply the outreach of its support through indirect incentives such as tax benefited donations, tax incentives for economic activities, supporting the creation of independent grant-giving entities etc.

IV. COUNTRY SPECIFIC FINDINGS

IV.1. Hungary

Basic data on Hungarian nonprofit sector (2009):

There have been 66 145 nonprofit organizations in Hungary in 2009. 57,865 (87,5%) of these can be categorized as a “classical” NGO, i.e. independent private not-for-profit organization. The rest are interest representation organizations (e.g. trade unions) and quasi-NGOs (e.g. nonprofit companies and public foundations established by the state). From among the classical NGOs, 22,122 are foundations and 35,743 associations. 48% of NGOs have public benefit status, meaning that they can be seen as more transparent and file annual reports. Almost 90% of NGOs reported some kind of financial activity in 2009, so there is a low percentage of fully inactive organizations.

Financial data on the Hungarian CSO sector

In 2009, the “classical” Hungarian CSOs (associations and foundations) disposed of over 418,4 billion HUF (1,494 billion EUR), which was 37.5% of the total income of the nonprofit sector (thus, the income of the whole nonprofit sector including trade unions, professional associations, nonprofit companies and quangos amounted to over 1.1 trillion HUF or 3.9 billion EUR). The almost 1,5 billion EURO income of the “classical” NGOs came in largest part from the state (35%), about 24% from private funding and about 26% from own income related to their mission; finally 15% of this income was a result of business activities (non-mission related economic activities).

Within the private funding, companies contributed 52.5 billion HUF (over 187 M EUR), which is distributed among 12 447 NGOs (or 18.8% of NGOs). Individuals donated over 20.2 billion HUF (72.4 M EUR), which was received by 8 727 NGOs (or 13.2%). Domestic nonprofit organizations (e.g., foundations) provided for 2.1% of the income of the whole sector, totaling 23.5 billion HUF (over 84 M EUR), and benefiting 17 397 organizations or 26.3% of all NGOs. Foreign support has grown from 2007 to 2009, the statistics documented about 44,2 billion HUF (close to 158 M EUR) of foreign support but this reached only 2 329 NGOs, or 3.5% of the sector⁴³.

It may be interesting to point out that the single source that reaches the most NGOs is the 1% tax designation: in 2009, 25 389 NGOs received a designation, which is 38.4% of the sector. The next largest outreach for a source was central government support, reaching about 28% of NGOs. At the same time, however, the total amount of the 1% designations (10.4 billion HUF or 37.3 million EUR) represents not even one percent (0.9%) of the total income of all nonprofit organizations in Hungary. If we take government sources altogether (including the tax designations), almost 64% of NGOs have some kind of governmental income (compared to 45% that receive private funding, 55% that have mission-related own income and 48% that have income from business activities).

Government funding mechanisms

Historic-cultural context

As a key feature in Hungarian civil society one must mention its strong orientation towards the state. This is true both financially and culturally. Financially, government funding has been dominant in the income of the CSO sector in Hungary since the mid-nineties. Its share in the sector's income grew from 13% in 1993 to 44% in 2007 (and started reducing somewhat to 42% by 2009).

⁴³ It is not clear, however, whether this is to be considered private as it may include e.g. the Norwegian mechanism which is governmental funding.

		Legal/Fiscal Framework	Historic/ cultural conditions	Country specific elements
Interaction with the state	Funding mechanisms	Supportive – neutral	Strong state orientation; issues in transparency of funding. Relative acceptance of CSOs by the public	Widest range of public financing forms in NMS. National Civil Fund and other state funds supporting CSOs
	Social contracting	Supportive	Innovative approaches, especially related to employment. CSOs increasing role in services provision until recently. Church providers privileged	Normative support for service providing CSOs and church providers according to volume of services. Various other effective models on municipal level
	Alternative financing	Neutral	Post-socialist unutilized buildings transferred to CSOs. CSO funding in Hungary highly politically tainted – 1% mechanism as a way to de-politicize decision-making	Property donations to trade unions and NGOs in the late 90's. Percentage tax designation scheme for CSOs was first in the CEE region
Interaction with the private sector	Private giving through institutionalized mechanism	Neutral	Foreign donors worked through re-granting organizations. Long-term investments made into professionalization of CSOs, social innovation	Small foundation sector - the focus of Western donors on creation of an indigenous grant-making sector came late
	Private-corporate giving	positive-neutral	Increasing volume of corporate giving in general. Low level of consciousness of customers that would put pressure on companies to follow more responsible practices	Used to have generous tax deductions for companies supporting PBOs and for long term giving. In-kind donations VAT free
	Individual giving	neutral-not supportive	After 1989 public expectation to receive services for free survived. This influenced the culture of giving: everything welfare related should be free and unconditional	Traditional fundraising methods not overregulated but strict data protection rules. Technical barriers. Recently decline of giving
Earned income	Income generation	supportive-neutral	Always a large part of CSO income. Nonprofit companies are a flexible form to provide market-like services	CSOs engage in many forms of economic activities. Membership fees regarded not important by most of the CSOs

Role of CSOs	Examples/Best Practices	Observations
Recipients; sometimes (NCF) decision-makers	Volume and variety of forms in state funding. Funds" policy to lower expectations if lower budget approved. Public benefit status as transparency requirement	Lack of strategic approach; high concentration of government funding with quangos. PBO status lacks implementation. Bureaucratic burdens and technical conditions undermine best value principle
In principle, service provider and contracting partner – in practice still recipient	Normative support based on clear legal mechanism. Measuring Social Return on Investment (SROI) can show the value created by CSOs	Increasing quality expectations not matched with adequate level of funding. Discrimination of CSOs vis-à-vis churches
Recipient; in case of 1% also active promoter	Restriction in amounts of direct budget subsidies. Percentage scheme: despite several problems, a good way to create links between CSOs and constituencies	Such methods often associated with political influence and in some cases corruption. New flat tax will reduce 1% income
Recipient-strategic partner	Strategic investment into hard-to-finance causes such as Roma, human rights. Flexible, CSO-friendly funding conditions	Private foundations gave less than 7% of CSO income, but their significance was much higher. Due to lack of such funding it is now hard to raise funds for startups and service development
Multiple roles: recipient-strategic partner-supplier	General purpose grants, emergency support, flexible and fast funding to partner CSOs. Good cases: decentralized decision-making; bank clients decide on CSO support from profits	More limited areas for support but one of the most flexible sources of income. Local companies are willing to give like multinationals but less strategically
Initiator-recipient (not paternalistic relationship with the donor)	Despite relatively low level of individual donations, their total was 6-7 times higher over the last years, than the income from 1%	1% system was successful in making people think about whom they want to support but may weaken individual commitment needed for true philanthropy
Initiator-service provider	Legislation on economic activities is exemplary and allows CSOs to invest into strategic development	Income generation linked to areas where state delivery is not cost effective, e.g. specialized employment services

Culturally, regardless of whether they currently receive or not funding from the government, there is a general expectation among NGOs that they should; and beyond funding, a general expectation that the government (state) should do things in order for the situation to change. This attitude is often also reflected in the way they aim to achieve their mission, for example through lobbying for a change in the law rather than grassroots advocacy, or getting endorsement from the local government rather than local entrepreneurs. The strong government orientation is of course not unique to CSOs: it is a common feature of Hungarian society.

By 2011 there is a general acceptance of the CSOs – especially foundations – as doing “good deeds” in society. This is largely due to the 1% law and an increased attention by the media towards promoting social causes in the recent years. At the same time, CSOs are often seen as political vehicles of parties; or as “do-gooders” that are not so important for solving the problems of the country.

Forms of public financing are widely available – probably the most forms are applied among the NMS. This includes grants, contracts and normative support at both central and local levels and through various channels: ministry funds, autonomous funds and public foundations, local government funds etc. After the EU accession a part of the funding from the EU budget (Structural Funds) also became available for CSOs through national distribution channels.

However, there is also a certain lack of transparency and accountability in the distribution of public funding. As an example, the National Civil Fund has been repeatedly condemned for its favoritism (favoring CSOs related to the members of the regional decision-making bodies) by the State Audit Office and by the competent Ministry as well as the media. There have also been serious problems in delayed contracts and payments from the Structural Funds that endangered the ability of even larger CSOs to deliver the services they contracted for.

For a long time there has been a lack of capacity of CSOs to lobby and advocate for more transparent, and more strategically targeted public funding. More recently, there has been an improving level of cooperation between expert CSOs and governmental-municipal partners in improvement of the financial framework.

The current government aims to reform CSO financing: on the one hand they announced that they aim to make it more transparent and accountable; on the other hand there will be serious cuts in the public funds available for CSOs.

Country specific elements

One specificity of Hungary is the National Civil Fund, which provides institutional and program support to NGOs. It is an autonomous Fund established through law, with elected CSO representatives in its 11 national and regional decision-making bodies. Every year it receives the amount equal to the total amount of the 1% of taxes that the taxpayers designated to CSOs.

Another noteworthy fund is the National Employment Fund that has been financing CSOs activities that created workplaces for the past two decades.

Since the introduction of the Structural Funds, re-granting mechanisms are concentrated in one state run quango, the European Social Fund Nonprofit Ltd. As one of the few exceptions, the Norwegian and Swiss Civil Fund NGO segment has been distributed through an independent re-granting consortium composed of private foundations.

Role of CSOs

CSOs are primarily seen as recipients of public funding. At the same time, the CSOs in the national and regional decision-making bodies of the National Civil Fund form the majority of members, therefore they are also decision-makers.

Examples, best practices

In general, the high level of government funding ensured that CSOs were not left without resources after foreign donors left; and thereby it ensured that they can continue to cater for the

ongoing needs in society. Regardless of the problems, the engagement of government in funding CSOs at all levels and in many various forms has to be seen as exemplary.

An important policy of the NCF and National Cultural Fund includes mechanisms binding the donor to lower expectations, if the approved project budget has been significantly cut.

The public benefit status of NGOs is relatively well defined and in practice government funding is often linked to the status, which is used as a transparency and quality requirement in public funding.

Observations

There seems to be a lack of a strategic approach in terms of the wished results and impact. The problem seems to be not so much the volume of funding but rather how it is spent. According to some development professionals, the Hungarian NGO sector has been spoilt by the fact that some level of governmental funding has always been available for the kinds of things that should be normally funded from community resources. As an example, the National Civil Fund has been supporting small town, even village level organizations with 1000-2000 EUR grants for institutional support (i.e. to support the NGO's existence). At the same time, the government has been cutting on the normative support to NGOs that provide crucial government services to needy populations. As a result, small NGOs become oriented on governmental funds and lose incentives to raise money from the community, while major NGOs get in a financial crisis and have to abandon quality service to their clients. So there is a total misplacement of the resources even though there has been plenty of funding for the sector.

There is also a disproportionately high level of funds distributed amongst a small group of organizations that are in most cases established by the state/local government⁴⁴.

PBO status does not always provide enough guarantees for transparent operation of CSOs due to the lack of strict monitoring and supervising provisions; but it is still one of the best attempts to find a balance between benefits and obligations of CSOs.

Bureaucratic burdens and technical conditions particularly in tenders related to the structural funds are often against good practices and the best value principle (e.g. too high own contribution⁴⁵, conditions related to the volume of the budget, no multi-year project financing etc.).

Social contracting

Historical-cultural context

Social contracting has been in existence since the early-nineties in Hungary. On the one hand, there was a lack of municipal funds and services while there was a huge need created with the transition from socialism into capitalism. On the other hand, many NGOs had an important role in catering for services for needy groups and were leaders in social innovation. As a result, governments at the central, and gradually also at the local level have acknowledged the importance of NGOs in delivering services. Legislation has helped this process by creating special mechanisms to contract NGOs at the local level from central state support (normative support)⁴⁶. Local civil society strategies and "compact"-type agreements have also proliferated between 1998 and 2008.

Most recently, however, this trend seems to reverse. Already the previous government started cutting the normative support for NGOs as a result of budget restrictions due to the economic crisis; the current government also has an ideological motivation to support church providers

⁴⁴ These quasi-NGOs used to be called public benefit companies, now simply called nonprofit companies, account for the major part of the governmental funding of the broad nonprofit sector (this includes not only classical associations and foundations but also e.g. trade unions, other interest representation groups and quasi-governmental organizations).

⁴⁵ In most cases 10-20%

⁴⁶ This means that if an NGO undertakes responsibility for a service that is a government obligation by law, and it meets certain standards, the government transfers a calculated per capita support to the organization.

over NGO providers and therefore continues to make it extremely difficult for NGOs to run local social services. Experts report that several NGO run services are being transferred to church denominations in order to avoid closing down⁴⁷.

Throughout the past two decades, Hungarian NGOs came up with innovative and effective solutions to distinct social issues. Examples include many fields from early childhood development to homeless care to rehabilitation; the most significant examples are probably in the field of employment. While many of these have remained at the local or pilot level, others have been slowly gaining place more broadly – e.g. through professional associations, and sometimes the government took up the model and financed country-wide application (e.g., home care for the elderly or a special methodology for integration of people with mental disabilities into the mainstream labor market). This resulted in tangible benefits for society, the state and the providers themselves.

Country specific

At the central level, the normative support is specific to Hungary, this is provided to CSOs that receive a license to run public services. Along with CSOs and the governments' own public service providers, church organizations and institutions maintained by a regional association of local governments are also in this "market". (However, CSOs are in the worst position among the service providers in terms of their financing and sustainability.) Quality assurance requirements in various fields of service provision are typical.

At the municipal level, there are various effective models ranging from annually repeated grants to CSOs to long-term service contracts. CSOs are more often engaged in service provision through these forms than through the restrictive normative support. Larger municipalities created a fund to support CSOs to engage in service provision as well.

Role of CSO

CSOs are in fact service providers and contracting partners to the government. However, due to the generally paternalistic nature of state-CSO relationships, they are more seen as recipients of support even when the quality of their services is well recognized.

Examples, best practices

The normative support that is based on legally defined and "automatically calculated" financing mechanism for those who comply with the license conditions, is a good practice for financing social services as it responds to customer choice. (Beneficiaries can choose between public, church or CSO providers and those beneficiaries who chose the nonprofit provider will also be guaranteed the service.)

A CSO best practice in social contracting is a foundation that started to measure its *Social Return on Investment (SROI)*⁴⁸. Based on results monitored over several years, it turned out that the clients assisted by the foundation will be employed on the average within 6 months, will remain employed in the same place longer and will find new employment faster than similar programs run by state agencies. All in all, every one Hungarian Forint (1 HUF) invested in the activities of Salva Vita resulted in 4.77 HUF in return over a period of five years (e.g., in savings or income generated)⁴⁹. This calculation gives proof to the government about the value created and gives a strong argument to continue investing in this organization even if the government changes.

⁴⁷ In Hungary, the Vatican has a special agreement with the Hungarian government that stipulates that the government will support church run services to the same extent it would support its own public services (including primarily schools and social services but also e.g. cultural or health services). By implication this is also applied to other "historical" churches; but not to NGOs.

⁴⁸ SROI is a method developed initially by US and UK academics and nonprofits to be able to monetize the value creation of nonprofit organizations. This foundation called Salva Vita has been the first one to undertake such assessment in Hungary and to the best of our knowledge, in the whole CEE region as well.

⁴⁹ http://salvavita.hu/index.php?menu_id=1210&topmenu=1200&oldal_id=1210&oldal_tipus=text

Observations

The normative support can in theory be a good tool to create equal conditions among providers from different sectors. However, this is not the case in Hungary where CSOs are provided a lower level of support (on the average 60-70% of what public and church providers receive). At the same time quality expectations are constantly increasing and CSOs have to comply with the same standards as fully funded providers. As such, this is a hidden discrimination of independent providers, reflecting the discomfort of the public sector with “opening up” the social services market.

At the same time, CSOs generated high quality, good value know-how in service provision that got integrated in state provided services; specialized services they developed were made broadly available as well as valued by majority of the general public.

The government seems not to understand that it needs the CSO service providers to continue generating this know-how and improving effectiveness of services. There seems to be a lack of understanding of the sustainability of services. There is also a lack of measuring the satisfaction of beneficiaries / clients receiving CSO or public or church based services.

At the same time, the plurality of the forms in which the government engages CSOs in service provision – apart from the normative system – and especially at the local level has created ample opportunity for CSOs to assist communities addressing their basic needs.

Despite the current difficulties faced by the CSOs in this system, it remains one of the most progressive models for social contracting in the NMS.

Alternative financing

Historical-cultural context

After the collapse of communism, national federations and other CSOs which were the successors of the party-organizations (e.g., federations of the disabled, of elderly, of women, of writers and journalists etc.) remained utilizing the buildings that were assigned to them before. In 1998-2000 these and other buildings have been transferred into the property of CSOs that have been using it or that proposed to utilize it in the future⁵⁰. This was a one-time program conducted through tender procedures over two years, without any specific feasibility or impact assessment.

Another factor to mention here is the political nature of government funding to CSOs. Since the change of the system, every government has favored certain groups of CSOs over others and this has been evident also in the amount of state support they received. (E.g., pioneers versus scouts, Christian women’s groups versus liberal women’s groups etc.). In the mid-nineties, the Parliamentary Committee that was deciding over CSO support got to a stall as they could not compromise on these preferences. This was when a group of MPs, the then Minister of Culture and CSO experts came up with the idea of the percentage mechanism – this was supposed to de-politicize government support by turning the decision over to the taxpayers. Other factors, such as the low level of private giving and the need to increase the resources for CSOs were also considered at the introduction of this idea (which initially would have concerned only cultural organizations).

Country-specific

Then transfer of property to CSOs was a special feature of the Hungarian policy towards civil society. While churches and trade unions could reclaim former properties, CSOs were provided the opportunity to take their “share” of restitution. However, this act did not result in a wide-reaching endowment of CSOs; only a few hundred received properties and many of them were not able to maintain it properly.

⁵⁰ Law on transfer of certain state properties

Hungary also provides direct budget support to some National Associations and umbrella organizations; however the possibilities for this are by now severely restricted. A Ministry cannot spend more than 20,000 Euros in support of any one foundation without a tender procedure; and it has to obtain approval of the Cabinet of Minister to include any association into its budget for direct subsidies.

The percentage designation scheme for individuals is a Hungarian “invention” as it was the first in the CEE region to introduce it. This scheme allows taxpayers to designate 1% of their tax dues to a qualified CSO, and another 1% to a church or an annually specified government purpose. There is much analysis to be done regarding the% scheme, but here we would only mention two main points:

- On the positive side, it clearly helped to create more connections between CSOs and the public at large. It was a reason for CSOs to reach out to people and explain what they are doing.
- On the questionable side, its effect on the development of «traditional» or «real» philanthropy is still not clear. Research made thus far was not able to establish a causal relationship, while more and more empirical evidence points to the conclusion that in the long term (i.e. over 10 years) it may hinder rather than help the development of a philanthropic culture.

Role of CSO

In the case of alternative financing, CSOs are essentially recipients of the public funds; however in case of the% system they are actively promoting themselves to the public and are therefore more than “passive” recipients of property or grants.

Best practices

Although there are many issues and criticisms towards the percentage scheme, if introduced in the proper context and at the proper time, it can help develop an understanding of the importance of CSOs among the population and in creating linkages between CSOs and their constituencies.

The restriction in the amounts that can be expended to support CSOs without a tender is also to be considered as good practice in CEE.

Observations

Transfer of property ownership, even if the process and conditions were regulated by law was associated with political influence and in some cases corruption.

In case of building support timing is critical. In Hungary, in most cases they were donated or provided for a long term lease in periods when it proved difficult for the CSOs to maintain the property (while they were banned from selling it for a number of years).

The new governmental initiative to introduce a flat tax will dramatically change the situation regarding the 1%. The volume of tax paid by individuals will decrease, while the number of individuals who will have tax to designate will increase. Altogether, a 30% reduction in tax income is expected, which may severely affect those CSOs that are more dependent on income from the percentage mechanism.

This points to the fact that the “real” or “traditional” individual giving scheme is still the most reliable source of income in the long term and that a governmental source – however innovative – can never be a substitute to the support of committed individuals.

Private institutional funding

Historical-cultural context

In Hungary, unlike in many other countries in the region, foreign donors were not directly established in the country; rather they chose, or helped establish, a Hungarian foundation for re-granting their funds. There have been not more than 10 such re-granting foundations in the mid-

nineties and about half of them closed or minimized its grant-making program after the original donors left the region. (Including the Hungarian Soros Foundation, which was the first of the Open Society Foundation network in CEE, and whose closure in 2007 was a symbol of the end of an era of private foreign funding.)

During its “glory”, such funding was mostly used for social innovation, for piloting and mainstreaming innovative services, and projects tailored to special beneficiary groups. It has been the main funding source to invest into capacity building and professionalization of CSOs, helping to strengthen them often throughout several years. (In comparison, the currently available institutional support from the NCF has to be spent within a few months each year.) Another advantage of western private donors has been that they were for the most part politically neutral and also seen as such (with the exception of the Soros Foundation, which was accused of intervening into political dealings)⁵¹.

Domestically “born” private grant making foundations in Hungary are still in the early stage of development. Their number is gradually increasing but there is only a handful of philanthropic individuals that have established foundations. These support typically contemporary artists or talented poor children, i.e. people rather than organizations (CSOs). The culture and understanding of supporting CSOs among the newly rich is not yet developed.

At the same time there is an increasing number of corporate foundations that support CSOs and civil society more broadly (see below).

It should be noted that in Hungary there is no separate legal form for grant making and operating foundations; and there is no incentive for a donor to make an endowment. Therefore, there are practically not more than 2-3 domestic grant making foundations that have been endowed and on whose support CSOs can count on in the longer term.

Country specific

The first phase of focused programs of Western development donors into the creation of an indigenous grant-making sector came late in Hungary. Essentially, donors started building endowed foundations from the re-granting/implementing organizations only when they were already leaving. This resulted in limited success in endowing them and also a limited range of areas they kept supporting.

Role of CSO

Unlike the governmental agencies, private funders saw CSOs not only as recipients but also as strategic partners in helping them achieve their own long-term goals. That is also why they tried to take responsibility for helping CSOs as long as they could with institutional support and flexible program grants.

Best practices, examples

The volume of strategic investment into advancing causes that are hard to finance from the “philanthropic market” is a good practice example of Hungarian institutional donors. These have included supporting causes such as the Roma, civil liberties, human rights and rights of marginalized groups etc. Although there has not been much impact measurement of these programs, they have clearly filled a gap in addressing needs that other donors did not undertake.

CSOs also praised the grantee-friendly, flexible, non-bureaucratic funding mechanisms of these foundations. For example, there was usually no or minimal own contribution required or if required, in most cases volunteer work was accepted. Flexible funding in important areas left space for a trial-and-error approach and slow accumulation of the results bottom-up, a more natural way for social change than government ordered policies.

⁵¹ In case of US based foundations a condition to receive the most beneficial 501C3 status.

Observations

The lack of a variety of donor models and diversity of strategies contributed to the fact that the Hungarian CSO sector became somewhat “uniform” (i.e. most CSOs have a similar income base, relying to a large extent on various forms of government funding and own income). While in last decade of the 20th century Hungary and its CSOs belonged to the top innovators of CEE, this advantage has diminished in the first decade of the 21st century. CSOs are today more implementers of governmental programs than innovators in their respective fields.

Although the volume of donations of private philanthropic foundations was never higher than 7% of the total revenue of the NGO sector, its significance was much higher. Many CSOs and in some cases also smaller community organizations receiving such support were able to develop their know-how and capacity to the level that they became relevant suppliers and partners for both companies and government. Most CSOs that have had the capacity to attract and implement EU programs came from the ranks of organizations “built” with the help of foreign donors.

Due to the lack of such funding, it is currently difficult to launch CSO startups, to invest in service development, and to build an organization strategically. Although corporate foundations are slowly learning the “art of grant making”, they will likely remain funding more popular causes, so the gap in the lack of independent domestic grant-making institutions is still being felt.

Private corporate

Historical-cultural context

The volume of corporate giving and institutional corporate giving in general has been increasing. In general, like in other CEE countries, there is more emphasis on PR and brand building but the classical charitable giving and CSR have been increasing as well. The most recent data of the Statistical Office are from the year 2009, and show that income of the CSOs from corporate support increased by 20% since 2007. Therefore, interestingly this form of support has not been affected by the crisis as badly as CSOs were expecting it.

A recent research by the Hungarian Donors Forum has the following results⁵²:

- 70 out of the top 200 companies responded to their survey
- 10% of these give under 1 million HUF (3,500 EUR) and 14% give over 100 million HUF (approx. 357,000 EUR) per year
- 45% do not plan to increase their giving budgets in 2011, while 20% plan to do so.

There has always been and still is a low level of consciousness of the customers that would put pressure on companies to follow more responsible practices. Hungarians have been repeatedly shown to be most sensitive to price, disproportionately so as compared with other European countries (quality, accessibility and other factors come much lower, not to mention environmental and social responsibility)⁵³.

Western owned companies were the first to establish more developed grant making schemes and corporate foundations on the national level. However, a research in 2005 showed that 67% of domestic companies actually give although not in a structured or professional way⁵⁴; while SMEs play a vital role in community level support. Thus, ad-hoc giving is still more typical than strategic giving; but the willingness is seemingly there.

Country-specific

Hungary had provided generous tax deductions for companies that supported public benefit organizations and legislation also provided incentives for longer term support. 150% of the donation to the maximum of 20% of taxable income could be deducted for a one-time support

⁵² Reference research, Oct-Nov 2010

⁵³ Kuti, Eva ed. *Vállalati adományozás Magyarországon Tanulmányok 2005* (Corporate giving in Hungary).

⁵⁴ Id.

of public benefit organizations; and in case of a four year commitment to give the same or larger amount, 150% of the donation could be deducted up to 25% of taxable income every year. If the supported CSO was not of public benefit status, up to 100% of the donation could still be deducted under the same conditions. This tax scheme has been very progressive and it helped spread the culture of giving among Hungarian companies⁵⁵.

However, in the past few years (since 2008) these benefits have been cut significantly, leaving only a very small group of CSOs (those who are “prominent” public benefit organizations and have a contract with a governmental agency) as eligible to receive a tax deductible donation.

In-kind donations are free of VAT, which has been a contentious issue as well.

Role of CSO

CSOs are perhaps most well recognized by the corporate donors: especially when having an established philanthropic or CSR strategy, they can be in the role of a recipient as well as a supplier or a strategic partner.

Best practices

Corporate donors often provide general purpose grants or unrestricted emergency support to their partners (e.g., in case of changes in the law that is causing significant cash-flow problems). Support in general is flexible and responsive to the needs of the grantee and the beneficiaries; usually there is no own contribution required.

There are good practices in decision-making: in some cases the decision-making on the grants is decentralized (e.g., employees of a local division have their own budget and can decide whom to support). Another interesting initiative is by the first Ethical Community Bank in Hungary (MagNet Bank), which launched a Community Giving Program, in which the clients of the bank can decide together which NGOs (from a pre-selected list) will receive 10% of the Bank’s annual profits. The Bank also has a special service package for foundations and associations, something that NGOs have been long waiting for in the Hungarian market of financial services.

Observations

Although the scope of corporate support is limited (only in certain fields and to certain CSOs), it remains one of the most flexible sources of income for CSOs. Also, the Hungarian example shows that domestic companies find CSO support just as important as multinationals; however, they lag behind in establishing planned giving programs that would make their support more accessible and more reliable for CSOs. Whether ad-hoc or institutionalized, companies are usually the fastest decision making donors of CSOs.

Individual giving

Historical-cultural context

Hungary, for historic reasons, had been running a generous, expensive welfare system before 1989. Since the quality of services was relatively high, the public expectation to receive high quality services for free survived even after the system change. This had significantly influenced the culture of giving: everything welfare related should be free and unconditional. As a result, people were not ready to support CSOs in providing welfare services for a long time.

Individual donations in Hungary were on the rise throughout the nineties but only at a very modest rate that actually put this mechanism behind government and corporate giving in terms of its share in CSO sector income. In the most recent trend, individual giving is already declining: the amount

⁵⁵ There has been no targeted impact research in this respect; however, when the benefits were discontinued, CSOs reported a clear decline in the willingness of companies to support them. It is not clear, however, if this was due to the tax change solely or also to the beginning of the financial crisis.

of money received by NGOs from private donations fell by 20% from 2007 to 2009. This could be explained by several factors: (1) the economic crisis and that people have less to give; (2) the decline has already been a tendency though not as sharp, in the mid-2000s, and (3) by 2009 all the tax benefits for donations from private individuals have been discontinued. Over the past 4 years, the government has gradually cut the previously existing tax credit on donations to public benefit organizations. Although the credit itself was not a major benefit (100% of the donation up to 30% of the tax but with a fixed ceiling of circa 200 Euros), it might have mattered to those who used to take advantage of it.

Nevertheless, some NGOs are trying to reach out to the public in fundraising campaigns but success seems to be limited to a circle of those who engage in the relatively higher cost professional fundraising. One of the detrimental effects of the one percent law may have been that it has hindered the development of the “traditional” way of raising funds, i.e. personalized and regular (cyclical) communications with the donors.

Country specific

The percentage mechanism was hoped to produce an increase in the low level of giving, and increase funding for large number of CSOs, as well as churches and causes of public interest. To some extent it achieved its purpose as people get more familiar with CSOs and started to think about which CSO “deserves” their support through the tax designations.

More traditional forms of fundraising such as street collections, charity events and direct dialogue are not overregulated. Simple technical barriers exist and present difficulties in raising money from individuals (e.g. private banking cheques crucial for most widespread fundraising methods in the West are not in use, or more than 50% of a donation via sms goes towards taxes and fees).

Role of CSO

The CSO is both the initiator of the relationship and the recipient of support. It is therefore regarded as worthy of support (unlike in the paternalistic relationship with a state donor).

Best practices, examples

Even though individual giving represents a lower share in the income of the sector, the level of individual donations was 6-7 times higher over the last years than the income from 1%. It is important to recognize that while the 1% is a capped amount, donations from individuals are not – they can be increased through including a new cause, a new target group or new ways of asking.

Observations

Due to relatively strict data protection rules, obtaining data of potential donors is difficult (still hard to find relevant data on donors in large quantities) and therefore expensive.

There is a lack of expertise relating to the different forms of professional fundraising and there are no clear benchmarks on how to evaluate success.

The percentage scheme brings public funds into the picture, which ultimately weakens the involvement and commitment of the individual (even if the person makes the decision, s/he remains anonymous and will not feel the financial consequences of this decision).

It remains to be seen whether having more net income – with the introduction of the flat tax – results in an increased level of individual giving.

Income generation

Historic-cultural context

Generating earned income has always played an important role in the development of the Hungarian CSO sector. Over 40% of the income of Hungarian CSOs comes from own income

including two major parts: income related to their mission (e.g., training on advocacy) – 26% and non-related business income (e.g., renting office space) – 15%.

CSOs can engage in economic activities directly or through establishing a company. However, foundations and associations cannot be established to primarily conduct economic activities. There was a special form, the public benefit company that was supposed to serve the purpose of service oriented nonprofit organizations, which could conduct economic activity more freely. However, it became a tool for local municipalities to contract out municipal services on a non-competitive basis (by setting up such companies). As a result the model was changed in 2009 and now instead of having a privileged form that is “automatically” considered public benefit, any corporate legal form may obtain public benefit status, if it complies with the same requirements as common CSOs.

Such companies represent a simple and flexible form for providing services in a way they would in any market: reacting quickly on changing needs of the beneficiaries. However, they are usually excluded from calls for grant proposals even though their public benefit requirements are the same as for other CSOs. Overall, since the nonprofit company in this form is still new, there is not much experience with it yet.

Country specific

Hungarian CSOs are engaged in many types of economic and business activities but there are also earned income models they do not favor. Membership fees are one of the latter.

Membership fees are regarded as not important by most of the CSOs – not counting trade unions – and often they don’t even collect them. The notion of the membership fee being symbolic still prevails in most associations.

CSOs receiving property as a grant (mostly from governments and municipalities but now more and more from corporations as well) are in privileged situation as they can generate unrestricted income through rents.

Role of CSO

In this function CSOs are proactive, initiators of relationships with customers and beneficiaries, and of course, service providers in a competitive market. Importantly, this is the only form of financial income where the feedback on CSO performance by the service user is immediately expressed in monetary terms as well.

Examples, best practices

While much abuse has been reported over the years relating to government funding and the 1%, there were no major scandals relating to economic activities. This indicates that the Hungary found a good balance of incentives and controls in regulating this type of activity.

Mission related income represents 26% of the total revenue of the sector in Hungary. This unrestricted income allows CSOs to invest own resources into areas that are strategic for them as well as self development or into non-mainstream areas.

Observations

Hungary has a pool of mechanisms that could make the CSO sector more self-sustaining. A strategic approach to harmonize these methods, increased benefits and clear rules may improve performance significantly.

Income generating activities are on a large scale linked to areas, where state service delivery is not cost effective, e.g. employment and re-integration of disabled people through production and services.

IV.2.CROATIA

Basic data on the Croatian nonprofit sector

In 2009, there were more than 37,000 registered civil society organizations, including associations, foundations, sports and religious organizations⁵⁶.

In the same year, the government funding amounted to almost 530 million Kn (over 71 million Euro), which is 15.5% less than in 2008. Out of this amount, 46.2% was distributed from the lottery proceeds. Most of the funds were given through the Ministry of Science, Education and Sport (31% of total funding). Sport is the most funded activity (31%) followed by projects in the fields of culture, people with disabilities and socially disadvantaged groups.

From 1999 to 2009, 27.543 projects of CSO were funded by the state, amounting to more than 320 million Euro of funding allocated to the sector. According to a research conducted among CSOs that received grants from the state budget in 2008 almost 70% of CSOs rely on funding from the central and regional/local government's budgets as the main source of funding.

CSI research results indicate that 33.2% of surveyed CSOs receive funds from the corporate sector, and the average share of corporate sector funds among CSO income amounts to 18.2%.

Government Financing

Historical-cultural context

The post civil war period entailed a strong position for CSOs within the society. They played a prominent role in delivering aid and assistance, and helped in post war conflict resolution in affected communities. As the whole state system was to a level newly created, the interaction with a newly formulating CSO sector was frequent, compared to early phases in other countries in CEE.

There were large scale international donor programs implemented here. Croatia belonged to the countries of the Western Balkans in which the imported know how had been already adapted in other countries of Eastern Europe. Development programs like USAID used experts from the region and implemented joint projects with Central European CSOs.

At the same time, Croatia had been historically closer to Western Europe than most other Western Balkan countries, which made it easier for them to adapt democratic institutions and adhere to European norms in practice even when the laws were not yet up to date (see law on foundations). It was also the first country in the Balkans that undertook a strategic effort to support the development of civil society, and such, it established exemplary models.

Country specific elements

Croatia is the first country in the Western Balkans to undertake initiatives to develop specially designated mechanisms for Government-CSO cooperation and a mechanism to support transparent funding of CSOs⁵⁷. This process resulted in significant innovations, the most influential was without doubt the creation of a National Foundation for Civil Society Development that was the first and has a unique place even among similar funds in the CEE region. Compared e.g. to Hungary the fund supports a relatively small number of organizations, but for the same reasons the support provided makes the donations relevant in terms of the wished impacts. Another unique feature is the support of multi-year activities. (See best practices)

⁵⁶ USAID, The NGO Sustainability Index for Central and Eastern Europe and Eurasia: Croatia, www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex 2009.

⁵⁷ Hadzi-Miceva-Evans (2010).

The National Fund has now been decentralized and it made agreements with four regional organizations to manage community grants programs. In addition, line ministries support CSOs with grants in their respective field of operation. Croatia also benefits from the EU funded Instrument for Pre-Accession Assistance (IPA), which has a civil society support component.

As a result of the learning process from several years of government funding experiences, in February 2007, Parliament adopted a Code for Good Practices in funding CSOs⁵⁸. (See best practices) This was aimed, among others, to fend off criticism relating to conflicts of interests that the National Foundation was accused of in the early years.

The National Foundation is the “funding arm” of the broader institutional framework connecting civil society and the Croatian government. It fits into a tripartite system of Croatia’s “new model”⁵⁹, which also includes the *Government Office for Associations* (created in 1998) and the more recently established *Council for the Development of Civil Society*, which is a specialized advisory body of the Croatian government. The Council is charged with monitoring, analyzing, and evaluating the financing granted from the state budget, and ensuring compliance with the Code.

CSO role

CSOs are seen as both recipients and partners in government funding.

Examples, best practices

Croatia undertook successful decentralization of a once centralized model of support for civil society. (All state funds to CSOs used to be distributed through the Government Office for Associations.)

The National Foundation for Civil Society Development is a good example of a state fund supporting civil society. Its concept follows the approach of an excellence model: based on strategic priorities it determined areas to be developed that have the largest potential to make positive influence even on the part of the sector that is not heavily subsidized through the fund (multiplying effect). It has set a strategic goal that it aims to accomplish and it views CSOs as key partners (rather than simply vehicles) in achieving it.

The main goal is to encourage Croatian citizens to take an active part in public life – not only at elections but also in taking care of each other and addressing social problems on a daily basis. It uses effective and appropriate funding mechanisms that are in line with development principles (such as rootedness and long-term processes). E.g. instead of directly giving very small grants to community based CSO programs (like the Hungarian fund), it agreed with regional intermediaries who can manage those programs more efficiently. Uniquely in the region, it also supports up to three years of institutional development of CSOs. This is not typical of governmental donors who usually support on an annual cycle.

Further, the Foundation is financed from the lottery proceeds, which provides a relatively secure and predictable financing year after year (in contrast with other countries where the Fund depends on annual budget appropriations).

The Code on Good Practices for government funding of CSOs is also exemplary in that it sets out basic rules and procedures for public authorities at all levels of government in distribution of public grants. It achieves this through a very simple and easy-to-follow document that contains eight key principles with concrete guidance for their application.

⁵⁸ Code of Good Practice, Standards and Benchmarks for the Allocation of Funding for the Programmes and Projects of NGOs. Official Gazette no.: 16/2007, February 2007.

⁵⁹ For more information about the model see: Vidacak, Igor, “Developing Standards and Mechanisms for Public Financing of NGOs in Croatia”, *International Journal of Not-for-Profit Law (IJNL)* October 2010; and Hadzi-Miceva Katerina, “Legal and Institutional Mechanisms for Government-NGO Cooperation in Hungary, Estonia and Croatia,” in “Organizacje pozarządowe. Dialog obywatelski. Polityka państwa,” edited by Marek Rymysza, (Institute for Public Affairs, Poland), 2007.

		Legal/Fiscal Framework	Historic/ cultural conditions
Interaction with the state	Funding mechanisms	Supportive	Post-war period: CSOs delivering humanitarian aid; strong international presence, weak government
	Social contracting	Neutral-not supportive	CSO services subsidized by foreign donors, no history of CSO involvement in state service provision
	Alternative financing		No significant model identified
Interaction with the private sector	Private giving through institutionalized mechanism	Neutral - not supportive	Foreign regranteeing organizations did not establish indigenous grant-making foundations despite large volume capacity building programs
	Private-corporate giving	neutral	Corporate social responsibility still in early stages of development due to unfriendly business environment
	Individual giving	neutral	Giving to church and charity is part of traditions; post-war solidarity enhanced community giving
Earned income	Income generation	Supportive	Economic activities a rare practice. CSOs used to give services for free, now late to change this pattern

Country specific elements	Role of CSOs	Examples/Best Practices	Observations
Tri-partite system of CSO strategy implementation: Government Office, National Foundation for Civil Society Development (CSD) and Council for CSD	Recipients and partners	National Foundation: lottery proceeds, decentralized structure, multi-year funding, institutional support; Code on Good Practices for Funding CSOS	Strength: clear strategy and autonomy. Weakness: small CSOs may remain without support.
No systematic involvement, strategy currently being developed. Good examples exist especially locally	Lobbyists for improved conditions.	Cross-sector participatory process to develop the strategy for involvement of CSOs	CSO capacity exists, e.g. quality management systems promoted among CSOs. CSO involvement will be in line with EU expectations
Weak foundation sector; National Foundation "took over" CSO support from re-granting organizations; foundation law out-dated	Recipients	CroNGO program introduced good practice in grant-giving that was taken up by the National Foundation (multi-year institutional funding)	Role of private donors was taken over by the state
Growing support of CSOs by companies but mostly ad-hoc giving. Tax deductions not significant	Beneficiaries, recipients only	Certain companies introduced responsible practices e.g. Croatia Telecom in a telephone fundraising campaign	No significant differences from other countries in the development of corporate philanthropy
The majority of Croatians give but only small amounts. Use of new technologies is spreading	Generally not active in fundraising	Some good examples for fundraising success exist, e.g. Guide Dog Association	Despite generally positive attitudes to giving, CSOs do not raise funds; they are not familiar with professional fundraising
Legal framework favorable for CSO economic activities, mission related income tax free; but interpretation issues. No public benefit status	Initiator-service provider	Some good examples for social enterprise, especially among environmental groups	Transition and economic development could be helped by increased role of CSOs in social enterprise and social service delivery

Observations

The model has the strength of focusing on large and mid size market leader CSOs, who are able to deliver good programs; at the same time this represents a weakness as well in that rural CSOs and startups have difficulties to access it⁶⁰. Another advantage is that while the overall strategies are set with the government, the fund has autonomous decision making and it has been able to develop good funding practices, responsive to the needs of CSOs making it a reliable partner for CSOs in the long term.

Social contracting

Historical-cultural conditions

Unlike in Hungary, in Croatia CSO services were largely subsidized by foreign donors and they provided the services for free, therefore the tradition of social contracting has not developed as much over the past decades. The expectation of free social services by the state has been coupled by the expectation of free social services by the CSOs, so both the citizens and the state expect that they don't have to pay for the CSO delivered services. CSOs also believed in this, however, they are struggling to sustain their services and so have started to lobby to change the situation. As a result, there are already some good examples of local service provision by CSOs at the municipal level.

Country specific elements

In Croatia there is no systematic involvement of CSOs in the provision of social services and local governments often lack the interest to contract CSOs. At the same time, there is an emerging dialogue among the state and CSO sector on the opportunities. A working group was formed to develop a Proposal for Improvement of the System of Contracting Social Services of Public Interest with Civil Society Organizations⁶¹.

CSO role

Lacking as yet a mechanism for financing, CSOs are mainly advocating for improved conditions.

Examples, best practices

It is a good practice that the Office for Cooperation with NGOs is leading a cross-sector, participatory consultative process including competent ministries, local authorities, and CSOs in order to develop a strategy to improve the situation in CSO contracting.

Observations

There is relevant and high quality CSO service providing capacity in Croatia due to the investments into institutional capacity building by both foreign donors and the government. In line with the EU practices, as a result of cooperation among sectors, the system of social contracting is likely to develop soon. There are evidences that show readiness for such cooperation, e.g. the attempt of a group of CSOs to introduce broadly accepted quality management systems for CSO services⁶².

Institutional private giving

Historical-cultural context

Despite big foreign aid programs, there were no large private funds, with a few exceptions. For a long period the USAID funded CroNGO Program (a re-granting organization) was playing

⁶⁰ According to the CSI survey from 2005, the geographical distribution of CSOs indicates the markedly urban character of these organizations. Most CSOs are not rooted in local communities, where citizen's activism is mainly characterized by informal assistance to neighbors or family members.

⁶¹ USAID NGO Sustainability Index 2009.

⁶² PQASSO by Charities Evaluation Services(CES) UK.

the role of a semi-private donor. Essentially, a few large scale state funds, like USAID and more recently the National Foundation played the role of classical private institutionalized funding – developing capacity of CSOs, financing their overheads, innovative projects, etc. USAID already had the experience with Central European countries, where such capacity contributed to the strengthening of the sector at large. The National Foundation was then open to take over the good practices from such donors, e.g. institutional support and multi-year funding.

Country specific elements

Compared to Hungary, Croatia received much higher levels of foreign aid and massive development programs took place. Yet, unlike in Hungary, there were hardly any local re-granting organizations; and there are hardly any indigenous grant-making foundations.

This has had two main reasons: first, with the establishment of the National Civil Fund in 2003, foreign donors could have had the impression that the state has “taken over” the financing of their key grantees, so they were less worried about “exit strategies”.

Second, Croatia was the country in the Balkans where due to political infighting, an outdated foundation law is still in force. It contains e.g., that the foundation cannot be created for unlawful or immoral purposes, or “if there is no serious reason for the establishment of a foundation, particularly if the purpose of the foundation is obviously lacking seriousness”⁶³. Obviously such provisions leave a wide space for interpretation; yet there have been no problems with registering foundations in Croatia. At the same time, there was no incentive, legal or fiscal, for indigenous grant-making foundations to evolve.

CSO role

In their relationship with foreign private funds, CSOs played mainly a recipient role.

Examples, best practices

One of the most successful funding programs from the point of view of capacity building of CSOs was run by the CroNGO program. This included three year institutional funding coupled with technical assistance to develop a strategy for the development and sustainability of the organization; and in addition training and pilot-funding for fundraising and income generation projects. In the program, some large scale fundraising projects were implemented, which achieved a concrete target – an unusual result in the region⁶⁴.

Observation

The role of private donors was taken over by the state in funding key national level CSOs and in responding to civil society development needs (institutional support, pilot projects). At the same time, due to the availability of central sources, there was not enough pressure towards wealthy individuals and strong corporations to establish private philanthropic foundations.

Corporate giving

Cultural-historical context

Research by the European Network on Research on Philanthropy (NROP) revealed that “the type of welfare state emerging in Croatia does not contribute to the development of a socially accountable corporate sector since the corporate sector is obliged to pay high taxes and contributions for social and public purposes, yet it is not seen as an important stakeholder for society at large”⁶⁵.

⁶³ Law on Foundations and Funds, Offl. Gazette No. 36/1995, 64/2001.

⁶⁴ E.g., the Croatian Guide Dog and Mobility Association raised 500,000 Euro in a campaign to build a dog training center, which was a great success beyond any expectation.

⁶⁵ European Research Network on Philanthropy, Croatia <http://www.ernop.eu/country/24/croatia.html#Data>

According to recent survey results on the extent of social responsibility of larger companies, over 50% consider their corporate social responsibility as insignificant (20.8%) or limited (33.6%). In general, firms see this type of spending as another way of spending money on marketing or sponsorship, rather than as their social responsibility⁶⁶. At the same time, the media pays close attention to charitable giving, and stories in the media have reportedly inspired individuals and donors to give more.

According to the ENROP report, small and medium companies are becoming active in their communities, although they still provide most of their support to sport and cultural events. Therefore, on the whole, the current extent of corporate philanthropy still is seen as rather limited.

Country-specific elements

Overall, corporate philanthropy represents a new and growing tendency in terms of the total revenue of the sector. Civicus Index research results from 2005 indicate that 33.2% of surveyed CSOs receive funds from the corporate sector, and the average share of corporate sector funds among CSO income amounts to 18.2%⁶⁷. This could be seen as a moderate level of philanthropic support; however, from CSO reports it seems that it is still not seen as a reliable, predictable income source, probably due to the prevalence of ad-hoc giving (a lack of strategic programs to support CSOs). As an example, only a few companies have established grant-making foundations.

As significant foreign investment was made in various industries whereby the foreign company's charitable policies were adopted, the funding is growing but has a less institutionalized character. Domestic companies also engage more and more in funding charitable programs, and young entrepreneurs showed interest to support CSOs in their communities⁶⁸. Tax deductions available to businesses for donations are not significant (up to 2% of tax base deductible).

CSO role

Overall, the corporate sector considers CSOs solely as beneficiaries of their support, while the associations consider the corporate sector as donors only. Such a narrow view of civil society-business relations results in a limited number of partnerships between CSOs and the corporate sector⁶⁹.

Examples, best practices

Encouraged by the success of a number of humanitarian organizations soliciting donations over the telephone, Croatian Telecom has waived its right to profit from certain humanitarian organizations, so that the money raised can be fully distributed for humanitarian purposes. In cooperation with the Government, Croatian Telecom established a committee for allocating phone numbers to humanitarian organizations⁷⁰. Construction companies, banks, often with an international background also play an important role promoting the culture of giving; and SMEs also started increasing their involvement mostly on the local level.

Observations

In terms of the development of corporate philanthropy, Croatia shows no significant difference from other CEE countries.

⁶⁶ Id.

⁶⁷ Civicus Civil Society Index Report on Croatia, 2005 http://www.civicus.org/new/media/Croatia_country_report_English.pdf

⁶⁸ ERNOP.

⁶⁹ ERNOP.

⁷⁰ CSI report.

Individual giving

Historical-cultural context

Although regular giving by individuals to CSOs does not have a tradition in the country, a culture of giving for charity and other public purposes is an important part of a civic culture. In addition, post-war solidarity facilitated community level giving – even when there was an abundance of humanitarian aid, people continued sharing their food and products (although not necessarily across ethnic lines).

Most Croatians give only small amounts to charity. The CSI survey reveals that for 76.6% of respondents, the financial value of donations during 2004 did not exceed 500 Kuna (83\$). With the average net income per annum in 2004 being 4.143 Kuna (690\$), this amounts to 1.2% of a person's annual income. Another research (from 2006) showed that 77.8% of citizens donated up to 500 kunas and only 4.7% donated more⁷¹.

Country specific elements

According to the CSI survey 66.8% of citizens have donated cash or goods, such as garments and food, for humanitarian purposes in 2004. Since then, charitable giving has increased, partly thanks to the introduction of new technologies of giving by phone or recurring payments (see Examples, also under Corporate Philanthropy). A slightly higher number of women than men give to charitable purposes, and individuals with higher levels of education are more inclined to donate.

CSO role

CSOs are generally not very active in fundraising from the public; when they are, they are initiators and recipients.

Examples, best practices

While charitable giving is not widespread, there are good examples of fundraising organizations that use a professional approach and take advantage of modern technologies. The example of the "PU" Association is mentioned in the Civicus report, which is partially financed by permanent transfer orders from banks, which citizens can commission without additional charges, allowing for a transfer of small but regular monthly income for the associations activities.

Observations

Survey results indicate that, in general, the public is in favor of a culture of giving. Still, individual giving does not represent a strong part of CSO support. This can have a number of reasons, but in our view it is mostly due to the fact that CSOs have managed to raise resources from the state (at the central or local level), and also from corporations; therefore very few feel the need to raise funds from the public at large. CSOs are not familiar with professional fundraising techniques and lacking the motivation to "go for it", they have simply not asked people. This theory is supported by the fact that whenever a CSO decided to engage in fundraising activities they were most of the time successful.

Income generation

Historical-cultural context

In Croatia, self-financing activities by CSOs remain a rare practice. CSO economic activities did not develop properly for several reasons, including that donor programs often did not allow CSOs to charge for the products and services they developed with the donor's support. Therefore it has

⁷¹ Survey by Frank Sakic (2006), in ENROP report.

become almost impossible to start charging fees for the same services once the donors ceased supporting them, and CSOs have missed an important opportunity to become more sustainable. On the other hand, it was often not felt proper also by the CSO to charge for its services, due to the idea of solidarity and assistance to the needy. In addition, there has been a lack of capacity and entrepreneurial spirit on the part of the CSOs to undertake commercial projects. Finally, there is no clear interpretation of the legal framework which, in principle, allows CSOs to engage in commercial activities⁷².

Country specific elements

The Croatian legal framework is favorable toward the economic activities of CSOs, as such activities are explicitly permitted by law and they are not taxed, if they are conducted within the framework of the CSO. CSOs are exempt from paying corporate income tax on income generated through commercial activities, unless such exemption has led to the acquisition of “unjustified privilege on the market.” Should the competent tax authority reach such a finding, which has not happened in practice thus far, a tax is levied on the CSOs income resulting in the same obligations as those incurred by for-profit entities (20%). CSOs will also need to pay the same taxes as for-profit entities, if they establish a company to run the economic activities. There is no clarity about whether only such economic activities are allowed which are referred to in the statute of the CSO. Also, it is unclear on what basis the “unjustified privilege on the market” would be judged, but it is understood that the provision is construed to fend off possible abuse of the tax exemption.

CSOs have lobbied for the introduction of a public benefit status, which would increase the transparency and accountability of the qualifying CSOs, and would therefore reduce the possibility of abuse regarding tax exempt economic activities. This might enable the legislators to abolish the ambiguous provision relating to “unjustified market privileges” as long as only public benefit organizations would be fully tax exempt in their mission-related economic activities.

CSO role

Initiator, service provider. One reason why CSOs are not so active in this field may be that they don't feel comfortable in the role of “salesmen”.

Examples, best practices

Engaging in economic activities is a growing tendency in the social services sector, and some training and consultancy organizations incorporated it into their business models, but it is still not widespread on the national level. There are however some good examples e.g. those in the portfolio of NESsT (Nonprofit Enterprise and Self-sustainability Team), including rental of coastal premises of the CSO and promoting the sales of cloth diapers⁷³.

Observations

The country has had to go through a difficult period in an extremely short time: from a post-war country into an accession country that has to reform most areas of recently created systems and mechanisms to comply with EU expectation. This could present itself also as an opportunity to involve CSOs more into economic development through encouraging social enterprises and CSO service delivery.

Introduction of the public benefit status may be helpful in clarifying legal uncertainties regarding the tax treatment of CSO economic activities.

⁷² NESsT Croatia guide <http://www.nesst.org/documents/2006CroatiaLegalGuideEN.pdf>

⁷³ <http://www.nesst.org/NVFCentralEurope.asp#LSCroatia>

IV.3. GERMANY

Basic data on German nonprofit sector

There are two main types of nonprofit organizations in the German third sector:

- registered associations: their number is over 550,000⁷⁴; and
- foundations: their number is over 16,000⁷⁵.

In addition, there are over 5,000 cooperatives that also play an important role⁷⁶.

Financial data on the German CSO sector

The non-profit sector is a substantial economic force in Germany, as far as both expenditures and employment are concerned. It employed 3.6% of the active population; and including volunteers, an equivalent of 6.6%. Its expenditures represented 4% of the GDP. In fact, if the German civil society was a country, its GDP would be 2.2 trillion \$ for Germany (approximately 1.7 trillion €), far above the 1.3 trillion \$ average (approx. 1 trillion €) of the all 35 countries analyzed in the *Global Civil Society – An Overview Report*⁷⁷.

The Global Civil Society Report also highlights that the sources of civil society organization revenue without considering volunteers are the following: 64.3% from the government; 3.4% from philanthropy; and 32.3% from income generated by economic activities. According to the same Report, the respective percentage including the value of volunteer work (as philanthropic support) will change to the following: 42.5% from the government; 36.2% from philanthropy; 21.3% from economic activities.

Government funding mechanisms

Historic-cultural context

Germany has a sizable third sector that is marked by strong government support. The nonprofit sector plays a prominent role in the everyday lives of German people by being the main provider of the basic social services, based on the so-called “principle of subsidiarity”. (See social contracting.) Due to their significant role in both service provision and everyday community life, CSO are well respected by society as well as the state.

Since the Second World War, Germany was restrained from undertaking a military role abroad but at the same time due to its export-oriented economy it could not be isolated and had to develop its export markets. Therefore it also undertook a prominent role in international development, another area where CSOs are highly involved. The German Ministry of Foreign Affairs provides an opinion on CSOs that recognizes their added value and that is characteristic of the attitudes of the state towards the CSOs in general:

“Non-governmental organizations are a manifestation of civil-society involvement (...). The NGOs strength lies, among other things, in the high degree of motivation and specialist know-how of their staff and partners as well as in the fact that they are in close contact with underprivileged sections of the population – a key prerequisite for people to help themselves and take the initiative.

⁷⁴ 554,401 in 2008; source: Vereinsstatistik 2008 – Statistics of Associations 2008, produced by the V&M Service GmbH with the collaboration of the Research Institute for Sociology at the University of Cologne, 2008, accessed on <http://www.vita.it/guide/view/50/91455>

⁷⁵ 16,406 in 2008; source: Stiftungen in Zahlen – Errichtungen und Bestand rechtsfaehiger Stiftungen des beurgerlichen Rechts in Deutschland im Jahr 2008, Association of German Foundations, published in 2009, accessed on <http://www.vita.it/guide/view/50/91455>

⁷⁶ According to data by the German Cooperative and Raiffeisen Confederation (DGRV), there were 5,291 cooperatives in Germany in 2007, with approximately 17.6 million members spread across them.

⁷⁷ Lester M. Salamon, S. Wojciech Sokolowski, Regina List, *Global Civil Society – An Overview*, The Johns Hopkins Comparative Nonprofit Sector Project, 2003.

		Legal/Fiscal Framework	Historic/ cultural conditions
Interaction with the state	Funding mechanisms	Supportive	Sizeable third sector with strong government support. CSOs respected by society. Added value of CSOs acknowledged by the state. After reunification Eastern CSO sector developed quickly
	Social contracting	Exemplary	Subsidiarity as central principle means nonprofit providers are preferred over public ones. CSO sector has two main parts: quasi-governmental service providers and more grassroots civic associations
	Alternative financing		No significant model identified
Interaction with the private sector	Private giving through institutionalized mechanism	Exemplary	Foundation reform movement in 1990's; since then real boom in private foundations due to new generation of donors
	Private-corporate giving	Supportive	Corporate social responsibility a long-lasting debate in Germany. Pressure from consumer groups for better practices
	Individual giving	Supportive	Germany is in the middle of European country rankings for level of giving compared to GDP (0.22%). Church tax indicates a larger interest in supporting good causes but expectation is for the state to finance welfare expenses from taxes
Earned income	Income generation	Supportive	Economic activities are a tradition in German third sector; including cooperatives, housing and banking associations. Membership fees are an important source of income as well

Country specific elements	Role of CSOs	Examples/Best Practices	Observations
High level of government support represents over 60% of sector income; at the same time, political and professional independence of CSOs maintained	Recipients and partners	Ability to maintain organizational autonomy despite government support	Government invested in capacity development of CSOs. CSO independence does not mean there is no control of use of public funds
CSOs organized in 6 federations that represent interests vis-à-vis government. Services financed by social security payments and subsidies	Service providers, partners, and recipients of subsidies	Normative funding financed by social security system complemented with subsidies to cover full costs of CSOs	Elements of the model very specific to Germany but principles are important. Such model needs well prepared CSOs with professional capacities
Very favorable tax deduction scheme introduced in 2007 that led to over 1,000 new foundations being established every year. Many types of foundations, including political	Recipients of foundation grants.	Tax deduction scheme provides real incentives. Political foundations as a way to separate politically oriented CSOs from others	Legitimate wealth generation and well defined public benefit purposes are important for the transparency of the system
Many forms of corporate philanthropy but only recently started strategic programs. 2007 tax reform also affected companies in a positive way but impact is not visible due to crisis	Recipients of support.	Important role of large corporate foundations in funding research and innovation	Enabling environment for both large and small companies, supporting role of SME in local development
Decreasing trend of donations. Cross border donations are also tax deductible, if there is a "potential benefit" for the German people. Few large fundraising CSOs collect major part of giving income of the sector	Recipients and intermediaries delivering assistance	Simplified and harmonized tax rules for deductions on donations adopted in 2007	Countries with higher personal taxation show lower level of giving in relation to GDP
CSOs can undertake tax exempt mission related economic activities, if they receive the public benefit status. This is well-defined and regulated in detail	Initiator-service provider	Tax regulation of economic activities related to a clearly defined public benefit status	This model enables CSOs to generate substantial income from economic activities while preventing abuse

One thing that all NGOs share is that they have no state authority and conversely that the state has no direct influence over them. Nevertheless, or perhaps precisely for this reason, the work of NGOs is very well accepted the world over, among the population and the media. This gives many NGOs better access to people than state bodies. In many places they can create a special relationship of trust. This has often proved to have created a very solid foundation for staying in contact and in dialogue at critical junctures, especially in politically sensitive situations, even in countries in which cooperation with the government is difficult or impossible for political reasons.⁷⁸

The development of the German nonprofit sector has also been influenced by the reunification of West and East Germany that took place in 1990 and the subsequent evolution of a nonprofit sector in East Germany. The Global Civil Society Report says in this regard: “In contrast to the experience of other transition countries in Central Europe, however, the emerging East German nonprofit sector largely adopted existing West German patterns and is by now virtually indistinguishable from its West German counterpart in size, structure, and composition”⁷⁹.

Country specific elements

What is intriguing in the relationship between government and CSOs in Germany is the dual presence of financial support and a relative high degree of political independence (autonomy). In general, the government takes it as an obligation to support nonprofit organizations that fulfill an important social role and help realize government policies (e.g. in social services provision, environmental protection or international development). Yet at the same time there is an inherent understanding that CSOs have their own autonomy and that it is not proper for the state to dictate the direction of their development.

This progressive attitude is rooted in the long-standing principles that have influenced legislation and that also govern the everyday lives of German people. Besides the subsidiarity principle as most relevant for the nonprofit sector and described below, these include also the principle of *self-administration* (self-governance) and *community economic self-organization* (Gemeinwirtschaft)⁸⁰. The former dates back to the 19th century and the absolutist state that realized that it has to provide space for its citizenry to organize themselves, if it wants to hold the federal power. Since then, there is the duality of a strong centralized federal state that has the final say in the “big politics” and the bottom-up organization of citizens to govern their everyday lives. Communal economics gave rise to the cooperative movement and mutual associations in the banking and housing industries, another important pillar in the diverse third sector in Germany illustrating autonomous self-organized entities.

In the light of the above, the government provides budgetary support to a range of CSO activities at all levels, primarily at the state and local level. There are a few policy areas, such as the youth, environment or international development, where federal support is also available. In these cases it is common to have project grants but also long-term strategic partnership agreements between the competent Ministry (or federal agency) and the CSOs. At the local level, grants and direct budget support are typical ways to support CSOs⁸¹.

⁷⁸ Web site of the Ministry of Foreign Affairs http://www.bmz.de/en/what_we_do/approaches/bilateral_development_cooperation/players/ngos/index.html

⁷⁹ Germany: Unification and Change. In: Global Civil Society, p. 99 http://www.ccss.jhu.edu/pdfs/CNP/CNP_GCS1_Germany.PDF

⁸⁰ Id. p. 105

⁸¹ The JHU Global Civil Society Report also notes that only about one third of the CSOs reported that state funding is dominant in their income to the extent that they are dependent on the state. This signals, that while state funding is dominant in the total revenues of the sector (above 60%), it probably concentrates with the large service providing organizations and the majority of CSOs have their income from membership fees and sales of their products and services.

It has to be noted that with the growing economic restraints, originating not only in the recent economic crisis but also in the deeper crisis of the big-spending welfare state, the wide range and volume of CSO support have been shrinking. The tendency is inevitable, but the German government has been inventive in ensuring alternative ways of support for the CSOs that it considers to be crucial also in fighting the consequences of the economic crisis, namely to encourage private philanthropy (see Private institutional funding).

Role of CSOs

CSOs are essentially recipients of the funding but also seen as partner actors in the social and economic development of the communities.

Examples, best practices

The combination of state funding and respect of organizational autonomy is an important good practice that is hard to find in Central and Eastern Europe. Although the situation is not ideal even in Germany, it would be important to adopt the understanding that the state is funding these private entities because of what *they* do and not because of what the state intends to do. This can be done because as long as the *goals are the same* (e.g., assist the needy, develop the poor communities), it can be assumed that the local CSO will know the needs and possibilities better and it can devise better solutions. Over the past 60 years (since World War 2) this has been proved in the German practice.

Observations

Germany features a dominantly state financed CSO sector with good measures of success and value added. Due to the long-standing, historic principles that govern the relationship between the state and CSOs, it would be hard to “copy” this model in CEE. However, the Ukrainian government could start cultivating such principles in its funding mechanisms as they are of key importance for the development of a healthy civil society.

It is important to note that the lack of government’s political and professional influence does not mean that there is no control over the use of public funds; or in case of service provision, over the quality of service. There are rules of the Treasury by which the CSOs have to abide; and the funding has to be transparent from the side of the government as well.

CSOs have had to develop a certain level of institutional capacity to be able to take advantage of this system. The majority of over half million associations does not receive government funding (at least not from the central level), but it is important to have a large enough pool of capable CSOs that can be eligible for the funding. The German government, and similarly the Hungarian and Croatian government realized that they need to invest also into the capacity development of CSOs.

Social contracting

Historical-cultural context

Historically the most important principle in German social contracting is that of “subsidiarity”. This principle is rooted in the agreement between the Catholic Church and the State and goes back to more than a century. It gives preference to community based private provision of the basic welfare services over those provided by the government. Essentially, the provider has to be as close to the need as possible; therefore the municipality will only start a service, if there is no local CSO that would undertake it, and the state and federal governments will also intervene only if the lower level cannot take care of the service (this can happen e.g. in the case of a rare disease, when there are not enough clients in the territory of the local government to start a service).

As a result, in fields such as health and social services, extensive partnership arrangements emerged between the nonprofit sector and the state. However, this also resulted in the

“duality” of the German nonprofit sector. One part of it, oriented at culture, community life, environment, youth is very much “civic”, its main income is from membership fees and service fees and it builds on community support engagement. The other part of it is providing social and health services financed by the state and forms an integral part of the welfare state; those CSOs are highly professional, institutionalized and receive direct budget subsidies and ongoing financing from the social security system (third party payments). They are indeed to some extent considered part of the public sector and perceived as less “civic”. While it cannot be said that the whole nonprofit sector in Germany depends on state funding, this is certainly true for this part of it.

Country specific

Germany has incorporated the principle of subsidiarity in its constitution. The principle of subsidiarity is defined in the following terms: “Subsidiarity means that the larger social unit (the state) should assist the smaller unit (the family) only if the smaller unit can no longer rely on its own resources. In terms of social policy, it basically translates into a system whereby private provision of services takes precedence over public efforts and local provision over non local”.

In this connection, the Federal Social Assistance Act states in its article 93 that government agencies are forbidden to establish their own service providers, if suitable associations are available, or can be extended or provided.

According to the German Social Security Code, the public bodies are obliged to complement effectively by co-operating with the non-public bodies. Also, the local authorities have to respect the independence of these bodies concerning the setting of objectives, carrying out the tasks and arrangement of their organizational structure. However, the local authorities have the right to examine the appropriate use of public means employed by the latter.

Accordingly, a majority of CSOs are working in the fields of service provision, mainly social services (38.8% of CSOs), health (30.6%) and education (11.7%)⁸².

Service providing CSOs are organized in a very specific way in Germany: they have convened into six major CSO federations which act as “CSO-unions”, representing the interests of their members. (Five of these are related to the major church denominations, while the sixth one brings together all the secular organizations.) These confederations negotiate with the government on an annual basis about the allocations to the service providing CSOs. Part of the funding is prescribed by law under strict criteria (e.g. the amount that is paid per capita for the service or the minimum quality standards of the service); but part of it is negotiable based on various factors, such as the annual inflation rate or the need for infrastructural investments (renovations, extensions of buildings, etc). The government then transfers the total amounts of the direct subsidies to the federations and they forward the funding to their members.

CSO role

In this scheme, CSOs are most of all service providers who are partners to the state; also recipients of the subsidy funding.

Examples, best practices

That non-profit provision of welfare and social services is preferred over the public one is a good practice; however, it needs a well-prepared CSO sector that is able to undertake the responsibility for the services.

A good practice element is also that – unlike in Hungary – per capita third party payments are complemented by subsidies that help sustain and develop the CSO as an organization – otherwise

⁸² 1995 data; source: Annette Zimmer Ed., The Third Sector in Germany, Münsteraner Diskussionspapiere zum Nonprofit-Sektor, Sonderband 3 –Arbeitsstelle Aktive Bürgerschaft at the Institute for Political Science, Westphalian Wilhelms-University of Münster, 2000), accessed on <http://www.vita.it/guide/view/50/91455>

the quality of its service provision would suffer. Therefore it shows a model for the “normative” system, in which CSOs are not discriminated but actually preferred.

Observations

Clearly this model is very specific to Germany. CSOs in this model are an integral part of the state welfare provision; this also generates some problems, e.g. that CSOs become almost like state providers and can over time lose their competitive edge (in contrast to the UK model, where there is no legally binding preference toward the CSO providers). The “unionization” of CSOs is also a unique model in Europe and is clearly due to the need for a strong lobby power vis-à-vis the state for the third sector, which receives the majority of its income from the government. Germany has a strong tradition of self-organizing and asserting the rights of private entities against the government, therefore it can be successful there. This may not be the case in some CEE countries, where the unions are usually co-opted by the reigning governments.

Private institutional funding

Historical-cultural context

Foundations have long tradition dating back to the 19th century⁸³. Yet, until the 1990's, the legal and fiscal environment for foundations did not receive much public attention. It was only in the 1990's when, due to the initiative of a few leading German private foundations such as the Bertelsmann Stiftung, a reform movement started to unfold and the foundation sector started to boom. This also had to do with a generational change: in the past two decades WW2 survivors have passed away and left considerable wealth to their children, who themselves have had accumulated enough assets not to need their parents' legacies for making a living. Therefore this new generation of wealthy people has started to look for opportunities to devote at least some part of the assets to a good cause. Unlike their parents, they are not so concerned that their children will need all the wealth they accumulated during their lives, and are more willing to make an endowment in their lifetime. The tendency of increasing private wealth has continued until today. According to the Bertelsmann Stiftung, there are approx. 200 billion EUR passing to next generations every year⁸⁴.

There are several types of foundations in Germany, both private benefit and public benefit foundations are typical. In addition, a new movement of community foundations has evolved (there are today approx. 230 community foundations in Germany which were unknown before 1996)⁸⁵. Germany also has so-called political foundations⁸⁶, which are each affiliated with a political party along distinct ideological lines. They receive annual budget support from the related political parties to educate the voters about their political programs. These foundations are also involved abroad, working with affiliated parties, trade unions and CSOs.

Country specific

As mentioned above, over the past decade there has been a real boom in foundations in Germany. In 1996 there were 441 foundations established, while today there are 1,000-1,100, or more new private foundations registered per year⁸⁷, increasing the number of foundations to 16,406 in 2008. (Most of them were established in the cities of the former West Germany.)⁸⁸

There are several reasons for this boom, one being the increase in private wealth and the new generation of high-net-worth individuals; a second being the role of leading German foundations

⁸³ CIVICUS, http://www.civicus.org/media/CSI_Germany_Country_Report_English.pdf

⁸⁴ http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_27508_27509_2.pdf

⁸⁵ Id.

⁸⁶ Interestingly, in terms of their legal form, these are actually associations.

⁸⁷ http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_27508_27509_2.pdf

⁸⁸ <http://www.vita.it/guide/view/50/91455>

in promoting a new model for foundations; and a third reason being the supportive tax deduction scheme that was introduced in the late nineties.

Concretely, an individual donor can deduct up to €1,000,000 for a donation to the endowment of a foundation with qualifying purposes. (This means essentially public benefit purposes as defined by the German tax law.) The deduction can be taken in the year of donation and/or divided over the following nine years. This has proven to be a serious incentive for many wealthy people who were seeking the most economically efficient “investment” of their assets.

The reason for the government to introduce such changes in the tax laws has been the realization of the inevitable fiscal difficulties faced by the welfare state, and that the tendency of budget restrictions will last for a long time. This meant that a gap was being created between the demand from society in welfare provision – including among others the gap in financing CSOs – and the possibilities of the state to meet the demand. Seeing the accumulated wealth among individuals (and to some extent, corporations), the government aimed to incentivize private philanthropy to address the needs that would remain unmet. Therefore, foundations and their active philanthropic engagement with society have gained political importance.

Role of CSO

CSOs are seen as recipients of foundation support; but also effective conduits of delivering the services to the needy with the funds of the foundations, i.e. partners and service providers on behalf of the foundation.

Best practices, examples

Motivating individuals to convert private wealth into a funding mechanism for public purposes is a good example. It is important to note that Germany resembles the CEE region in the public expectations towards welfare service provision, and that by financing the services, the state ultimately takes the responsibility for providing accessible and affordable social services, health and education for everyone – even if the services are actually delivered by private providers. The private foundation model in Germany is a strategic way to ensure that the services are delivered even when the state does not have the resources to provide them as broadly as earlier.

It is also a good practice that the law makes no difference, if the person establishes its own new foundation or if the person donates to an existing one – as long as the funds go towards an endowment, i.e. they ensure the long-term financing of the given purpose. The ability of the person to distribute the deduction over ten years also contributes to the long-term thinking and shows that the legislator has thought with the perspective of the donor in mind.

Finally, the idea of separate political foundations is also an interesting one (it has already been adopted in Hungary too), as it is one way to “channel” the political interests into a legally controllable mechanism. If such category of foundations exists, the other foundations and other CSOs can be required to refrain from party-related political activity, especially if they are receiving tax privileges (e.g., public benefit status).

Observations

This is a win-win model for encouraging private philanthropy. However, it has two components that are specific to Germany (or rather, Western Europe): the origin of private wealth is legitimate and can be tracked down, which may be an issue in the case of CEE countries, including Ukraine; and second, the public benefit purposes that are eligible for the tax exemption are well defined in German legislation (tax laws and case law). In case of such a serious tax incentive, the government has to make sure that both the origins and the destinations of these funds will be legitimate and justifiably eligible for tax exemption.

Private corporate funding

Historical-cultural context

The issue of corporate social responsibility (CSR) and corporate citizenship had been a long-lasting debate in Germany, which was reinvigorated in the late 1990's due to the new "wave" of CSR globally. Consumer pressure on companies to behave responsibly is certainly bigger than in the examined countries in CEE, and that plays an important role in the development of corporate responsibility as well as corporate giving.

Companies in Germany have different attitudes towards CSOs depending on their field of activity. E.g. CSOs active in culture and sports have always enjoyed sponsorship and other support from corporations; while consumer groups and environmental organizations have been more challenging towards them and thus, less supported (often they do not even accept funding from corporations). Local and regional companies often play an important role in the communities as employers as well as promoters of community development. Overall it can be said that the relationship between the corporate and CSO sector is a balanced one, where different players have different interests but they can negotiate around their interests in a constructive way⁸⁹.

More recently, companies find it more and more important to have a positive image in the media, and are organizing in various forms to promote social responsibility among their peers. In addition, they have started to become more involved in the promotion and support of the nonprofit sector as such, e.g. KPMG has been organizing a CSO transparency award for the past few years, while other companies are involved in supporting CSOs to become more professional in their management practices⁹⁰.

Country-specific

Companies are involved in philanthropic activities in many ways, from giving community grants or giving in-kind donations to company volunteering programs and secondment arrangements; as well as establishing corporate foundations.

Large corporate foundations (Bosch, Siemens, Bertelsmann and others) play an important societal role by financing research and development, social innovation and supporting difficult causes. Company giving in Germany is most often of a classical charitable character, i.e. it is not directly linked to business interests.

At the same time a cross-sector panel evaluating the role of corporate involvement in the Civicus project concluded that "companies are engaged in corporate citizenship, but their engagement is not comprehensive or reliable enough to make a lasting contribution towards solving social problems"⁹¹.

This conclusion is probably due to the relatively low overall level of funding represented by the corporate sector in the incomes of CSOs. According to the JHU data, only 3% of the sector income is derived from philanthropy, individual and corporate support combined⁹². More recent data from 2007 show that in that year, 29.1% of the firms donated up to 5,000 €, whereas 30.5% of the firms donated from 10,000 to 50,000 €. The small- and medium-sized enterprises mostly donate up to 50,000 € (86.3% of the small firms and 65.7% of the medium firms fall in the first three donation categories); 42.1% of the bigger firms, instead, donates from 50,000 to over 100,000 € (2005 data)⁹³.

⁸⁹ Based on Civicus Index Germany Country Report p. 37-38. http://www.civicus.org/media/CSI_Germany_Country_Report_English.pdf

⁹⁰ Guidestar Europe Germany report, 2008.

⁹¹ Civicus Index Germany Country Report p. 38

http://www.civicus.org/media/CSI_Germany_Country_Report_English.pdf

⁹² Germany: Unification and Change. In: Global Civil Society, p. 109

http://www.ccss.jhu.edu/pdfs/CNP/CNP_GCS1_Germany.PDF

⁹³ 2007 Report Citizenship in Germany and a Transatlantic Comparison with the USA – Results of a CCCD Survey by the Centrum für Corporate Citizenship Deutschland (Centre for Corporate Citizenship Germany, CCCD), <http://www.vita.it/guide/view/50/91460>

However, in 2007 there has been a major tax reform, with the aim to encourage private involvement in addressing social problems. In this regard, cash, assets and any other economic goods except rights of usage and claims for specific performances can be deducted; and a tax deduction is possible up to 20% of yearly taxable income (or 0.4% of the sum of the turnover and salaries). Donations exceeding the deductible limit may be carried forward to subsequent fiscal years.

Since we have found no data from the past two years regarding corporate giving, it is not clear what the effect of these changes have been in corporate philanthropy. (However, considering also that it has been the period of the economic crisis, it would be hard to measure the effect of legislation separate from the general economic decline.)

Role of CSO:

CSOs are mostly recipients of corporate support.

Best practices:

Transparent, exemplary operation in case of the largest, most visible corporate foundations that play an important role in promoting philanthropy and social and economic development in general.

The model whereby 0.4% of the turnover and salaries paid can be deducted from the tax dues as an alternative to deductions of the tax base is important, as it provides an opportunity for companies that do not report a profit in any given year to still enjoy a benefit related to their donation (since it can be carried over to the next years).

Observations

German companies in CEE countries do not have a socially responsible image, especially compared with UK and US companies. This can be a sign that the domestic context in which there is a high consumer pressure for socially responsible performance makes a big difference. It has to be noted that company giving abroad will not generally be subject to the same tax deduction as domestic giving, unless the donor can justify that the gift has been made to an entity pursuing public benefit and that the purposes supported abroad possibly have a positive impact for Germany. Thus, German companies are not encouraged to establish large giving programs benefiting the local environment (unless perhaps they can argue that it enhances the general image of Germany in that country).

Another observation is that the general tax environment as well as tax incentives for giving benefit large and small companies in the same way. This is important, as small companies are key actors in supporting local development.

Individual giving

Historical-cultural context

Being an European welfare state, individual charitable giving is not as widespread in Germany as in Anglo-Saxon countries such as the UK or the US; however, the % of giving represents a higher level of GDP than in other continental European countries, e.g. France. Data from the Charities Aid Foundation (CAF) in 2006 show that the national giving level represents 0.22% of GDP in Germany, compared to 0.14% in France on the one hand, and on the other hand, 0.45% in the Netherlands, 0.73% in the UK and 1.67% in the US (largest % globally). It is interesting to note also that there was a significant difference between the two parts of Germany: giving in former East Germany represented only 0.12%, while giving in former Western Germany was at 0.26% of the GDP⁹⁴.

⁹⁴ International comparisons of charitable giving, CAF Briefing Paper, November 2006 <http://www.cafonline.org/pdf/International%20%20Giving%20highlights.pdf>

Another study revealed that about 35% of the physical taxpayers have declared a donation in their income tax returns between 2001-2003. This indicates a relatively high level of engagement from the population compared to the fact that they contributed only a small percent of the income of the nonprofit sector⁹⁵.

In Germany there is also a church tax, which is a voluntary contribution with an opt-out system (in other words, taxpayers are assumed to pay it unless they refuse to do so). According to the CAF research, if this has been included, Germany would have been among the top countries in the levels of giving in proportion to GDP. This shows that there is a traditional basic commitment among German people to contribute to the “greater good”; however, the expectation is in general that the government should be for the welfare services from the taxes paid. Actually, the CAF study concludes that there is a correlation in the EU countries between the level of personal taxation, particularly social insurance, and the level of giving: countries with higher personal taxes show a lower level of giving in relation to GDP and vice versa (Germany obviously belonging to the first category).

Country specific elements

Based on the available research data, it can be seen that there is decreasing trend in the total amount of donations to nonprofit organizations since 2005. While one report estimates 4.4 billion € donated to nonprofit organizations in 2005⁹⁶, the data for 2008 shows only 2.8 billion € that have been donated to third sector entities in Germany, by approximately 27 million people over 14-years old. The average donation amounts to 102 €, and women are somewhat more generous than men (44% of women donates, against 40% of men). Moreover, differences between West and East Germany exist: 43% of the population makes a donation in West Germany against 37% in East Germany. Age groups that are more willing to donate are the seniors and the 50/64-years old people, with respectively 61% and 45% of donors⁹⁷.

Unfortunately there is no reliable data available to compare the levels and structure of giving before and after adopting the new tax legislation in 2007, which harmonized and increased the tax benefits available for physical persons donating to public benefit purposes. Under this law, as described in the section on Corporate Funding, up to 20% of the annual taxable income is deductible for a qualifying donation, while exceeding amounts can be carried forward to future tax years without limitation.

Furthermore, following the recent call by the European Commission that Germany brings its legislation in line with EC Treaty principles regarding the tax benefits, as of January 1, 2009, donations to nonprofit organizations residing in other countries can also be eligible for the tax deduction, if they pursue public benefit purposes and if the donor can justify that the donation has the potential to benefit the German people. (Actually, the EC has challenged this latter provision and it is now under consideration for amendments.)

It has to be said also that there are only a few hundred CSOs in Germany that are large professional fundraising organizations, and those collect the major part of fundraising (giving) revenues of the sector⁹⁸. Most CSOs know rather how to apply for state funding and have the same kind of capacity problems in public fundraising as their peers in CEE. This is another reason why the shift to increase available funding from philanthropic foundations can be an effective step (as these foundations also run project grant competitions which resemble fundraising from the state).

⁹⁵ Borgloh, Sarah: What drives giving in welfare states? ZEW Discussion Paper #08-123 <http://econstor.eu/bitstream/10419/27606/1/dp08123.pdf>

⁹⁶ Household budget survey, 2005 <http://www.ernop.eu/country/3/germany.html#Data>

⁹⁷ Report 14 Jahre Deutscher Spendenmonitor – Fakten und Trends im Zeitverlauf by the TNS Infratest Holding GmbH & Co. KG (2008; data from October 2007 to October 2008) <http://www.vita.it/guide/view/50/91460>

⁹⁸ DZI, the main German fundraising certification body certified 236 organizations in 2008, which have together collected 1.4 billion Euros, out of an estimated 2.45 billion (in other estimates, 2.8 billion) Euros in that year. <http://www.ernop.eu/country/3/germany.html#Data>

Role of CSO

CSOs are recipients and intermediaries in delivering the assistance to the needy.

Best practices, examples

Even though it is too early to see the longer term impact, the 2007 tax laws represent good practice in that they provided a unified definition of the qualifying organizations (earlier there were different levels of benefit available for CSO pursuing different public benefit purposes); and that they provided a cross-cutting rule on the tax deductions (earlier there were different limits of deduction depending on the purpose as well as the taxpayer – physical or legal person). In other words, these provisions represent a simplification and an increase in the incentive for making philanthropic donations by individuals.

Observations

Germany is an example of a country where there is a historic commitment to give to the church and public purposes, but where the taxpayers expect the state to pay for the welfare services from the taxes. Yet, through tax incentives this pattern could be slightly shifted (although results show thus far primarily in the field of foundations philanthropy and not yet in direct giving).

Income generation

Historic-cultural context

Income generation and engaging in economic activities has never been alien to the German third sector. In fact, cooperatives, housing and other mutual associations form an important part of the third sector both at the local level and as national federations. (See the reference to the principle of *Gemeinwirtschaft* in the section on Government funding.) More generally, revenues from economic activities, including membership fees, provide for more than a third of CSO sector income.

Unlike in the countries of CEE, membership fees are an important income source for CSOs. According to the Household Budget survey, 6.7 billion Euros were spent on membership fees in 2005⁹⁹; 1.5 times the amount as on donations (and twice as much compared to later years). Also, it is generally accepted that CSOs are sustained based on their earned income and so customers are willing to pay for CSO services (these are usually services offered beyond the basic services that the state sponsors).

While economic activities are permitted and CSOs generally undertake them, they are also taxed unless they comply with a strict system of rules that is required by the tax-exempt status. The criteria for this status and for the accompanying income tax exemption have been developed over the years and while the 2007 reform gave it a simplified framework, it has retained the key elements of the system. In Germany it is the competent tax authority that determines the eligibility of the organization for the public benefit status. If this is granted, the organization is free to engage in economic activities furthering its public benefit purposes without paying income tax on the returns.

Country specific

Here we are including the provisions relating to the public benefit status and the related tax exemptions as an example that we believe is a good practice for regulating income tax exemptions for economic activities¹⁰⁰.

⁹⁹ <http://www.ernop.eu/country/3/germany.html#Data>

¹⁰⁰ This section is taken from the USIG country report on Germany, with slight modifications only. <http://www.usig.org/countryinfo/germany.asp#exemptions>

The Fiscal Code (*Abgabenordnung/AO*) defines three types of purposes as being tax-privileged:

- According to it, the organization pursues **public benefit purposes** (*gemeinnützige Zwecke*), if “its activities aim to support the general public materially, intellectually, or morally”. The beneficiaries must not be limited to a closed circle of people, such as members of one family or employees of one corporation. The law also lists a series of purposes that are regarded as supporting the general public, if the above requirements are met. The list, which is exclusive since 2007, includes the following categories: science and research, education, arts and culture, religion, international understanding, development aid, preservation of the environment and cultural heritage, support of youth or the aged, public health, amateur sports (including chess), support of democracy, care of soldiers and reservists, and the support of civic engagement. There are also additional explanations provided in the regulations to help interpret these categories.
- An organization pursues **charitable or benevolent purposes** (*mildtätige Zwecke*), if it aims to support and help people in need either because of their economic situation or because of their physical, psychological, or mental situation.
- **Church-related purposes** (*kirchliche Zwecke*) include the support of public law religious communities, construction of houses of worship, spiritual development, and religious education.

In addition, the AO requires that an organization receiving tax benefits must carry out its tax-privileged (public benefit, charitable, or church-related) purposes **exclusively, directly, and unselfishly**. The organization should pursue its activities by itself (directly), which can also be through “*Hilfspersonen*” (auxiliary persons), through which the organization is acting (employees, free-lancers, other legal persons), e.g., by contracting or assignment. Just to lease premises or personnel to tax privileged organizations would not be considered to be directly pursuing tax-privileged purposes. Tax-privileged entities must use their income before the end of the year following the year during which the income was received.

If compliant with the above purposes, the CSO may receive tax privileges regarding its economic activities. If the activity is necessary to pursue the organization’s statutory purpose and it does not compete with for-profit organizations more than necessary, profits are not taxed and VAT is reduced to 7% (so-called “*Zweckbetrieb*”, according to Article 65 AO). Commercial activities which are not necessary to pursue the statutory purposes of the NPO are taxed at ordinary rates, if the annual gross income of non-statutory commercial activities exceeds € 35,000 (Article 64, AO).

Role of CSO

CSOs are producers and sellers of goods and services, as well as service providers for their members.

Examples best practices

The tax regulation related to the public benefit status is a good practice as it ensures transparency and accountability, and yet it allows CSOs to engage freely in economic activities that help ensure their sustainability.

IV.4. UNITED KINGDOM

Basic data on the UK nonprofit sector

There are 180,918 charities in England and Wales¹⁰¹. Government funding of CSOs was around £12.8 billion in 2007/08 and it accounts to over one third of all income to the sector. Around 40,000 organizations have a financial relationship with the public sector, but over 75% of CSOs do not have direct financial relationship with the state¹⁰². Most of the funding from state sources is distributed to organizations working in social service fields.

As part of the state funding, an important source of income is the proceeds from lottery. 28% of lottery proceeds are distributed to good causes in the categories of: charities, health, education and environment (50%); sports (16.67%); arts (16.67%); and heritage (16.67%). So far £25bn has been distributed to over 350,000 projects¹⁰³. The largest distributor of lottery proceeds is the Big Lottery Fund.

Funding mechanisms

Historic-cultural context

The UK is a common-law country with traditions and legal mechanisms that are very different from those of countries in the continental Europe. At the same time, it has many specific solutions, examples that can be well adopted in European and CEE countries as well. Yet, here we would like to set as the main example not one or another concrete tool or mechanism but the overall approach that the UK demonstrated in its effort to involve civil society (in the UK, the voluntary sector) in the provision of welfare services.

The UK has a robust voluntary sector with charity regulation dating back to 1601. Charities seen as trusted good-doers of publicly raised funding; while all voluntary organizations are seen as core to society. Unlike in Germany, in the UK private nonprofit entities did not develop to be an integral part of state service provision. However, they developed their own services from philanthropic resources and demonstrated impressive results with the communities they served. During the time of financial constraints and in line with the general policy of streamlining the welfare state, in the mid-nineties the labor government set out to develop a new overarching policy to capitalize on the potential of the voluntary sector.

The result was the so-called Compact, a principle document which defined the tasks, rights and obligations on both sides (government and voluntary sector), and which served as the basis for a long-term strategic effort to maximize the benefits not only for the government and CSOs, but most of all, for the population. The Compact meant an increasing role for both charities and the voluntary sector in delivering public services. It also meant increased support for and investment in building capacity of CSOs.

The Compact was followed by several related policy documents, guidance and regulatory measures, all based on solid data and impact assessments. Today, the new government has somewhat different ideas about the role of and relationship with CSOs; however, it builds on the results of the process thus far and considers the outcomes – both negative and positive – in setting new policies.

¹⁰¹ <http://www.charity-commission.gov.uk/showcharity/registerofcharities/registerhomepage.aspx> (data as of December 1, 2010) However, charities are not the only form of CSOs. They constitute about a half of around 865,000 CSOs in the UK. European Commission, “Recent Public and Self-Regulatory Initiatives Enhancing NPO Transparency and Accountability of Non-profit Organizations in the European Union”, developed by ECNL, 2009, www.ecnl.org

¹⁰² NCVO, Funding Commission, Paper 4 – Public Sector Funding – Findings and Emerging Recommendations, 2010, www.ncvo-vol.org.uk

¹⁰³ www.lotterygoodcauses.org.uk/lottery-grants/lottery-grant-faq/

Country-specific elements

The Compact provides a strategic framework for CSO support. The cooperation is institutionalized through the recently reformed *Office for Civil Society in the Cabinet Office*, which is active in the field of support for the sector through cooperation and funding, social enterprise, charity law and regulation of volunteering and giving and the sector's role in public services. Central government funding is often channeled through other bodies, such as the regional government and regional development agencies, non-departmental public bodies and local National Health Services trusts¹⁰⁴. Lottery proceeds provide significant funding to CSOs working in selected fields of activities. The past decade has witnessed countless initiatives both from the government, funding agencies and CSOs to improve funding practices. It supports web-based portals which aim to facilitate the implementation of the granting schemes and ease the access to information about funding opportunities (e.g., governmentfunding.org.uk, Decision Support Tool¹⁰⁵ and fundingcentral.org.uk)¹⁰⁶.

Role of CSOs

CSOs are recipients of funding but they are seen as long-term partners by the governmental funders.

Examples, best practices

The Compact is a unique mechanism for government-CSO partnership. While it cannot be expected to be replicated as such in other countries, we find it important to point to some of the key elements of the Compact process (including its implementation to date) as instructive for devising a strategy for cooperation with the CSO sector:

- There needs to be a vision for the relationship, that clearly describes the role of CSOs vis-à-vis the central and local authorities, and provides clear benefits for both sides.
- The government will need to invest into capacity building of CSOs in order to make them capable of playing an increased role in social development. Even though the CSO sector in the UK was many times more developed than in any other European country, the government still needed to propose capacity building programs across the country to help them fulfill their new functions.
- There needs to be funding strategy supporting the overall development strategy, which enables the vision (see example written under “General Findings”).
- There needs to be enough data and information available to make sound policy decisions – if such data are not available, the government needs to invest into producing them (during the past years, several UK government agencies engaged in measuring progress in the various aspects of implementation).
- There needs to be an ongoing assessment of the process and openness to flexibly change

Observations

The Compact itself is hard to “copy” in other contexts, but its principles can be followed: partnership, joint processes, clear rights and responsibilities, commitments on both sides. The current government is set to curb social expenditure and CSO funding but the strategic approach remains to guide policy (under the name of Big Society¹⁰⁷).

¹⁰⁴ NCVO, *The State and the Voluntary Sector; Recent Trends in Government Funding and Public Service Delivery*, 2009, www.ncvo-vol.org.uk

¹⁰⁵ National Audit Office, *A Decision Support Tool for Public Bodies in England*, www.nao.org.uk/guidance_and_good_practice/toolkits/better_funding.aspx

¹⁰⁶ Hadzi-Miceva and Golubovic, 2011.

¹⁰⁷ See <http://www.cabinetoffice.gov.uk/content/big-society-overview>

		Legal/Fiscal Framework	Historic/ cultural conditions
Interaction with the state	Funding mechanisms	Supportive	Robust voluntary sector with charity regulation dating back to 1601. CSOs seen as trusted good-doers of publicly raised funding; core to society. Blair "Compact" meant increasing their role in delivering public services; increased support for and investment in building capacity of CSOs
	Social contracting	Exemplary	Long traditions of fair and open process for contracting out public services. CSOs, private sector and local government institutions are treated as actors with equal chances in public bids
	Alternative financing		
Interaction with the private sector	Private giving through institutionalized mechanism	Supportive	Under common law, trusts have been playing the role of foundations. Charitable trusts are strictly regulated, trustees have personal liability for the assets
	Private-corporate giving	Supportive	UK companies have been leading worldwide in good CSR practices. Good image is a real motivation in the UK market. Accountability is a key term for the private sector as much as for the public sector
	Individual giving	Supportive	Highly developed philanthropic culture - donors give as part of the "routine" of everyday life. Despite crisis, charitable giving remained widespread
Earned income	Income generation	Exemplary	"Primary purpose" trading income tax free; trading income for fundraising and other "non-primary purpose" trading only allowed within limits

Country specific elements	Role of CSOs	Examples/Best Practices	Observations
Compact provides strategic framework. Big Lottery Fund and other funds support CSOs. Decentralized government offices, authorities, and municipalities provide grants for local projects	Recipients and partners	Good practice guidance given to funders. Regular monitoring of impact of funding	Compact hard to replicate but its principles can be followed. Current government set to curb CSO funding but strategic approach remains to guide policy
Best value principle combines high quality with reasonable cost in the evaluation of service tenders. High quality service provision by CSOs, strong user focus	Service providers, partners	Best value as guiding principle in contracting. Full-cost recovery (funder paying for indirect costs of the service)	Local municipality is encouraged to contract out so doesn't see CSOs as rivals - it has an interest in the good performance of CSOs
The UK trust/foundation sector spends as much as the government and 10 times more than the corporate sector to support charitable purposes	Recipients of gifts by trusts	Increased accountability in safeguarding assets with a public benefit purpose.	Strong, large and diverse trust/foundation sector was key in the development of a strong and independent voluntary sector
A wealth of CSR and philanthropy good practices are being practiced by all types of enterprises – from small to multinationals	Strategic partners, service providers and recipients of support	Payroll giving; community investment tax benefit	Shift away from corporate philanthropy towards a holistic view of socially and environmentally responsible business
Gift-aid: government matches donation by redirecting tax on the amount to the charity	Recipients and vehicles to deliver donor's intentions	Certain limited benefits to donors in exchange for donations are allowed	New government prefers tax incentives to direct funding of CSOs
Social enterprise movement has been playing a big role in social development	CSO acts as business but profit reinvested	Tax breaks for primary purpose trading	Highly enabling environment for SMEs in general is key to the success of the social enterprises

Social contracting

Historical-cultural context

In the UK there is a long tradition of fair and open procedures for contracting out public services for purposes of government efficiency. In principle, CSOs, the private (for-profit) sector and local government institutions are treated as actors with equal chances in public bids. Due to the boost in privatization during Thatcher, for-profit providers dominated the public services market for quite a long time. However, in the past 15 years, since the Compact was adopted, CSOs have been gaining a more prominent role in welfare service delivery, especially in the areas of housing, social services and education. This was assisted by capacity building programs of the Blair government aimed at voluntary organizations and charities, with the aim to become more professional to meet contracting requirements, and more sustainable to ensure long-term partnerships.

Country specific elements

The leading principle in contracting out social services in the UK has been the so-called “Best Value” principle. This was an important principle that is nowadays used by most public service tenderers. Traditionally in procurement price used to be the leading factor of selection. However, it has to be recognized that in most public services, especially the above mentioned, welfare services price alone cannot drive the competition; that could lead to a serious decrease in the quality of the service. Ensuring a certain quality is key in the case of social services, education and similar fields. The “Best Value” principle combines high service quality with reasonable cost in the evaluation of service tenders¹⁰⁸.

In the UK, there is some evidence that CSOs are providing generally higher quality services than other sectors, especially the government. The Audit Commission of the UK¹⁰⁹ has published a Report in 2007¹¹⁰ which contains some hard data regarding comparisons of nonprofit (voluntary), for-profit (private) and governmental (public) service providers in the area of social services. The Report found that “voluntary sector providers meet a greater proportion of the national minimum standards than in-house [i.e. public] or private sector providers”. Data is retrieved from the Commission for Social Care Inspection. It analyses seven different types of social care services for children, younger adults and older people (mostly residential/institutional care services) over the period 2003-2006. In six types of services, the voluntary sector providers have consistently outperformed the other two sectors over the four years in terms of the levels of meeting national standards. Only in the service area of residential special schools have the private sector providers achieved a slightly higher rate of compliance than the voluntary sector¹¹¹.

In addition, UK CSOs can bring additional resources for the municipalities. They are able to attract volunteers and also donations (to cover part of the costs or add additional value to the services provided). The above mentioned UK Report cites an example from Greater Nottingham, where a study found that for each 1 GBP the local council invested in the form of grant funding to local voluntary organizations, the voluntary sector was able to lever in approximately another

¹⁰⁸ Although it has by now been replaced with a newer, more complex performance measurement method, the Best Value remains a key principle for contracting out. See <http://www.idea.gov.uk/idk/core/page.do?pagelId=5184420>

¹⁰⁹ The Audit Commission is an independent body responsible for ensuring that public money is spent economically, efficiently and effectively, to achieve high-quality local services for the public.

¹¹⁰ Hearts and minds: commissioning from the voluntary sector. Audit Commission Public Services National Report, July 2007.

¹¹¹ Id. pp 19-20. It should be noted that the Audit Commission also observes: “the data available do not permit a robust assessment of value for money. For example, they do not reveal the cost of achieving a higher proportion of minimum standards, nor whether reaching a higher proportion of minimum standards actually lead to a better quality service for end users” (Although the latter is an implicit assumption).

6 GBP through mobilizing volunteers and community resources. In Newcastle, every 1 GBP given in grant aid brought in another 14 GBP from local voluntary organizations¹¹².

Role of CSOs

CSOs are seen as strategic partners in delivering social services, therefore the government has invested in their capacities to meet quality standards.

Examples, best practices

Apart from the best value principle, there are two good practices to be mentioned: full cost-recovery and user-focus. Both came as a result of strategic advocacy processes led by the CSO sector.

- *Full cost recovery* has been one of the Compact funding principles and means that government funders should finance not only direct costs of a service but also any indirect (overhead, administrative) costs associated with it that the CSOs incur as an organization. See more on this under *Chapter III, General findings: The importance of a strategic approach*.
- *User focus* is a principle that has been championed by UK CSOs as an alternative to government services in the 1980's, when service quality was largely measured by infrastructure (especially in institutional care) and evaluations by the caring professions (experts). CSOs argued that the most important factor is whether the users are satisfied with the service they receive; and that they should be involved in planning, designing and evaluating the services. The term «user» itself reflected a departure from the traditional term «client» or «patient», as it refers to the entitlement of the beneficiary to use the service rather than being subjected to it. As a result of a long advocacy process, by today user-focus is a mainstream principle in all government services and it lead to the redesign of the service models (including user-consultation, user-empowerment, user-led services and other similar methodologies in the development and management of services).

Observations

In the UK, the local municipality is encouraged through the performance evaluation of the government to contract out. Therefore incentives for contracting (and thus, effectiveness and efficiency) are built in to counter the natural institutional interests of keeping the services in-house. Unlike in most CEE countries, municipalities do not see CSOs as rivals – they have an interest in the good performance of CSOs. At the same time, CSOs have high quality professional and infrastructural capacity which is not entirely dependent on the funder. These two factors account for a relatively successful model of social contracting.

Private institutionalized giving

Historical-cultural context

Under common law, there is no separate legal form for a foundation. However, there are foundations in the UK, which can assume different legal forms; most often this will be a trust. A trust is an entity created to hold and manage assets for the benefit of others. The trust must pursue a charitable purpose and is governed by trustees. Trusts have a long history in England. In fact, the protection of private property dedicated for public purposes was the original goal of charity regulation in the 17th century.

Charitable trusts have been a key factor in the development of the voluntary sector as well as society as a whole. Many of them maintain hospitals, schools or museums. Others are essentially

¹¹² *Id.* p 24. The two above sections were taken from Nilda Bullain and Luben Panov: *Handbook on non-state social service delivery models*, ECNL and UNDP, 2011 (under publication).

grant-giving foundations that give grants to voluntary organizations and charities to support public benefit causes. Others are so-called Community Investment Finance Institutions, which lend money to businesses, social enterprises and individuals who struggle to get finance from mainstream banks and loan companies. They help deprived communities by offering loans and support at an affordable rate to people who cannot access credit elsewhere. They can also be run by Government.

A trust ordinarily is not a legal person. Under the Charities Act of 1993, however, the body of trustees can apply to the Charity Commission for a certificate of incorporation. An incorporated body of trustees is a legal person, but without the usual corporate limitation on liability; in other words, trustees are personally liable for the assets of the trust. Incorporation allows the trust to perform particular functions – hold property, enter into contracts, and sue and be sued – in its own name rather than in the names of trustees.

Charitable trusts are regulated by the Charity Commission. Due to the strict regulatory environment and the fact that trustees have personal liability, trusts are a well established sector and enjoy the support of the public.

Country specific elements

There are three main groups of charities that act as grant-makers in the UK¹¹³:

- Charitable trusts and foundations. Independent charitable trusts and foundations in the UK act in a variety of ways to support the voluntary and community sector. Grant-making is the predominant activity for most foundations. The majority of foundations in the UK do not engage in any operational activities, i.e. the provision of services or other direct support to beneficiaries.
- Community foundations. Community foundations are charitable trusts that support local community causes. Their role is to manage donor funds and build endowments as well as make grants to charities and community groups, linking local donors with local needs.
- Other charities. Some large operating charities, or operating fundraising charities (that is those that do provide direct services), also carry out grant-making. This type of grant-making often supports a charity's own programs and projects and/or provides specific funding for their field of interest (e.g., the British Heart Foundation and Oxfam).

The estimated total number of trusts and foundations in the UK is 8,800. The spending from trusts and grant-making charities is broadly comparable with central government spending (£2.5 billion) and nine times greater than the £ 0.3 billion of corporate cash donations¹¹⁴.

Role of CSOs

CSOs are usually recipients of grants from the trusts.

Examples, best practices

Increased accountability in safeguarding assets with a public benefit purpose is good practice. While the personal liability of the trustee is not feasible under continental law, it serves as an example for creating greater incentives for prudent directorship of the public benefit organization.

Observations

The UK has a very strong, large and independent grant-making sector. Trusts are extremely diverse – not only in the scale and number of grants made and the type of trust – but in their

¹¹³ Grant-making by UK trusts and charities, ACF and CAF, January 2007 http://www.acf.org.uk/uploadedFiles/Publications_and_resources/Publications/0416B_TrustAndFoundationBriefingPaper.pdf

¹¹⁴ Id.

age, their style of grant-making and in the areas they support¹¹⁵. This sector is a key reason why UK CSOs are able to develop institutionally and yet remain independent and thus become equal partners to the government.

Private corporate giving

Historical-cultural context

The concept of corporate social responsibility (CSR) goes back centuries in the UK, to the Victorian era and industrialization when the success of factory businesses across the country brought about masses of urbanized factory workers living in overcrowded slums. One of the earliest mentions of an “industrialist philanthropist” is the Quaker entrepreneur Cadbury, whose aim with a coffee and tea (and chocolate) factory was “a business with a conscience: Quakers believed in equality and social justice, and Cadbury hoped his products would prove an attractive alternative to alcohol, seen as the principle cause of poverty and deprivation among the working classes”¹¹⁶.

CSR got a new impetus in the early 1980’s when, as a result of a combined effect of Thatcherian privatization, global recession and the end of the manufacturing industry, Britain was faced with the unrest of socially excluded masses. A new movement among British businesses led to the formation of Business in the Community, a leading CSR membership organization until today. In 1985, the Prince of Wales became its president, and the following year, Thatcher attended the launch of the Per Cent Club, encouraging companies to donate at least half a per cent of pre-tax profits in cash or kind to Business in the Community and other projects.

“It’s worth noting, however, that this outpouring of generosity by business was driven as much by self-interest as philanthropy. (...) most of the big companies backing Business in the Community were cutting far more jobs than they were creating, and needed to show their remaining employees, trade unions and the communities (...) that they were doing something to help the victims. At another level, the prosperity of business was linked to the prosperity of society: right at the outset, David Sieff, a board member of Marks & Spencer and Business in the Community, remarked that the wealth of the high streets depended on the health of the backstreets, a catchphrase that was to become caring capitalism’s slogan.”¹¹⁷

In the mid-1990’s, came the new global push for social responsibility in protecting the environment and the future of the planet (an early representative of this trend has been the Body Shop). This trend over the past 15 years led to a shift in thinking about CSR among British (and multinational) companies from the focus on “caring” and charitable giving (corporate philanthropy) to a focus on their core business: to ensure that their supply, production and distribution lines, employee policies and operating practices are all “ethical” (respecting the environment, diversity, sustainability, etc.).

Country specific elements

A wealth of CSR and corporate philanthropy good practices are being practiced by all types of enterprises – from small to multinationals. According to the data, corporate philanthropy has been on a decline in the past decade (in line with the shift in the focus of CSR mentioned above). Although total charitable giving by the 500 biggest companies has grown in real terms over the past few years, it has tumbled by more than half as a percentage of pre-tax profits, according to

¹¹⁵ http://www.acf.org.uk/trustsandfoundations/?id=74#Grant-making_by_Uk_Trusts_and_Charities_a_briefing

¹¹⁶ Tomkins, Richard: Shifts in corporate philanthropy, in: Financial Times, January 17, 2009. <http://www.ft.com/cms/s/2/3a0856c6-e1d5-11dd-afa0-0000779fd2ac.html#ixzz1ITRCUAKO>

¹¹⁷ Id.

the Charities Aid Foundation – from 1.6 per cent in 2001/02 to just 0.7 per cent in 2005/06, the latest period for which figures are available. Indeed, the Per Cent Club closed in 2006¹¹⁸.

The majority of corporate community support comes from a small number of companies. The latest (7th) edition of *The Guide to UK Company Giving*, just published by the Directory of Social Change, reveals that of the 490 companies covered in the guide, a mere 50 accounted for over three-quarters of the total cash donations given in support of charitable causes. Of the £500 million donated in total in 2007/08, nearly 77% (£384 million) was accounted for by this small group¹¹⁹.

A specific feature to be mentioned is payroll giving. Although this is a benefit in the personal income tax, it should be mentioned under the title of corporate giving, as it needs the commitment from the company as an employer to make it available for its employees. Payroll giving means that for employees who sign up to the system the company will deduct and automatically transfer a specified amount of the employee's salary to a charity of their choice. This gift is fully tax deductible, i.e. there is a 20-40% saving on the donation for the donor.

Payroll giving is growing in the UK: it has increased from £37 million in 1999/2000, to over £106 million in 2009/2010. But there is still room for further growth: only 4% of UK employees participate in payroll giving schemes (for comparison, in the US, the employee participation rate is nearly 35%). Research shows that companies which offer payroll giving believe it improves the company image, enhances community involvement programs, and supports employee volunteering. 96% of companies feel that payroll giving is something a good employer should offer; and nearly all said they would like to increase participation levels in their organizations¹²⁰.

Role of CSOs

CSOs are actively seeking funding from companies. However, over the past 15 years they have been increasingly undertaking other roles as well: partnering with companies on CSR programs (e.g. "cause-related marketing"¹²¹), giving advice and training to companies on CSR (e.g. on workplace diversity or "greening the office"), and holding companies accountable for their practices (advocacy campaigns). One of the reasons companies have adopted ethical practices in the UK has been the ability of CSOs to mobilize public opinion against them, if they failed to do so (e.g. organizing consumer boycotts).

Examples, best practices

Incentivizing payroll giving (as a specific form of giving) is a good practice because it creates a joint incentive between employers, employees and charities. It encourages employees to organize and advocate for the introduction of this form of giving at their workplaces, and encourages companies to introduce it to improve their image. Often companies will match the amounts given by their employees which in turn can lead to a tax deduction for the company.

Observations

The historic and cultural conditions for the development of corporate philanthropy are unmatched in continental Europe, not to mention the CEE region. However, globalization and the increasingly unified European markets mean that the good CSR practices are spreading to

¹¹⁸ Id.

¹¹⁹ http://www.companygiving.org.uk/page.aspx?SP=CG_News

¹²⁰ <http://www.payrollgiving.co.uk/index.php?getID=4&getTitle=Employer>

¹²¹ This is when a company sells a product with the logo of a well-known CSO and transfers part of the proceeds to the CSO.

this region as well. While corporate philanthropy and cash-based giving is on decline, there is plenty of room for CSOs to engage with companies and for the government to provide innovative incentives for philanthropy.

Individual giving

Historical-cultural context

The UK is one of the countries with the highest levels of philanthropic giving in Europe and worldwide. It ranks 8th on the World Giving Index, with only Ireland, Switzerland and the Netherlands ranking higher among European countries¹²². This is important in understanding the strength that the UK voluntary sector derives from having a strong supporter base independent from government support.

The Gift-Aid is a specific form of tax benefit provided upon charitable donations. It does not necessarily mean a tax advantage for the donor, however, the charity can receive the tax benefit¹²³. If the donor claims Gift-Aid, the Treasury will match the donation with the proportionate amount of tax to be paid on the donation by transferring it to the charity. In essence, for every 1£ donated, the charity will receive an additional 25 pence from the Treasury. (In some ways it is similar to the percentage mechanism; however, unlike the percentage scheme, in this case the donor has to make a real gift to the charity.) The fact that giving remains high (between 54-58% of UK population give to charity every year), regardless of the fact that donors do not get a real tax benefit, illustrates the importance of the cultural rootedness of philanthropy.

Another element that is important to recognize is the strong charity regulation. Charities are registered and supervised by the Charity Commission, an independent regulatory body that is specialized in understanding, supporting and investigating charities. As a result of a long and consistent regulatory practice regarding charities, the public considers a charity as a reliable organization that is worth supporting. Therefore, the “charity” label became like a trademark that people can trust with their gifts.

Country specific elements

The crisis years (2008-2009) saw a decreasing trend in donations but a slight increase was reported already in 2010. Key findings of the most recent report on UK giving include¹²⁴:

- **Charitable giving remains widespread.** In 2009/10, 56% of adults living in households in the UK donated to charitable causes. The typical amounts given per donor per month in 2009/10 were £12, measured by the median, and £31 measured by the mean. Our best estimate of the total amount given to charity in 2009/10 by all such individuals is £10.6 billion, clearly a major contribution to the work of the voluntary sector. In addition, donations from individual legacies are estimated to provide at least a further £2 billion (the latest estimate, based on 2007/08 figures).
- **High-level donors have the greatest impact on the total amounts given.** The share of total donations coming from high-level donors in the survey (those making donations

¹²² The World Giving Index 2010, Charities Aid Foundation <http://www.cafonline.org/pdf/WorldGivingIndex28092010Print.pdf>

¹²³ Only higher rate taxpayers can claim a tax benefit, which will be the difference between the lower rate tax (20%) and the rate they are paying (40 or 50%). Therefore, they will be able to claim 20 or 30% of the donation in a tax deduction.

¹²⁴ UK Giving 2010. CAF and NCVO, December 2010 http://www.cafonline.org/pdf/UK%20Giving%202010_101210.pdf

of more than £100), has increased slightly, from 6% in 2005/06 to 8% in 2009/10. Furthermore, this does not take account of the very wealthy who give very large amounts (...). It is estimated (...) that very wealthy individuals gave 100 donations of £1 million or more (...), with a combined value of £1.0 billion.

- **If the recession hit giving, levels are recovering.** Over the last year the proportion of people giving increased slightly, after decreasing between 2007/08 and 2008/09 at the time of the recession. The typical (median) amount given also increased, from £10 in 2008/09 to £12 in 2009/10. The overall amount of £10.6 billion given to charity was an increase in real terms of £400 million compared to £10.2 billion in 2008/09 (once adjusted for inflation). However, the total amount given has not recovered to 2007/8 levels.
- **The patterns of who gives and how they give remained much the same as in previous years.** Women aged 45-64 continue to be the most likely group to give (68%) and young men aged 16-24 the least likely (31%). People in managerial and professional occupations are the most likely to give (69%) and they also give larger median amounts on average (£19). Giving in cash remains the most common method of donation, used by half of all donors (50%) in 2009/10. After increasing between 2005/06 and 2008/09, the proportion of donors using direct debit now remains fairly steady at 29%. Those giving larger amounts tend to use cheque/card and direct debit.
- **Use of the Gift Aid scheme appears to be leveling off.** Gift Aid was used by 40% of donors in 2009/10, a proportion similar to 2008/09. Before that there had been a gradual increase in Gift Aid usage. People who donate larger amounts are more likely to use Gift Aid; in 2009/10 Gift Aid was used by 73% of those giving higher-level donations (£100+) but only by 20% of those giving donations of £10 or less.

Role of CSOs

CSOs in the UK are playing a strong role in raising funds for causes. However, “voluntary organizations not only benefit from donations, they also perform a role in highlighting social needs to suppliers and potential suppliers of social finance”¹²⁵.

Examples, best practices

The creation of the charity sector is an important example that can be adapted in continental Europe through a properly designed public benefit legislation. The charity sector is only about a third of the whole voluntary (CSO) sector, but it is the most institutionalized and professional part of it, which is working hard to gain and maintain the trust and monetary support of people. The Charity Commission not only controls, but rather supports the sector in becoming more professional and deserving of the public trust¹²⁶.

At the more technical level, a good practice that can be shared is that the UK determines a certain level of benefits that the charity can give to donors “in exchange” or rather, as an appreciation of the donation. This is a helpful way of regulation to make a clear difference between donations and sponsorships. The table below illustrates the value limits of benefits for donations in order for the donation to qualify as Gift Aid.

Another good practice method is the *community investment tax relief*, which allows investors in the community development finance institutions (see above) to reclaim up to 25 per cent of their investment in tax relief over five years.

¹²⁵ The summary is taken from: UK Giving 2010, CAF and NCVO

¹²⁶ More recently, with budget restraints reaching also the Charity Commission, it is planning to focus more on its role as a regulator and less on the support functions it has been playing. However, by now there is a wider infrastructure available for the support of charities as well.

Benefit value limits for donations¹²⁷

Amount of donation	Benefit value limit
£0 - 100	25% of the donation
£101 – £1,000	£25
£1,001 – £10,000	5% of the donation
Above £10,000	£2,500 (maximum) ¹²⁸

Observations

While the new government is cutting back on direct government funding for CSOs, it is increasing the available types and amounts of tax incentives for charitable giving. According to news on the latest Budget of the UK, George Osborne, the Chancellor of the Exchequer (Minister of Finance) has “unveiled a raft of measures aimed at helping voluntary sector organizations in what he claimed were the “most radical and most generous reforms to charitable giving for more than 20 years”¹²⁹.

Reforms will enable charities to claim Gift Aid on donations totaling up to £5,000 per charity without any paperwork, implementing an *online claim system* for the tax relief by 2013 and a 10 per cent tax break on inheritance tax for people whose wills include a 10 per cent legacy to charity. Osborne said he wanted to make “giving 10 per cent of your legacy to charity the new norm in our country”. They will also retain community investment tax relief, which was recommended for removal.

Furthermore, in December 2010, the Cabinet published the so-called Giving Green Paper, which sets out “the Government’s initial ideas for building a stronger culture of giving time and money to start a national debate on our society’s attitude to giving”¹³⁰.

These policies demonstrate that while the Conservative government prefers different means than Labour to support charities (indirect rather than direct incentives), it places an equally high emphasis on their role in the well-being of society and the development of the country. The ideas relating to indirect incentives may be of interest to CEE governments that are cautious to commit direct funding to CSOs.

Earned income**Historical-cultural context**

Charity law allows charities to exercise a trade in the course of actually carrying out a primary purpose of the charity. This is commonly known as “primary purpose trading”. Examples include, e.g., the provision of educational services by a charitable school or college in return for course fees; the holding of an art exhibition by a charitable art gallery or museum in return for admission fees; or the sale of tickets for a theatrical production staged by a theatre charity¹³¹.

However, if fundraising is the main or sole aim of trading activities (for example the selling of postcards by a child-welfare charity) this is called “non-primary purpose trading”. Charity law does not permit charities to directly carry out non-primary purpose trading where a significant risk

¹²⁷ http://www.hmrc.gov.uk/charities/gift_aid/basics.htm

¹²⁸ This is to be raised to £5,000 as of 2011.

¹²⁹ Ricketts, Andy: Gift Aid reform and tax relief figure prominently in Budget, In: Third Sector Online, 23 March 2011. <http://www.thirdsector.co.uk/news/Article/1061503/Gift-Aid-reform-tax-relief-figure-prominently-Budget/>

¹³⁰ <http://www.cabinetoffice.gov.uk/resource-library/giving-green-paper>

¹³¹ USIG country note on England <http://www.usig.org/countryinfo/england.asp>

to their assets would be involved. There are special tax rules to help charities that wish to carry out small amounts of non-primary purpose trading, when all the profits from the trading are to be used by the charity. The maximum permitted non-primary purpose trading turnover for a given tax year is £5,000 for a charity whose total income is under £20,000; 25% of the total income of a charity whose annual revenues are between £20,000 to £200,000; and £50,000 for a charity with an annual total income of over £200,000¹³².

Commercial/economic activities other than the exceptions set out above cannot be conducted directly by the charity; however, any commercial/economic activities can be conducted through a for-profit subsidiary with the profits then transferred tax-free to the charity. Many charities now have trading subsidiaries for fundraising purposes.

Country specific elements

Social enterprises¹³³ are a specific form of businesses trading for social and environmental purposes that took hold in the UK. The pioneers of social enterprise can be traced as far back as to the 1840's, for example in Rochdale, where a workers' co-operative was set up to provide high quality affordable food in response to factory conditions that were considered to be exploitative. A resurgence of social enterprise started in the late 1990's with the coming together of different traditions, including co-operatives, community enterprises, enterprising voluntary organizations and other forms of social business. Social enterprises are distinctive because their social and/or environmental purpose is absolutely central to what they do – their profits are reinvested to sustain and further their mission for positive change. Famous social enterprises from the UK include *The Big Issue*, a newspaper distributed by the homeless, or Jamie Oliver's restaurant *Fifteen*.

Government data (the Annual Survey of Small Businesses UK 2005-2007) estimates that there are approximately 62,000 social enterprises in the UK contributing at least £24bn to the economy. Social enterprises are estimated to employ 800,000 people. The State of Social Enterprise Survey released November 2009 found that despite the recession, social enterprises are twice as confident of future growth as typical small to medium enterprises (SMEs), with 48% of social enterprises responding positively as opposed to just 24% of SMEs. Additionally, since the economic downturn began, 56% have increased their turnover from the previous year whilst less than 20% have seen it go down. This is a considerably better performance than SMEs in the UK, where only 28% increased their turnover and 43% saw it go down.

Social enterprises are active in a wide range of industries. According to a DTI survey in 2005, health and social care services are the largest category of trading activity for social enterprises as they were the principal trading income source for 33% of respondents, followed by education at 15%. Social enterprises are also extremely active in the energy, transport and recycling markets. However a social enterprise can be successful in any market – from an employee-owned bicycle shop to an IT consultancy firm hiring people with Asperger's syndrome.

Social enterprises can take different legal forms, the most often used is the company limited by guarantee (a nonprofit company form); as well as membership societies or the recently introduced community interest company. Since tax considerations are important, many of them assume also a charitable status; however, this brings with it a layer of regulations that do not fit

¹³² Id.

¹³³ This section is written based on information on the web page of the Social Enterprise Coalition UK. <http://www.socialenterprise.org.uk/pages/frequently-asked-questions.html>

all types of social enterprises. In February 2010 the Social Enterprise Mark was launched as the brand for social enterprises. It requires a business to meet six defined criteria in order to qualify to receive the Mark¹³⁴.

Role of CSOs

CSOs in the UK are often entrepreneurial and engage in trading activities to achieve their charitable causes. In these cases they are essentially like for-profit businesses, showing great care for their multiple stakeholders (their customers, the community and the beneficiaries of their cause).

Examples, best practices

Encouraging social enterprises is a good practice in the UK. In terms of charity regulation, the tax free pursuit of “primary purpose trading” is a clear incentive that can lead to the emergence and spreading of socially oriented businesses that create employment, provide social and health care, promote education, develop communities and contribute to the social and economic progress in the country.

Observations

In the UK, there is a generally favorable legal environment for doing business, including starting and running a small or medium enterprise. It ranked 4th out of 183 countries of the world in the *Ease of Doing Business* survey of the World Bank in both 2010 and 2011¹³⁵. This demonstrates that an enabling legal environment is needed not just in terms of CSO regulation but also (most of all) in terms of small enterprises in order to promote a culture of social entrepreneurship.

¹³⁴ See more at <http://www.socialenterprisemark.org.uk>

¹³⁵ <http://www.doingbusiness.org/data/exploreconomies/united-kingdom/>

IV.5. CZECH REPUBLIC

BASIC DATA ON THE CZECH NONPROFIT SECTOR

The Czech Republic's nonprofit sector consists of civic associations, foundations, endowment funds, public benefit institutions, church-related legal entities, and organizational units of civic associations, such as trade associations. At the end of September 2009, there were 105,758 nonprofit organizations operating in the Czech Republic. The most widespread types of nonprofit organizations are civic associations, which number 68,057.

The only information that is available to date on the overall income and its structure is the estimate made for the Johns Hopkins NPO project. According to Frič and Goulli (2001) public funding made up 39.4% of the Czech nonprofit sector's cash revenue, while fees provided 46.6% and private philanthropy 14.0%. If churches and religious organizations were included and the value of volunteer labor added, the estimates would change considerably: public funding would then account for 31.8%, fees for 36.7% and philanthropy for 31.4%. However, these figures are more than a decade old.

The tradition of charity and voluntary association in "The Lands of the Czech Crown" is rich and old, dating back to the beginning of the Czech state in the 9th and 10th centuries. Its long evolution culminated in the latter half of the 19th century – by the end of the 19th century the Czech Lands had the largest number of charitable and voluntary organizations in the Austro-Hungarian Empire – and in the twenty years of the first Czechoslovak Republic in the 1920's and 1930's. Its evolution was then disrupted by fifty years of totalitarian rule (1939-1989).

In spite of harsh repression, some independent citizen initiative as well as opposition to the communist regime did exist, but remained fragmented and weak. Both the early scattered opposition of the 1950's and the mightier reform movement of the Prague Spring in the 1960's were put down by force, and so after 1968 occupation of the country by the Soviet Union, cultural activists and civic leaders had to find new ways of independent existence and opposition to the regime. They found it in the parallel polis of independent cultural initiatives, samizdat publishing, underground church and underground university and in the defense of human and civil rights initiated and inspired by Charter 77.

Government Financing

Historical-cultural context

The communist regime had a huge impact on civil society in the Czech Republic, which persists to this day. This inheritance manifests itself, for instance, in the prominent role of the state, the paternalistic attitudes of the public, in the absence of a strong middle class, in the suspended traditions of giving and volunteering, etc. A high level of mistrust in other people and in democratic institutions characterizes the Czech Republic, like the other post-communist countries, inhibiting the development of a strong civil society¹³⁶.

In the 1990's Czech conceptions of civil society were influenced by a polemical debate between two of the leading political personalities of the time, Václav Havel (the then president) and Václav Klaus (the then prime minister). The debate reflected the ambivalent relations between the state and CSO sector. A key question was that of the mandate and legitimacy of CSOs to protect public interest and to participate in public policy (in contrast to elected political representatives). Havel believed that CSOs play a central role in society and that they should be compensated for the losses suffered

¹³⁶ Vajdova, Teresa: An assessment of Czech civil society in 2004: after fifteen years of development. Civicus Civil Society Index Report for the Czech Republic

http://www.civicus.org/media/CSI_CzechRep_Country_Report.pdf

from the dictatorships in the same way as other segments of society (i.e. citizens, companies and the church). His initiative led to the adoption of the support of foundations (see below). Klaus, on the other hand, thought that CSOs are no more than “hobby” organizations and the state should not interfere with their affairs, negatively (oppressing them) or positively (supporting them). As a result of this debate, the Czech Republic did not have an overall policy towards the development of the CSO sector and followed separate routes for CSO development than the other Visegrad countries. E.g. it introduced a special scheme for creating domestic foundations but did not adopt a percentage law. Government funding as such has not been properly regulated until this day.

Country specific elements

Presently, CSOs receive public resources from the State budget and from budgets of all public administration offices (regional and communal), which amounted to a total of US\$ 264 million in 2007. 70% of this was provided by the Ministry of Education and Sports, and the Ministry of Labor and Social Affairs. Nearly half of this state support was received by CSOs seated in Prague. Furthermore, the Czech Republic provided support to civil society from specially dedicated funds (see below). In addition to the State funds, CSOs also received funding from 14 administrative regions and from more than 6,000 municipalities. The overall total of state support for CSOs amounted to US\$ 446.4 million in 2007¹³⁷.

The Czech Republic has uniquely introduced targeted funding to support civil society not only directly from the State budget but also from specially dedicated funds from the EU and other foreign support schemes. One example is the EU Transition Facility, which was an instrument for new member states to help the transition period after becoming a member of the EU¹³⁸. While other countries used this mainly to build capacity for the public administration, the Czech Republic dedicated a part of the funds to support the development of the CSO sector. Unlike other countries, which contracted the grant management to a state supervised or private agency, Czechs contracted with a leading grant-making foundation for this purpose (Civil Society Development Foundation, NROS).

NROS has also been managing the Czech NGO Fund (Block Grant for NGOs) that supports Czech CSOs under the Financial Mechanisms of European Economic Area and Norway, with over 10 million EUR¹³⁹. While the Norway mechanism supported CSOs also in other new EU member states, this was the first program in the region that provided institutional support for the development of CSOs and the CSO sector.

CSO role

CSOs are seen as both recipients and partners in government funding.

Examples, best practices

The Czech government used EU funds to foster the development of civil society. To achieve this purpose, it contracted an independent domestic grant-giving foundation for the management of the funds. This was very beneficial for the effectiveness of the program, as NROS had experience of providing small grants to CSOs, which most government bureaucracies always struggle with. This was a good way to find a balance between the need to have a strict reporting and accounting framework for the EU and the Government, and the need to have smaller, flexible and needs-based projects for the CSOs. CSOs did not have to undertake unreasonably big administrative burdens, yet the reporting and accounting requirements of public budget spending were met by NROS.

¹³⁷ Pajas, Petr Jan: *Civil Society in the Czech Republic*, 2011. Data taken from: *Analysis of Financing CSOs from Public Resources in 2007* (Governmental Council of Non-Government Nonprofit Organizations, Prague, 2008). In: Yuwen, Li (Ed): *NGOs in China and Europe*, Ashgate, 2011. Page 266.

¹³⁸ The Transition Facility was created by the European Commission for the accession countries as a continuation of assistance in areas where administrative and institutional capacity is not sufficient yet compared to the current member states. It also focused on areas that could not be financed from the Structural Funds. The program was scheduled for the period 2004-2006, but the drawdown of funds for various projects running until 2009.

¹³⁹ See www.blokovygrant.cz

		Legal/Fiscal Framework	Historic/ cultural conditions
Interaction with the state	Funding mechanisms	Neutral	Debate on the role of civil society and its relations to the state between Havel and Klaus - held back development of state support schemes
	Social contracting	Neutral/Supportive	CSOs are involved in social services provision since 1990's. Special legal form created for public benefit service provision
	Alternative financing	Exemplary	Government endowment of private grant-making foundations using 1% of privatization income: a unique alternative financing case. See below
Interaction with the private sector	Private giving through institutionalized mechanism	Exemplary	In 1991 a law was adopted that dedicated 1% of the income of voucher privatization in the Czech Republic for the strengthening of the CSO sector (as a form of restitution for civil society)
	Private-corporate giving	Neutral/hindering	Due to lengthy process of the voucher privatization, company giving took on later than in other NMS
	Individual giving	Neutral/supportive	Giving was not typical in the 1990's but started to increase after the 2002 floods. CSOs built on this occasion to raise their profiles
Earned income	Income generation	Supportive	Generally high levels of membership in associations. Asking for fees in CSO service provision is customary, they are not expected to provide everything for free

Country specific elements	Role of CSOs	Examples/Best Practices	Observations
Widely spread state budget support and local support to CSOs without an overarching policy or structure	Recipients of state funding	Use of EU facilities to support CSO development; contracting with independent grantmaker to manage grants	No data on the sector to support effective policy making. State builds on existing capacity for sector development
Contracting principle; competition for licensing of services; in-kind social benefits including recently introduced vouchers	Service providers, dominant in certain fields (personalized care)	Voucher system can have great potential, if successfully introduced in practice. Good practice, as increases service users' choice and voice	CSOs are part of the picture but without a system of support and development for long-term partnership in service provision
Foundation Investment Fund distributed the assets from privatization to over 200 foundations in 1999-2001. Foundations are strictly regulated and have to report annually on their spending	Foundations are long term strategic partners to the state	This scheme resulted in a strong domestic foundation sector that can help ensure sustainability of CSOs when foreign donors leave	CSO sector was supported by the public and by policy makers as a key part of the democratic transition
Tax deduction available but minimal. Deductions are available not only for donations to CSOs but for individuals as well	Recipients of company donations	Czech Donors Forum is a good example of sharing good practices with company donors	No special features or innovations in this field
Relatively high level of giving (not just to CSOs) and volunteering among the population. Fundraising permits required for public collections	Recipients of charitable gifts	CSOs used the flood rescue efforts in a creative and strategic way to raise funds	Czechs are active also in public life (petitions, demonstrations) so can be mobilized for supporting causes that matter to them also financially
Detailed regulation of the ability of various legal forms to engage in economic activities. Partial tax exemption for purpose-related business income	CSOs: service providers; foundations: investors	CSOs excel in certain types of services and are recognized through payments from government and service users as well	High levels of membership and volunteering signal strong community links of CSOs and increase chances for sustainability

Observations

Experts examining the Czech CSO sector have difficulties in making a sound analysis as there key data are missing, and the data available are unreliable, often contradicting or not representative¹⁴⁰. This is a reflection on the lack of a coherent state policy towards the sector, as such data would be essential to devise an effective strategy for civil society development.

One feature that seems outstanding from the available information is that in the Czech model, the government often builds on already existing capacity of suppliers in the country for managing government funds. This is exemplified not only by the NROS example, but also e.g. by the establishment of the Czech Development Agency, that was inducted by the Ministry of Foreign Affairs to develop policy and manage programs in development cooperation of the Czech Republic. Instead of creating a new institution, it took up the activities of the already existing think-tank, the Czech Development Center. This approach also means that the Czech Government – unlike some of its neighbors in the region – considers the effectiveness of independent or semi-independent (“arms-length”) agencies in distributing state funding.

Social contracting

Historical-cultural context

CSOs have been participating in service provision since the political changes in the 1990's. This was partly inspired by the post-independence economic reforms where privatization was a dominant feature not only in terms of state assets (as in most other countries), but also in terms of public services. The approach was reflected also in the legislation: the Czech Republic was the first in the region to create a special form for the provision of public services, namely the public benefit corporation (PBC). This is a non-membership, nonprofit legal person whose main function is to conduct social, educational and other “generally beneficial services” to the public on equal terms and conditions (which, on the other hand, endowed foundations cannot directly undertake). PBC's were originally created to enable the privatization of state entities providing public benefit services.

In practice, however, PBC's commonly have been used as an alternate legal form for those foundations created before 1998 that could not meet the criteria for establishing a foundation under the new Law on Foundations (see below). Other organizations, including theatres, hospitals, homes for the elderly, drug rehabilitation clinics, and other kinds of not-for-profit establishments providing community services, became PBC's after the enactment of the Law on PBC's¹⁴¹. A more structured and fuller participation of CSOs in service provision was hampered by the competing policy views on the role of CSOs vis-a-vis the state (as noted above).

Country specific elements

The overall system of social service provision in the Czech Republic is based on the contracting principle. Social service providers compete to receive a license in order to be able to register and run the services. Licenses for concrete types of services are issued by regional authorities based on an assessment of whether the provider is capable of meeting all the conditions prescribed by the Law¹⁴². Conditions include service quality standards and are regularly inspected. A fundamental measure of the quality of social services is the compliance with human rights when providing

¹⁴⁰ http://www.e-cvns.cz/soubory/Hladka_paper.pdf Hladká is listing the two credible studies used by most researchers analyzing the Czech sector, one from 1995, the second from 2001, revised in 2004. Specific cross-sectoral data are hard to collect even for institutions focusing on the analysis of the sector.

¹⁴¹ USIG Czech Republic Country Information <http://www.usig.org/countryinfo/czechrepublic.asp>

¹⁴² In March 2006 Parliament approved a set of three new acts related to social benefits with the date of implementation on 1st of January 2007: Act on Assistance in Material Need, Act on Living and Existence Minimum, Act on Social Services.

social services (a progressive approach compared to many other countries in the region). The principle of competitiveness is therefore included in the social contracting scheme, which in theory renders the provision of social services more effective. State licensed CSOs, private firms and even individuals may become service providers.

Besides annually revisited¹⁴³ priorities in social contracting, innovative projects beyond these priorities are also funded, if the provider is able to show the added value of the innovation.

As a specific feature of the Czech social system, Act No. 111/2006 on Assistance in Material Need also enables the provision of social allowances in kind. The provision in kind should be maintained either in the form of *vouchers (tokens)* which are intended for buying basic food, clothes or in the form of special credit cards scheme. The aim is a closer connection between the labor market and social assistance benefit system. At present, in some Czech municipalities and city districts there are pilot projects in progress with this scheme of social benefits provision¹⁴⁴.

CSO role

Based on available information it can be drawn that NGOs are definitely accepted as social service providers. The decentralization of services is not only financial but relates to the transfer of responsibilities and possibilities for control. The process of decentralization is directed towards the local authorities, and then from local authorities to contracting services out to independent providers. Although territorial self-governments are still the majority providers of social services, CSOs play a dominant role in specific types of services such as social counseling or social prevention¹⁴⁵.

Examples, best practices

The voucher system which is included in the law but not applied widely yet, can be considered a good practice. In this system, the government distributes the vouchers to the service users, who will choose the provider (among those licensed), and the government will reimburse the cost of the services to the provider based on the actual usage. This system provides a choice to the service users, enables them to provide direct feedback on the services, and encourages competition among the providers. There are also counter-arguments, especially related to the fact that service users are often under-informed and may make the wrong choices (from a professional point of view). In the Czech Republic, it is early to see any serious effects of this tool as it has only been launched in very limited ways (It is planned in some districts of Prague with a more restrictive character, e.g., restricted use of social welfare for alcohol, etc.).

Observations

Overall, the Czech system with the contracting principle linked to a transparent and relevant accreditation system of the social services providers represents a progressive and user centered, decentralized approach, offering room for qualitative improvements.

CSOs are involved in the provision of social services but – in contrast to the UK or Germany – there is no general scheme that would assist them to become sustainable and reliable partners for the central and local government in ensuring the welfare services for the population. The voucher system may be beneficial for CSOs, if they are able to prove that their services are in high demand among the beneficiaries.

¹⁴³ The annual revisits are conducted more as an evaluation exercises to reflect on progress and introducing technical interventions rather than changing the course or strategy every year. Based on experience, the priorities are rather stabile, leaving enough space for creating longer term strategies in line with state preferences by services providers.

¹⁴⁴ Provazníková, Romana: An alternative provision of public services – the use of vouchers. University of Pardubice, Economic Faculty, 2007

http://dspace.upce.cz/bitstream/10195/35612/1/ProvaznikovaR_AnAlternativeProvision_SP_FES_2007.pdf

¹⁴⁵ BCNL: Contracting of Social Services between the State and the NGOs in England, Germany, Poland, Hungary, the Czech Republic and the practices in Bulgaria. Sofia, 2004.

Alternative Financing/Institutional private giving¹⁴⁶

In the Czech Republic, on the initiative of Vaclav Havel, the first Parliament of the new Republic adopted a provision in the law on privatization according to which 1% of the total privatization income of the country shall go towards the support of the Czech nonprofit sector. This was justified by the fact that after 1989 all citizens, churches and private entities received some kind of restitution (compensation for assets that were nationalized by the socialist government) except CSOs, which were, for the most part, newly formed.

It took almost a decade to agree on the exact form of the support, during which the privatization income was accumulated in a separate account. In 1998 the Parliament adopted a new law in which the system was laid out: foundations in the Czech Republic are required to have a certain level of endowment, cannot engage in economic activities and are subject to a set of strict transparency and accountability rules. These foundations were eligible to apply for the privatization funds, which provided them with endowments, which in turn allowed the foundations to support CSOs in their respective geographic and thematic fields on an ongoing basis.

With this solution the state played an important catalyzing role in the development of civil society through a one-time investment. Today there are around 300 indigenous grant-making foundations in the Czech Republic, making it the strongest foundation sector in CEE, and thus, relieving the burden of the government to finance small community organizations, startups, innovative pilot projects and other high-risk or economically not feasible philanthropic projects.

Country specific elements

The Foundation Investment Fund (NIF) was established in 1991 from the allocated 1% of shares from the second wave of coupon privatization as an asset of the fund. It has managed these assets that were dedicated to the nonprofit sector. NIF was designed to strengthen the nonprofit sector by ensuring the support of community projects, non-profit organizations. It has played an important role in the formation of a strong endowment base for the Czech CSO sector, and currently constitutes the majority of registered endowments of Czech foundations.

The tender for the breakdown of the contribution from the Foundation Investment Fund took place in two stages. In Stage I (1999), a total of 500 million Czech crowns (CZK) were divided into 39 foundations in seven program areas. In Stage II (2001) a total of 64 foundations were distributed 849.3 million crowns, and share future revenues from the sale of shares in the NIF portfolio.

Foundations who benefited from this arrangement are strictly regulated. They are required to distribute annual income (if any) and use the proceeds for the calendar year (real income) by the end of next year. There are certain rules as to how the income can be used (e.g., according to its purpose and through open grant competition). However, the Foundation should strive to preserve the real value of the endowed assets. It can use up to 20% of the income for its own administration or to increase/preserve the assets, while 80% has to be used for grant support. Investment policies are prescribed to the Foundations and they have to report annually on the incomes from investments and the use of the income for grants.

In exchange, Foundations enjoy certain benefits, e.g., tax free investment income and tax exemption for yields resulting from economic use of a property that is part of the protected endowment of a foundation.

¹⁴⁶ The Czech Foundation sector is analyzed as an example under both of these categories as the form of financing the foundations was an innovative and unique method.

Furthermore, foundations have pooled their assets and contracted with an investment company that worked out a specific portfolio that complies with the legal requirements and aims to achieve the highest yields within the limitations on risk-taking that the law and good practice require.

CSO role

Foundations that were recipients of the state funds were seen as long-term strategic partners of the government to provide sustainable support for communities and CSOs in the Czech Republic.

Examples, best practices

The concept of endowing private local grant-making foundations – with the appropriate regulatory environment – is itself a best practice. Due to the fact that the Foundation Investment Fund contributed largely to the stabilization of hundreds of local and national CSOs, by endowing them, the Czech donor sector is vivid and diverse, supporting wide range of activities in the country. This presents a good model for the survival of CSOs without foreign funding while avoiding dependence on the government.

Observations

A unique example in Europe (and even globally), in which the state not only offers tax credits or annual support but practically contributes to the endowment of independent grant-making institutions. When this idea was raised in Hungary – with the aim to follow the Czech example, – Hungarian CSOs as well as the general public rejected it out of mistrust towards the potential recipient foundation (they were not convinced that such endowed foundations would spend the funds in their support). In the Czech Republic, CSOs and foundations were seen in a more positive light and the system was seen as part of the democratic transition process, so it did not meet a negative public opinion.

The comparatively high number of registered active CSOs within the country couldn't exist without the large number of donors – and the decentralized principle of funding – which shows the practical relevance of the theory of a large one-time investment that pays off.

Since the institutionalized private donor community is rather big compared to the other NMS's, there is relevant experience with professional grant-making to share and learn from each other. Due to the diversity of funding models, these grant-makers also influence state and corporate grant-making practices.

Corporate giving

Cultural-historical context

Corporate charitable giving as well as various forms of corporate engagement with the society has strong historical roots in the Czech Republic. Due to the lengthy voucher privatization period, the corporate engagement was developing slowly after the changes in 1989 but nowadays it is comparable or in some aspects more developed than in other NMS's. The large number of endowed foundations made an influence on changing attitudes of Czech firms for establishing more and more charitable mechanisms.

Country specific elements

According to taxation laws, subsidies, grants, and donations for NGOs are tax-deductible, and individuals and companies may deduct donations from their tax base. The current maximum allowed deduction (5% of taxable income for legal entities), however, is inadequate to motivate

potential donors. In 2009, the situation worsened when the tax rate was lowered; with a smaller tax bill, individuals and companies were less motivated to offset their tax liabilities through charitable donations. The tax environment in the Czech Republic is further complicated by inconsistent interpretations of the tax law. For example, a lawyer, an economist, an accountant and a financial office may all interpret it differently¹⁴⁷.

The deductibility of a donation under Czech law is a function of the activity rather than the form of the recipient organization. In order to be deductible, a donation must be made for “financing science and learning, research and development, culture, schools, police, fire squads, support and protection of young people, protection of animals and their health, social and health care, ecology, humanitarian and charity purposes, religious purposes for registered churches and religious communities, and sports, as well as for supporting political parties in their activities”. Deductible donations can also be made to individuals under certain conditions (e.g. to support their education, to disabled people, to victims of a natural disaster, etc.). In addition, a donor may receive a deduction for a donation to any legal entity that properly applied for and carried out a public collection under the Public Collections Law (i.e. fundraising)¹⁴⁸.

CSO role

Recipient of funding from companies. Other roles (adviser, strategic partner etc.) are not typical as yet.

Examples, best practices

An interesting example of good practice is the Czech Donors Forum. This is a membership organization of donors that also exists in other countries. However, due to the strong foundation sector in the Czech Republic, the Czech Donors Forum has been building a vast array of practical knowledge, learning points and good practices in CSO grant-making that are very useful also for companies. Therefore, companies in the Czech Republic have a specialized resource and advocacy organization that they can rely on in order to be able to donate more efficiently, in a simple and cost-effective way.

Observations

Company giving and CSR in the Czech Republic are similar to those in other NMS's, without any specific features or innovations.

Individual giving

Historical-cultural context

Most of the CSO sector has always had income from services and membership fees. In part due to this, also due to the greater availability of foundation grants, and finally because of the general attitude of the socialist past, individual giving has not been particularly strong in the Czech Republic. This was especially true in the first decade of the transition. However, there was an increasing movement among leading CSOs to mobilize public support, and the catastrophic floods of 2002 provided a sad but opportune occasion to turn the public sentiment on philanthropic giving. Fundraising initiatives to help flood victims produced outstanding results and provided a good basis for CSOs to carry on developing a broader pool of supporters for their “ordinary” work. The image of Czech CSOs was also strengthened during the flood rescue efforts as they acted quickly and professionally, often more effectively than the state agencies.

¹⁴⁷ USAID Sustainability Index 2010

¹⁴⁸ USIG Czech Republic country information.

Country specific elements

According to the Civicus CSI Index, 47% of people have donated either money or a gift to a CSO in 2004. Over the previous 4 years there was a slight increase of 4% in charitable giving in the Czech Republic. The survey Civil Society 2004 reveals that the total value of material or financial donations last year did not exceed CZK 700 for two thirds of citizens making donations. The average gift per citizen in 2004 was CZK 1,161. With the average net income per annum in 2001 of CZK 83,000 this amounts to 1.4% of a person's annual income¹⁴⁹.

The largest proportion of individual donors is found among people with university education (64% donated in the last year). Entrepreneurs, people with incomes over 15,000 CZK per month, people from the higher status group and believers belong to groups who give to charity significantly more often than others. Czech citizens most frequently donate to causes related to children (49%), physically handicapped people (35%) and people stricken by a natural catastrophe (24%). These main target groups remain the same as in 2000¹⁵⁰.

The survey also showed that 32% of citizens of the Czech Republic did voluntary work during the last year. In light of the CSI's assessment criteria this is a minority, but when compared to Poland, the percentage of citizens volunteering at least once in the last year is approximately twice as high in the Czech Republic than in Poland. Based on CSI data, compared to Poles, Czechs are also more likely to donate to CSOs. These differences may have to do with the different role of the Church in the civil society: Church plays a major role in Poland while the Czech Republic is one of the most atheistic countries in the world with 59% of non-believers (Czech Statistical Office 2004). Church itself was not included among CSOs in the CSI project¹⁵¹.

As for the legal framework, CSOs aiming to conduct public fundraising activities need to register their campaign under Act No. 117/2001 on Public Collections ("Public Collections Law"). Registration and permit for the collection are required not only from CSOs but anyone who wants to run such activity (e.g. a parent who wants to collect money for her sick child). Individuals may deduct donations to qualifying NGOs up to 10 percent of the person's taxable income. However, to qualify for the deduction, the individual must donate at least 2 percent of his/her taxable income or CZK 1,000¹⁵².

CSO role

CSOs are recipients of donations. The culture of giving is still very much of a charitable (rather than philanthropic) nature in the Czech Republic.

Examples, best practices

CSOs have used the occasion of the natural catastrophe in a creative and strategic way to build interest in regular giving.

Observations

Czech people have a strong inclination to express their opinion and make their voice heard. This is also visible from the CSI index: close to 50% of Czechs have engaged in some kind of citizen advocacy activity in the past five years (some 12% of the Czech population has written at least one letter to a newspaper, around 14% have participated on a demonstration, and 43% have

¹⁴⁹ Vajdova, Teresa: An assessment of Czech civil society in 2004: after fifteen years of development. Civicus Civil Society Index Report for the Czech Republic

http://www.civicus.org/media/CSI_CzechRep_Country_Report.pdf pp. 30-31

¹⁵⁰ Id. pp. 30-31.

¹⁵¹ Id. p. 30.

¹⁵² USIG Czech Republic Country Information.

signed a petition). This would indicate that, if asked effectively, they would be willing to donate as well. Philanthropic giving is another way of expressing their opinion on what should change in their country and their communities.

Income generation

Historical-cultural context

Although there is no recent data available on the incomes of CSOs from economic activities, due to their role in service provision it can be assumed that the majority of income sources of the Czech CSOs is still income from statutory and non-statutory services.

The activity of citizens is high in Czech Republic (see below), for this reason the membership fees are likely to represent a relevant source of income at least for the major associations. This tendency has been improving except the trade union sector, where the decline has been almost constant over the last 20 years¹⁵³.

The CSI survey showed that 47% of the Czech population are members of at least one CSO, representing a significant increase from 2000 (29%). 23% of citizens are members of more than one organization, which means that almost half of the members of CSOs belong to more than one organization. The largest membership is found in sport organizations (16%) and trade unions (13%), followed by organizations of gardeners and growers (6%), voluntary fire brigades (6%), faith-based organizations (6%) and fishermen organizations (5%)¹⁵⁴.

Country specific elements¹⁵⁵

An association may not be established for the primary purpose of carrying out economic activities. Foundations and funds are prohibited from engaging in economic activities directly or through other entities except for leasing real property in their endowment, and organizing lotteries, raffles, public collections, and cultural, social, sporting, and educational events.

Foundations (but not funds) are allowed to hold up to 20 percent of the shares of a joint stock company and invest up to 20 percent of their property remaining after subtracting the value of their endowment in stocks of shareholding companies traded on regulated stock markets. (Strict rules govern the use of the endowment on the capital market.)

PBC's may engage in so-called "complementary operations" (for example, economic activities) provided that these do not jeopardize the quality, scope, and availability of the organization's public benefit services. PBC's may establish another juridical person but are not allowed to take part in the entrepreneurial activities of other juridical persons. Any profit earned from economic activities must be used for a PBC's development.

Income from profit-yielding economic activities that is related to the statutory purposes of a CSO is subject to a reduced tax. All related income is fully exempt from income tax up to CZK 300,000 (approximately USD 17,250). Total revenues (i.e., income minus related expenses) at the end of fiscal year over this amount are reduced before taxation by 30% or CZK 1,000,000 (approximately USD 57,500), whichever is less, provided that the proceeds are used for statutory public benefit activities within three years of accrual and other conditions are met.

CSO role

In relation to income generation, CSOs are mainly service providers. In addition, foundations are seen as investors in capital markets.

¹⁵³ Martin Myant, Trade Unions in the Czech republic, 2010.

¹⁵⁴ Vajdova, Teresa: An assessment of Czech civil society in 2004: after fifteen years of development. Civicus Civil Society Index Report for the Czech Republic
http://www.civicus.org/media/CSI_CzechRep_Country_Report.pdf p.30-31.

¹⁵⁵ Information in this section is taken from the USIG Country Information on the Czech Republic.

Examples, best practices

In certain fields of social assistance, mainly in ones that offer rather personalized, local services, the Czech CSOs play a dominant role in services provision. Asking for a fee in exchange for the service is customary; CSOs are not expected to give the services for free.

Observations

The extent to which Czech CSOs have been able to generate resources from their constituencies (membership fees, volunteer contributions, service fees, other economic incomes) shows that there is at least a certain level of “rootedness” among CSOs. They have strong links with their communities that they can build on as they increase also the financial support from people. Notwithstanding the existing contradictions in the law, a generally well regulated, enabling legal environment has helped income generation activities.

V. CONCLUSIONS BASED ON COUNTRY FINDINGS

Based on the analysis of various aspects of funding mechanisms in countries, the conclusions and recommendations of the research listed in this and the next chapter may be divided into two main areas. The **Conclusions** refer to **general considerations, enabling environmental and policy conditions** for effective funding mechanisms (basing funding mechanisms on a clear strategy, ensuring larger transparency, accountability and motivating systems through a version of defining public benefit status). The **Recommendations** (Chapter VI) refer to **concrete technical steps** and funding methods the legislators may consider introducing in Ukraine in the field of governmental funding, social contracting, private institutional giving, corporate giving, individual giving, and earned income. The recommendations are based on the general conclusions drawn from the country analyses and the identified best practices as could be applied in the Ukrainian context. As it is visible from best practice countries, only a harmonized approach of strategic level interventions and the palette of technical funding tools may bring the wished impact that is also cost effective.

Conclusions relating to the general funding environment

To ensure that the Ukrainian CSO sector can grow to serve the larger benefit of the citizens and become a reliable trusted partner for the government, it is crucial to develop a proper funding strategy for this sector. Key considerations in developing the funding strategy include:

a. Link between overall policy framework and funding mechanisms:

- The research has demonstrated that the success of a funding mechanism is strongly related to the existence of two key elements: (a) a clear understanding (in the form of a government policy) of the intended role for the CSO sector in social development, and (b) a strategic approach to funding which makes it possible for the CSO sector to fulfill this role.
- Therefore, there is a need of a «from the vision to the mechanism» approach to link funding mechanisms to be introduced with the vision and purpose of CSO development: the legislator needs to determine what functions it envisions for the CSOs; then to develop the appropriate tools to achieve the results.
- Developing a strategy for CSO development is typically the primary element that envisions a clear role for CSOs vis-à-vis the government. However, preparing the strategy itself means little in terms of the impact of governmental measures. Equally (if not more) important is the relevance of the strategy to the desired impacts; and the relevance of funding policies to the strategy.

b. Evidence based approach in developing and monitoring the funding mechanisms:

- There needs to be sufficient data and information available to make informed evidence based policy decisions in this field. This is important, as the CSO field is often neglected as a policy area and basic data are missing.
- There needs to be an ongoing and systematic effort to trace the practice and impact of the implementation of the strategy.

c. Success factors of the “funding mix” for the CSO sector:

- The CSO sector cannot be financed through one main mechanism. Funding streams have to reflect the diverse functions, organizations and needs of the sector. There can be a different funding strategy for larger service providing and for small community based CSOs. Both direct and indirect means of support can be effective.
- The funding streams have to come from long-term sustainable resources (public and private) so that CSOs can predict the levels of funding and can plan long-term. Some

creativity may be needed to identify those – but based on the findings of the research it is possible.

- The funding mechanisms should be complementary rather than competing; e.g. re-granting or intermediary organizations should not be in a competition with the CSOs they are supposed to support.
- While certain income sources are less significant in terms of the total revenues of the sector, their absence or presence can dramatically change the conditions for CSO sustainability (the principle of “less is more”).

d. Importance of an enabling legal-fiscal environment:

- Developing funding mechanisms should take a long-term view (8-10 years) and consider a gradual development of various mechanisms, building on each other (e.g., introduction of tax benefits after redefined public benefit status).
- A coherent approach in developing an enabling legal environment is needed, e.g. in introducing tax deductions and the public benefit status. The public benefit status can serve as a good basis for indirect support of CSOs but only if it is well defined and entails tax benefits that serve as real incentives.
- It is essentially the culture and historic traditions that determine the behavior of taxpayers, CSOs and the state in any country. However, intelligent tax policy can capitalize on the opportunities presented by the ever changing environment and introduce incentives which can successfully change behaviors.
- Innovation and creativity can be helpful in legislation. Other countries can serve as models but every country can create its own most effective solution. However, in this case the risk of unintended impacts is much higher (see the case of the percentage laws in Hungary and other CEE countries).

e. Considerations of supporting CSO sector development

- Government needs to invest into the capacity development of the CSO sector. Even in the most developed countries, CSOs need support in delivering the expected increased contribution to the public good.
- Government should also ensure that there are resources that finance the ongoing development of the CSO sector – startups, innovations, service development, etc. These are usually more effectively funded from private sources; where there is a lack of these, government can undertake this role or provide incentives to private actors to pursue it.
- Government should assume a difference between strategies supporting, on the one hand, CSOs that assist in state service provision – more long-term direct support and more regulation can be justified, if they are more involved in providing government services; and on the other hand, other types of CSOs (community based, cultural, environmental, etc.) – more indirect support, project based direct support and less regulation are typically needed in their case.

VI. RECOMMENDATIONS

The following proposals are recommendations based on the best practice examples that were identified in the country research, considering the general conclusions as well as their potential applicability in the Ukrainian context. They need to be considered within a strategic framework that is based on solid policy evidence.

Public benefit status

We see the introduction of a meaningful public benefit status as a central element of a CSO funding strategy, as it can serve as the basis of providing the various benefits that can be afforded to the CSOs through the funding mechanisms. The public benefit status ensures a higher level of accountability and transparency to the CSOs in exchange for being eligible for a higher level of direct and/or indirect benefits than “regular” CSOs. As such, it could be the basis for a number of benefits and privileges listed below, including e.g. eligibility for normative support, for tax deductible donations, for tax deductions on endowments, etc.

Currently there is a “charity” status, related essentially to tax deductible donations. However, there are different limits (e.g., an additional 5% is deductible for donations for cultural heritage); the existing benefits seem not to be sufficient incentives to change behavior; and there is no unified understanding of this status (somewhat similar to the situation in Germany before 2007). A well-defined status with clear conditions and tangible benefits, available for a broad range of CSOs, could be the basis of a more developed CSO sector, with more state and private sector involvement, but also with increased transparency and accountability.

Government funding

This Study proposes the establishment of a Fund for Civil Society Development (Civil Fund). The main aim of the Fund would be to build capacity in the sector in two ways:

- To strengthen CSOs that are capable of undertaking services contracted by the government; and
- To strengthen smaller CSOs and more broadly speaking civic groups and communities through a multiplier effect.

In order to achieve this, the Fund would not only give grants directly to CSOs but it could also be able to provide support through regional resource centers in all the main regions of Ukraine. The resource centers could provide professional methodological guidance to CSOs in the region, as well as operate a social innovation fund. (The innovation fund could also be centralized, however it may be better to have local decision-makers to support the local innovations.)

The board of the fund needs to be composed of credible and independent experts, who have expertise in both civil society development (at the policy level as well as practically), and grant-making to CSOs. The Board should be a mix of people from the nonprofit sector, from the government (or Parliament), and from independent institutions, e.g. media or academia. It has to have proper conflict of interest policies and procedures and should not be seen as trying to lobby for their own organizations. The Board should be able to set a strategic vision for the sector; seeing not just the needs of CSOs but also the needs of society and how CSOs can best address them. A credible independent expert governing board has been key to the success of the Croatian Foundation as well as the other successful Fund model in the region, Estonia.

The fund would manage a total of up to 9-10 million EUR/year, supporting up to 300 CSOs in a year (including multiple year commitments). It could be decentralized, like in the case of Croatia, whereby it could agree with existing regional development CSOs to manage the grants

for that region. The central unit would give the large national level grants (e.g., 30,000 -50,000 EUR), while the regional ones could also give small grants (e.g. 5,000-25,000 EUR). Therefore its overhead costs could vary between 8-12% (depending on the grant management scheme). The Fund could also choose to tender the regional centers every 3 years.

The Fund should provide institutional support to CSOs. It is very important to provide a clear definition for institutional costs, as there are many ways to interpret this type of expenses (also called core costs, running costs, administrative or overhead costs). The institutional support could also be provided in matching funds, preferably over a three years period and requiring the CSO to raise increasing levels of matching funds each year. There could be entry-level considerations, i.e. only those who already have a certain level of budget could apply – this would ensure that the Fund builds on existing capacity rather than is encouraging to “create” CSOs just to apply for the funding.

The state can also decide to establish a sinking fund for the institutional support, aiming to strengthen a cadre of a few thousand CSOs over 10-12 years. This would be part of the overall Civil Fund, amounting to, say 30%, of its total budget. Then every 3 years, this part of the budget would be reduced by 20%, until at the end there would be only a minimal amount, circa 12% of the Civil Fund budget available for institutional support, to help newcomers. The Fund would need to communicate this strategy clearly from the beginning so that CSOs can take advantage of the opportunity in time.

Social contracting

This Study proposes to consider introducing the normative system in Ukraine, similar to the Hungarian arrangement. The reasons we propose the normative system over the contracting one are the following:

- It seems that both state and CSOs are not ready to enter into proper contracting relationships on a systematic basis; e.g. there may not be enough willingness with local authorities to contract; or there may not be enough capable CSOs to apply for the bids.
- There is an ongoing reform of the financing of social services that shall introduce the unit-based calculations for each service, which can serve as the basis for per capita normative support.
- With the normative system, CSOs will become not competitors but complementary providers with the public administration system, as the funding will only be given, if there is proven need for the service (based on the number of clients).

We are not proposing to introduce the German principle of subsidiarity in which CSO providers would be preferred across the board. It is important, however that (a) CSOs are not put into a disadvantaged position compared to local governments' own agencies, like in Hungary, and (b) that there are incentives for the local governments to engage with CSOs. These require innovative legal guarantees and solutions, the Polish example could be a good starting point.

The normative system could be introduced most of all in the area of social services, and over time, possibly also in health and education. For the social services, in case of certain types of services (institutional services and those requiring high intensity care) licensing of the organizations providing the service could take place. Although the state should determine the minimum quality of service requirements for the services it intends to finance, we would recommend to leave the decision as to which quality management system to use with each organization.

Alternative financing

We do not recommend to introduce the percentage mechanism at this stage in Ukraine. We believe that with proper tax incentives for giving, a deeper and more lasting impact could be achieved in developing philanthropy and generating sustainable income sources for CSOs.

Private institutional giving

We suggest to consider the introduction of a system of incentives for private endowed foundations, similar to the German model. Although there are already private foundations in Ukraine, those are seen as political undertakings. A clearly defined public benefit status would help in making the endowments free of political or private interests and would increase trust in the private foundations. Without doubt, there is private wealth in Ukraine and the challenge to the government is to make it work for the public good. In our view, the German system of tax deductible contributions to an endowed foundation (or making an endowment) would also work well in Ukraine, provided that the level of deduction is equally motivating and deductible over time. It can also be considered to allow a shorter time period, e.g. 5 years only for smaller amounts (while 10 years can be allowed for a larger endowment).

Increasing the support of domestic private foundations toward Ukrainian CSOs would probably be the best strategy to address the gap that foreign donors are likely to leave when they withdraw from the country, i.e. the support of social innovation, pilot projects, protection of rights, etc., especially at the national and regional levels.

Corporate giving

For companies it can be suggested that in case of green-field investments, regeneration projects, privatization and similar transactions, 5% of the investment should be spent on public benefit purposes, supporting entities entitled under the public benefit law. This would create a real incentive for CSOs to opt for the PBO status, undertaking the increased accountability and transparency obligations. The level of support could also differ at the regional and national levels.

It is important to note that most mechanisms suggested in these recommendations focus on the support of the more capacitated CSOs, whether at the national, regional or local level. At the same time, the experience from other countries shows that it is the small enterprises that provide the most support to public causes locally – not only monetary but also in-kind and volunteer support. Therefore it would be important to provide special incentives for the small enterprises, which will be affected negatively by the new tax laws in Ukraine. One example can be to define an amount that is not too high but is already a good incentive that can be credited against the tax obligation, and which can be repeatedly used, if the enterprise supports the CSO in the long term (perhaps up to 10% of the taxable income). It is also important that in-kind donations can be counted as support.

Finally, the German model of the deductibility of a certain percentage of the turnover as opposed to taxable income could also be considered in Ukraine, where it is quite common that companies do not report an end-of-year profit.

Individual giving

According to the CSI report, up to 65% of the population already gives to charity on a yearly basis¹⁵⁶. While the culture of regular (e.g. monthly) support of CSOs is still some way ahead, intelligent tax policy could help speed up the process. With a well-defined system of public benefit organizations, incentives for individual giving can be reconsidered. It is likely that some increase in the current level of deductibility (5%) would be helpful, as the European average is closer to 10-12%; but most of all, it seems, that clear criteria and easy procedures for claiming the deduction would almost be sufficient to assist CSOs in their fundraising efforts.

¹⁵⁶ Civicus Index Ukraine report, 2006, p. 50 http://www.civicus.org/media/CSI_Ukraine_Country_Report.pdf

Earned income

In our understanding it is currently unclear whether CSOs may engage in economic activities on a tax free basis¹⁵⁷. We suggest that public benefit organizations may conduct mission related economic activities exempt from income tax, and unrelated economic activities exempt up to 20% of the total income of the CSO (possibly, also including a limit in the amount).

In conclusion, we would like to emphasize once again that these are suggestions that are based only on the comparative analysis done in the course of the research. More research needs to be made to compile data and information that will further inform the decision-makers and allow for making informed decisions based on an understanding of the fiscal implications (e.g., the amounts involved in the tax benefits, the potential impact related to the Civil Fund etc.).

¹⁵⁷ Id.

Bibliography and references

Studies, reports and other materials

1. Bailey, S. J.: *Strategic Public Finance*, Basingstoke: Palgrave Macmillan, 2003.
2. BCNL, *Contracting of Social Services between the State and the NGOs in England, Germany, Poland, Hungary, the Czech Republic and the practices in Bulgaria*, Sofia, 2004.
3. BCNL, *NGOs and Public Procurement in the European Union*, 2009.
4. Blöndal, J., R.: *Market-type Mechanism and Provision of Public Services*, In: *OECD Journal on Budgeting*, Paris: Organisation for Co-operation and Development, 2005, vol. 5, No.1, pp. 79-106.
5. Bullain, Nilda, "Learning Points from the National Civil Fund in Hungary," ECNL, 2008.
6. Bullain, N. and Hadzi-Miceva K.: *Recent trends in the public and self-regulation of accountability and transparency of nonprofit organizations in the EU*, European Commission, 2009.
7. Bullain, N. and Panov L.: *Handbook on non-state social service delivery models*, ECNL and UNDP, 2011 (awaiting publication, provided by ECNL).
8. Bullain, N. and Toftisova, R.: *A Comparative Analysis of European Policies and Practices of NGO-Government Cooperation*. In: *The International Journal of Not-for-Profit Law (IJNL)*, Volume 7, Issue 4, September 2005.
9. Charities Aid Foundation and Association of Charitable Foundations: *Grant-making by UK trusts and charities*, January 2007 http://www.acf.org.uk/uploadedFiles/Publications_and_resources/Publications/0416B_TrustAndFoundationBriefingPaper.pdf
10. Commission for the Compact: *Research Study into the Compact and Independence*, September 2008; *They are Champions: The role and impact of Local Compact Champions*, July 2009; *Compact Baseline Survey 2009/10 – A study of the levels of awareness, knowledge, understanding and use of the Compact among Government and Non Departmental Public Bodies*, July 2010. All available at <http://www.thecompact.org.uk/information/100023/140293/research/>
11. Cordery, Carolyn J., *Operational Risk Management in Social Services Contracting*, Social Sciences Research Network, 2010. <http://ssrn.com/abstract=1761659>
12. Carmel, E. and Harlock, J. *Instituting the "Third Sector" as a Governable Terrain: Partnership, Procurement and Performance in the UK*, Policy and Politics, Volume 36, number 2. The Policy Press, 2008.
13. Clifford Chance, *Memo on Performing public tasks consisting in the activities to the benefit of the disabled in co-operation with foundations in Poland*, September 2010 (unpublished, provided by ECNL).
14. Croatia, *Code of Good Practice, Standards and Criteria for the Allocation of Grants for Programmes and Projects of Associations*, 2007.
15. Charities Aid Foundation: *The World Giving Index*, 2010 <http://www.cafonline.org/pdf/WorldGivingIndex28092010Print.pdf>
16. DfID/FRSSU, *Non-Government Organisations in the Market of Social Services: Institutional, Legal, Financial and Tax Aspects*, Kiev, 2007, http://www.parlament.org.ua/docs/files/8/1174300044_ans.pdf
17. Dimitrova, M., *Research of Good Practices on Social Contracting in the Field of Social Services: Bulgaria, Hungary, Poland Czech Republic, Russian pilot experience*, 2008 (unpublished; provided by BCNL).
18. England, *the Compact on relations between Government and the Third Sector in England*, 2009.
19. England, *the Big Fund, Transition Fund grant program*, 2010.
20. Estonia, *Rules of Financing of the National Foundation for Civil Society*.
21. Estonia, *Code of Ethics of Estonian Non-Profit Organizations*.
22. Estonia, *procedures for financing "Good Idea" projects of the National Foundation for Civil Society*.
23. European Center for Not-for-Profit Law, *"Public Financing of Civil Society Organizations in Europe: Principles and Practices in Tendering"*, 2010.
24. European Commission, *"Recent Public and Self-Regulatory Initiatives Enhancing NPO Transparency and Accountability of Non-profit Organizations in the European Union"*, developed by ECNL, 2009.
25. European Commission: *A White Paper on European Governance*, COM(2001) 428, 24 July 2001.
26. Figyelő – Hungarian weekly, issue 50/2010, Gábor Lambert *The characteristics of Hungarians and willingness to re-start*.
27. Fric, P., Goulli R.: *Neziskovýsektor v České republice*. [The nonprofit sector in the Czech Republic], Prague: Eurolex Bohemia, 2001.
28. Fric, P.: *Dárčovství a dobrovolnictví v České republice*, [The giving and volunteering in the Czech Republic], Prague: NROS, AGNES, 2001.
29. Hadzi-Miceva., Katerina, with Bullain, Nilda, *"A Supportive Financing Framework for Social Economy Organizations"* in *Social Economy – Building Exclusive Economies (OECD Local Economic and Employment Development (LEED) Programme*, 2007.

30. Hadzi-Miceva, Katerina, "Legal and Institutional Mechanisms for Government-NGO Cooperation in Hungary, Estonia and Croatia", in "Organizacje pozarządowe. Dialog obywatelski. Polityka państwa," edited by Marek Rymsza, published by the Institute for Public Affairs, Poland, 2007.
31. Hadzi-Miceva, Katerina and Golubovic, Dragan, "Public Funding for Civil Society Organizations – Good Practices in the European Union and Western Balkans", ECNL, SIPU and TACSO Montenegro Office, 2011.
32. Harrell, A., with M. Burt, H. Hatry, S. Rossman, J. Roth, and W. Sabol, *Evaluation Strategies for Human Service Programs: A Guide for Policymakers and Providers*. Washington, DC: The Urban Institute Press, 1996.
33. *Hearts and minds: Commissioning from the voluntary sector*, National Audit Commission, July 2007 (<http://www.audit-commission.gov.uk/nationalstudies/localgov/Pages/heartsandminds.aspx>);
34. Hyánek, V., Pospíšil, M., Rosenmayer, T.: *Country – specific situation of the nonprofit sector in the Czech Republic: Department of Public Economics, Faculty of Economics and Administration, Masaryk University and Centre for Nonprofit Sector Research*, 2007.
35. HM Treasury, *Improving financial relationships with the third sector: guidance to funders and purchasers*, May 2006.
36. HM Treasury, *The crosscutting review of the Role of the Voluntary and Community Sector in Service Delivery*, 2002.
37. Hungary, Law No. 2003/L on National Civil Fund.
38. Hungary, 160/2003. (X. 7.) Government Regulation on the Implementation of Law No. 2003/L. on the National Civil Fund.
39. *Improving Financial Relationships with the Third Sector: Guidance to Funders and Purchasers*, HM Treasury, May 2006.
40. ICN: *Statistik apočtunestátních neziskových organizací v letech 1990 – 2005*. [Statistics of the number of non-state non-profit organizations in the Czech Republic 1990 – 2005] Prague, 2005.
41. ICNL, *Preliminary Study of the Legal Frameworks for Public Financing of NGO Activities in Bulgaria, Croatia, Hungary, Romania, and Slovakia*, *International Journal of Not-for-Profit Law*, Volume 3, Issue 4, April 2001.
42. ICNL, *Recommendations and Analysis on Legal Reforms on State Social Contracting*, February 2010.
- Inglehart, Ronald F. and Christian Welzel. 2005. *Modernization, cultural change, and democracy: the human development sequence*.
43. Kubar, Urmo., "Estonian Civil Society Development Concept (EKAK): Framework for Cooperation between Third and Public Sector: Brief Overview and Some Learning Points", European Conference "How to foster civil dialogue in Europe", Brussels, May 15, 2008.
44. Kuti, Eva ed. *Vállalati adományozás Magyarországon Tanulmányok 2005 (Corporate giving in Hungary)*.
45. *Law on Foundations and Funds*, Offl. Gazette No. 36/1995, 64/2001.
46. Lester M. Salamon: *Global Civil Society: Dimensions of the Nonprofit Sector*, Volume Two, Bloomfield, CT: Kumarian Press, 2004.
47. Lester M. Salamon, S. Wojciech Sokolowski, Regina List, *Global Civil Society – An Overview*, The Johns Hopkins Comparative Nonprofit Sector Project, 2003.
48. Morris, D., *Charities and the Contract Culture: Partners or Contractors? Law and Practice in Conflict*, published by the Charity Law Unit, University of Liverpool, 2001
49. NCVO, *The State and the Voluntary Sector; Recent Trends in Government Funding and Public Service Delivery*, 2009.
50. OECD: *Voucher Programmes and their Role in Distributing Services*. Puma Public Management Committee. Paris: Organisation for Co-operation and Development, 1998.
51. PACT memo, *Overview of Social Contracting in Ukraine*, July 2010.
52. Pajas, Petr Jan: *Civil Society in the Czech Republic*. In: Li, Yuwen (ed.): *NGOs in China and Europe*, Ashgate, 2011.
53. Provazníková, Romana: *An alternative provision of public services – the use of vouchers*. University of Pardubice, Economic Faculty, 2007 http://dspace.upce.cz/bitstream/10195/35612/1/ProvaznikovaR_AnAlternativeProvision_SP_FES_2007.pdf
54. Ricketts, Andy: *Gift Aid reform and tax relief figure prominently in Budget*, In: *Third Sector Online*, 23 March 2011. <http://www.thirdsector.co.uk/news/Article/1061503/Gift-Aid-reform-tax-relief-figure-prominently-Budget/>
55. Robinson, M., White, G., *The Role of Civic Organizations in the Provision of Social Services: Towards Synergy*, 1997 http://www.wider.unu.edu/publications/working-papers/previous/en_GB/rfa-37/_files/82530852568570736/default/RFA37.pdf
56. Sator, Balazs: *Learning for a Lifetime: NGOs, Capacity Building and Non-Profit Education in Eastern Europe*. In: Li, Yuwen (ed.): *NGOs in China and Europe*, Ashgate, 2011.

57. Scheye, E., State-Provided Service, Contracting Out, and Non-State Networks: Justice and Security as Public and Private Goods and Services, OECD/The International Network on Conflict and Fragility and the Partnership for Democratic Governance, 2009 <http://www.oecd.org/dataoecd/43/8/43599221.pdf>
58. Seidenstat, P., Contracting Out Government Services, Praeger Publishers, 1999.
59. Toftisova, R., Cooperation in the Area of Social Services Delivery and Mechanisms of State Financing of NGOs (Sample Models), The International Journal for Not-for-Profit Law, Volume 3.
60. Tomkins, Richard: Shifts in corporate philanthropy, in: Financial Times, January 17, 2009. <http://www.ft.com/cms/s/2/3a0856c6-e1d5-11dd-afa0-0000779fd2ac.html#ixzz1ITRCUAKO>
61. USAID, The NGO Sustainability Index for Central and Eastern Europe and Eurasia, 2008 and 2009.
62. Vajdova, Teresa: An assessment of Czech civil society in 2004: after fifteen years of development. Civicus Civil Society Index Report for the Czech Republic http://www.civicus.org/media/CSI_CzechRep_Country_Report.pdf
63. Vidacak, Igor., "Developing Standards and Mechanisms for Public Financing of NGOs in Croatia", International Journal of Not-for-Profit Law (IJNL) October 2010.
64. World Bank, Making Transition Work for Everyone: Poverty and Inequality in Europe and Central Asia, Washington, D.C., 2000.
65. World Bank, Ukraine: Improving Intergovernmental Fiscal Relations and Public Health and Education Expenditure Policy: Selected Issues, 2008 <http://siteresources.worldbank.org/INTUKRAINE/Resources/UkrainePFRFinalEng2.pdf>

Web references

<http://www.audit-commission.gov.uk/nationalstudies>
http://www.bertelsmann-stiftung.de/bst/de/media/xcms_bst_dms_27508_27509_2.pdf
http://www.bmz.de/en/what_we_do/approaches/bilateral_development_cooperation/players/ngos/index.html
<http://www.cafonline.org/pdf/International%20%20Giving%20highlights.pdf>
http://www.ccss.jhu.edu/pdfs/CNP/CNP_GCS1_Germany.PDF
<http://www.ces-vol.org.uk/index.cfm?pg=42>
http://www.civicus.org/new/media/Croatia_country_report_English.pdf
http://www.civicus.org/media/CSI_Germany_Country_Report_English.pdf
http://www.civicus.org/media/CSI_Ukraine_Country_Report.pdf
http://ec.europa.eu/yourvoice/index_en.htm
<http://econstor.eu/bitstream/10419/27606/1/dp08123.pdf>
<http://www.ernop.eu/country/3/germany.html#Data>
<http://www.ernop.eu/country/24/croatia.html#Data>
<http://www.giving.nl/>
<http://www.guidestareurope.org>
<http://www.idea.gov.uk/idk/core/page.do?pagelId=5184420>
<http://www.kozadat.hu>
<http://www.nesst.org/documents/2006CroatiaLegalGuideEN.pdf>
<http://www.nesst.org/NVFCentralEurope.asp#LSCroatia>
<http://www.osale.ee>
<http://www.pioneerinvestments.cz/Fond/ZakladniUdaje.asp?fond=ZBFondNadaci>
http://salvavita.hu/index.php?menu_id=1210&topmenu=1200&oldal_id=1210&oldal_tipus=text
<http://www.thecompact.org.uk>
<http://www.un-ngls.org>
http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex_2009
<http://zaklada.civilnodrustvo.hr/category/180/subcategory/182>
<http://www.usig.org/countryinfo/germany.asp#exemptions>
<http://www.vita.it>
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html>
http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/spending_review/spend_ccr/spend_ccr_guidance.cfm

INTERNATIONAL PRACTICES
ON CONFIDENCE-BUILDING MEASURES
BETWEEN THE STATE
AND CIVIL SOCIETY ORGANISATIONS

ALBENA KUYUMDZIEVA, OSCE EXPERT

FREQUENTLY USED ACRONYMS

CEEC – Central and Eastern European Countries
CIVICUS – World Alliance for Citizen Participation
CoE – Council of Europe
CSO – Civil Society Organizations
DIFID – United Kingdom Department for International Development
EC – European Commission
ECOSOC – United Nations Economic and Social Council
EESC – European Economic and Social Committee
EKAK – Estonian Civil Society Development Concept
EP – European Parliament
EU – the European Union
NGO – Non-governmental organisations
NPO – Non-profit organisations
NSA – Non– State Actors
OECD – Organisation for Economic Cooperation and Development
OSCE – Organisation for Security and Cooperation in Europe
TI – Transparency International
UK – the United Kingdom
UN – United Nations
UNDP – United Nations Development Programme
UNEP – United Nations Environment Programme
WB – World Bank

EXECUTIVE SUMMARY

“Democratic deficit”, lost public trust, confidence gap... In the last decade all these phrases have invaded the international public domain thus focusing the political and media attention on a problem that threatens to undermine the main democratic values of the last centuries. Slowly but consistently the close link between those who govern and those who have been governed has been loosened to a point where citizens have lost their trust in the ability of politicians to properly govern the state and where public authorities mistrust good intentions and support coming from the civil society sector. This tendency was very clearly pictured by the 2005 Gallup International world survey¹ revealing the following paradox: approximately 50% of global respondents declared that their national elections are free and fair, but only 30% of them believed their country is governed by the will of the people.

In order to respond to this social phenomenon, international organisations, governments and civil society sector organisations around the globe have launched series of programmes, policies and initiatives aiming at diminishing the government-citizen confidence gap and building mutual trust and understanding. The current review presents the major developments in the last two decades with a special focus on the policies and best practices implemented by the European Union and five selected EU Member states (Austria, Bulgaria, Estonia, Netherlands and the United Kingdom). Parallel to this, the strategic policy guidelines of the Council of Europe, United Nations and the Organisation for Economic Cooperation and Development have been highlighted. Three of the founding good governance principles: transparency, participation and accountability, have been taken as benchmarks and examined through the lenses of building trust in the efforts of both public authorities and civil society organisations to achieve social inclusion, better life and sustainable development.

General trends

The role of the civil society sector has been gradually increasing during the last decades. The main stages of inclusion vary from information provision through consultation, dialogue and partnership. The methods of involvement have been closely interlinked with the aim of the involvement and political, administrative and social development of a country and its civil society sector.

The European Union has been using various “hard” and “soft” confidence building instruments. The main foundations of the citizen participation have been laid down in the Treaty on European Union and the Treaty on the Functioning of the European Union. The White Paper on European Governance and the General principles and minimum standards for consultation of interested parties have given a major impetus and have set the standards that were adopted by the European institutions and member states. The European Transparency initiative and the regulations on lobbying further contributed to the establishment of clear framework for citizen involvement in the policy process.

Parallel to the EU framework, the Council of Europe has developed additional trust building tools providing opportunities for wider acknowledgement and reinforced cooperation. The Guidelines for the Development and Reinforcement of NGOs in Europe, the Recommendations on the legal status of non-governmental organisations in Europe along with the Code of Good Practice for Civil Participation in the Decision-making Process adopted in October 2009 by the Conference of International Non-Government organizations have marked the main directions for spreading the standards for active citizen involvement across the boundaries of the EU thus forming common European understanding on how to build citizen-government trust.

¹ Information available at : <http://news.bbc.co.uk/2/hi/4247158.stm>

There is a common understanding that the greater the CSO's role in the policy process, the greater responsibilities should be vested in them. Deriving from that notion, the expectations that CSOs should follow the same transparency and accountability rules that are required from public institutions have been growing. The new transparency and accountability rules for CSOs have been mainly developed on voluntary basis from the civil society sector itself (e.g. the European Charter of Active Citizenship, Accountability Charters etc.) and by guidebooks elaborated by major international organisations such as the UN and the EU. These standards aim to ensure that CSOs are representing the "true" voice of citizens and act solely in public benefit.

The trend towards introducing more accountability and transparency into the CSO sector is largely supported by the sector itself. Good governance principles and handbooks have been elaborated by international organisations such as the Independent Sector, European Foundation Centre, Central and Eastern European Working Group on Non-profit Governance. In addition a number of self-accreditation, third party accreditation and integrity assessments schemes have been introduced.

There is an urge for elaborating well defined and clear representativeness criteria for the CSOs involved at international, national and regional policy making level. The idea has been promoted by the European Commission and supported by the civil society sector at European level in the face of organisations such as the European Economic and Social Committee and the Platform of European Social NGOs.

Among the most used tools for ensuring smooth collaboration between public institutions and civil society organisations there are different guidelines and handbooks outlining the rights and obligations of both sides in the policy process. Examples of such guidebooks include the OECD Handbook on Information, Consultation and Public Participation in Policy-making, the guidelines for participation of Major Groups and Stakeholders elaborated by the United Nations Environment Programme, etc.

The development of e-technologies have reshaped the delivery of public services and substituted many of the traditional governmental mechanisms. eGovernment has become a synonym for a modern and innovative state where quality, trust and speed are central elements. Accordingly, the means for provision of information, public consultation and monitoring have changed giving more room to Internet tools as better and faster channels for government-citizen communication. Therefore, governments across the globe have actively promoted the use of e-governance tools in all spheres of interaction with their citizens.

Transparency

The right of access to information and public documents has been comprehended as a key feature of good governance that strengthens public authorities' legitimacy in the eyes of the public, and its confidence in them. The right of access to information has been stipulated in various international legal instruments (e.g. CoE Convention on access to official documents, Charter of Fundamental Rights of the European Union, UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, etc.) and in the legal frameworks of EU Member States. At national level, the right to access information is considered fundamental and is broadly guaranteed by constitutional provisions.

The implementation of transparency standards at international level is guided by the internal rules (Regulation No 1049/2001 on public access to European Parliament, Council and Commission documents), guides explaining in a simple manner how to get access to information (e.g. European Commission's guide) or is embedded in different Codes of Conduct (Code of Good Administrative Behaviour for the General Secretariat of the Council of the European Union and its Staff in their Professional Relations with the Public, Code for Good Administrative behaviour in relation with the public adopted by the European Commission, etc).

The right to access of information in the selected EU countries is guaranteed by their constitutions and specialised laws. In all of them, government authorities are required to take proactive stand in the process of information delivery, thus, ensuring that activities of public bodies can be closely scrutinised. Standards and requirements for mandatory provision of information have been elaborated and stipulated in the respective normative acts. The UK Publication schemes and the Slovenian model catalogue for information are good examples for government commitments to routinely and proactively provide information to the public.

Governmental web portals have become the main channels for exchange of information between authorities and their citizens. Good examples for such portals are the Austrian “Help” portal, Estonian X-Road, the Finnish Suomi.fi and the UK Direct.gov portal.uk.

Good practice for stimulating the development of e-government from a citizen’s point of view is the Dutch e-Citizen Programme and e-Citizen Charter. The Charter summarises the vision of the Dutch citizens on the government as a whole and provides the main principles to be followed by public authorities in their interaction with the citizens.

Participation and Accountability

The mechanisms for holding public authorities to account are often used in conjunction with transparency and participatory measures.

Public consultations are comprehended as “win-win” interactions that enable the elaboration of effective and efficient policies. Citizen participation is ensured throughout the whole policy chain – from conception to implementation. The Green Papers published by the European Commission constitute a major consultation tool enabling wider public debate at European level. It is supported by various consultation initiatives such as the Citizen Agora, Interactive Policy Making Initiative, the web portal “Your voice in Europe”, the European Citizens’ Consultations projects etc.

Expert groups are widely used as consultative bodies that provide advice in preparation of legislative proposals and policy initiatives. Public registers ensure the transparency of their work and the integrity of their members.

The general rules for public consultations at national levels are set in national legal frameworks (Bulgaria) or are embedded in “soft instruments” as Social compacts or charters (the UK, the Netherlands). Despite the fact that they are not legally binding documents, their rules are widely endorsed as the “comply or explain” principle is introduced. The consultation process is additionally supported by the elaboration of specific handbooks aiming to ensure the proper conduct of consultation procedures (Austria, Bulgaria, the UK). Participation is enabled at all policy levels – local, regional, national and international.

Public participation is further facilitated by the establishment of consultation portals. Such practices are found both at the European level (e.g. European Interactive Policy Making Initiative, the web portal “Your voice in Europe”, etc.) and in the selected member states: Bulgarian strategy.bg, Estonian participation portal osale.ee., Austrian participation.at, Dutch Citizenlink.

In order to facilitate government-citizen collaboration, a number of strategic documents have been elaborated jointly by government authorities and civil society sector (Estonian Civil Society Development Concept, Social Compact in England and Wales, etc). Their objective is to outline the main roles, principles and mechanisms for cooperation of public authorities and CSOs. Codes of good practices on involvement of the civil society have been published to support the implementation of the strategy papers (Estonia, the United Kingdom). Similarly the Austrian Chancellery has adopted Standards of Public Participation while the British government has proposed a National Framework for Greater Citizen Engagement.

Citizen summits, citizen juries, e-petitions, civic forums and public policies assessment tools are among the main mechanism used for “hearing” the voice of the people.

Good examples of civil society based monitoring bodies at international level are the UNDP Civil Society committees, the UN Economic and Social Council and the European Economic and Social Committee. The practice for establishing bodies which comprise representatives of civil society organisations that aim to scrutinise public policies implementation and get involved in policy shaping is widely spread in the EU member states. Examples of such bodies can be found in Ireland, Bulgaria, and Slovenia.

At the local level, the collaboration of citizens and local authorities is widely developed to ensure that a citizen have a say in the development of the environment they live in. Local Strategic Partnerships (UK) and participatory budgeting (Spain, Belgium, Italy, Germany, France, Portugal, Denmark, the Netherlands and the UK) are among the best practices for building trust between public authorities and citizens.

I. INTRODUCTION AND METHODOLOGY

This paper is elaborated in the framework of the OSCE Project “Civil Society – International Best Practice Research”. The overall objective of the project is to contribute to further development of civil society in Ukraine by learning and transferring successful international practices in the field of civil society organizations funding and confidence building measures between state authorities and civil society organizations (CSOs).

The concrete aim of the current research is to present a comprehensive overview of some successful international practices in the framework of cooperation between government authorities and CSOs and outline existing confidence building measures and mechanisms that facilitate the dialogue and can be applied in the Ukrainian context.

In the last decades both “old” and “new” democracies have been facing a common challenge: the widening gap between citizen expectations and the state performance. The constantly declining trust and the overall dissatisfaction towards the ways the countries are governed lead unsurprisingly to declining performance indicators both at “micro-economic” and “macro-political” levels.

The current paper will focus on the macro political level where the confidence building measures may strengthen democratic governance, improve the efficiency of state institutions and the quality of economic policies. Providing that confidence building attempts may encompass a wide variety of measures and taking into consideration their depth and perplex structure, it will focus on one of their main aspects and will look at confidence building measures through the prism of the principles of good governance.

The principles of accountability, transparency and participation will be taken as benchmarks for comparing and showing empirical examples from five selected European countries. The added value of the current paper is the provision of focused comprehensive information, specially targeted for the needs of representatives of state and non-state bodies, practitioners and experts dealing with CSOs in Ukraine and thus tailored to the needs of local environment.

Given research is guided by the understanding that civil society participation in the decision making is a key factor for the democratic development and economic sustainability of every state.

Lost in translation – the widening gap between citizens and their institutions

Globally, 65% of people don't think their country is governed by the will of its people with the figure rising to three out of four in the former Soviet bloc. These shocking figures were revealed by one of the biggest surveys of world-wide public opinion undertaken in 2005 by Gallup International². The figures though were not that surprising either for politicians or for political scientists as the problem of the “lost trust” has been subject to vigorous discussions at least for the last two decades. The results however shifted the question high on the international political agenda. The main reason behind that being the fact that public trust is among the main determinants of the economic development and social cohesion and is often viewed as an indicator for social capital. Trust also indicates people's attitudes towards the state and its ability to provide social welfare, promote common economic and human values. It also indicates the way the citizens perceive their state – as their “defensive shield” and partner or rather as an opponent that they should overpower. The more people consider the state as their partner the better they will align their personal aims and objectives with those of the community and as a consequence will contribute to the overall prosperity of the state.

² Voice of the People 2005 poll included more than 50,000 people in 68 countries – representing the views of 1.3 billion people worldwide – about who has power, who wants it and how it is used. (More info available at <http://news.bbc.co.uk/2/hi/4247158.stm>)

While for the “old” democracies the declining trust raises serious concerns but yet does not damage that severely the performance indicators, for transitional societies the issues related to social and political trust and the state and citizen welfare are much more crucial as political environment tainted with corruption, fragmented power and lack of consensus hampers additionally the implementation of sound economic policies. “Consequently, trust issues become embedded, directly or indirectly, in every action taken by leaders in crisis and post-crisis countries.” (Blind 2007). Blind also argues that the versatility of associations between social and political trust in different countries, regions and time periods brings the following conclusion:

“A certain degree of social distrust may generate increased political involvement on the part of some people, under some circumstances, and with respect to some kinds of political activities only... At the same time, “high dissatisfaction with democracy and extremely low levels of trust almost unequivocally go together” (Norris 1999, 228-33). This implies that while it is healthy for citizens to suspect that their political representatives might not act in line with the wishes of their constituencies, prolonged periods of social and political distrust on the part of the majority of the population can produce deleterious consequences for governments and governance.’

The issues related to trust are even more perplexed when it comes to transition societies. As building trust is a two-way street, the mistrust of state institutions towards civil society organisations and the “real” interests they may represent is also a question to be addressed. From this perspective, implementing the principles of accountability, transparency and openness should not be considered a sole responsibility of the state institutions but should be equally embedded in the work of the civil society organisations. Thus by safeguarding the policy shaping process from both sides of the “fence” the efficiency of the democratic governance on behalf of the people will be properly guaranteed.

Good governance principles as confidence building mechanisms

Trust has considerable influence towards building a prosperous and competent state where citizen feel they can impact the policy process and the development of state as such. And the elaboration of the principles of good governance was an inevitable result of the striving for better life and future.

These principles³ were outlined by the European Commission as major contributors to the European democratic process. At a broader international perspective, United Nations Development Programme defined good governance as *“among other things, participatory, transparent and accountable... Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.”*⁴

Based on the core principles of good governance concept, the current paper presents the mechanisms that the European states implemented in order to ensure better citizen involvement and bridge the existing gap between state institutions and civil society. The implementation of the following principles is closely observed:

Accountability: Members of the public should legitimately expect to have accountable and responsive public authorities. Such expectation envisages rights vested upon every member of the society to examine and question the performance of public authorities on one hand, and on the other hand the obligations imposed on public authorities to be accountable towards their citizens.

³ The principles of good governance are defined by the European Commission in the “European Governance. A White Paper (COM (2001) 428 final). They largely correlate to the common administrative principles proclaimed by SIGMA (“European Principles for Public Administration”, Sigma Paper #27)

⁴ Governance for sustainable human development. A UNDP policy document, available at: (<http://mirror.undp.org/magnet/policy/chapter1.htm>)

Such entitlement holds the public authorities responsive to the public in relation to performance of their duties and improves the governance within the public sector.

Participation: introduction of any changes within the public sector requires involvement and participation of all interested individuals and groups. In order to facilitate the process, clear and precise rules should be enforced to ensure user-friendly framework for public consultations. Setting the right preconditions that will enable the civil society to actively engage in the policy process requires mutual efforts and new approach towards the social and political participation.

Openness and Transparency: Information sharing and public awareness are among the core elements for achieving greater transparency. It is a well recognized practice within the European Community that “information-sharing is a well proven confidence-building measure”⁵. Such practice should entail publishing information about the activities and projects, as well as use of public funds by public authorities on regular basis.

⁵ Extract from “Communication to the Commission from the President, Ms. Wallstrom, Mr. Kallas, Ms. Hubner and Ms. Fischer Boel. Proposing the Launch of a European Transparency Initiative. Memorandum to the Commission”

II. METHODOLOGY

In order to ensure comprehensiveness of the report and at the same time to present a paper that is tailored to the needs of the Ukrainian society, the method of comparative analysis will be used. The current review is based on the desk top overview of European policy documents, theoretical researches and briefing papers, best practices from 5 selected European countries and analysis elaborated by state and non-state actors as well as major donor organisations working in the area of promoting good governance and building trust between state and its citizens. The desk top study is combined with interviews and expert opinions along with on-site visits to Ukraine, meetings with stakeholders and round table discussions. The analysis is also based on the comparative benchmarking technique that aims at performance improvement by studying and comparing best practices. In this respect two main approaches are used for the purposes of the current research:

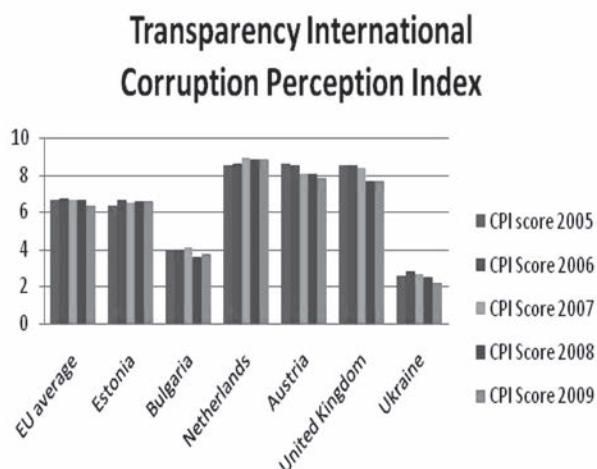
- Analysis of the relevant strategic documents adopted by major international organizations in the area of confidence building measures. The analysis focuses on the main strategies adopted by the European Union in order to overcome the declining citizen trust and promote principles of good governance. It also elaborates on the recommendations and strategic directions outlined by the Council of Europe, United Nations and the Organization for Economic Cooperation and Development. The research makes a comprehensive overview of the latest trends, methods and instruments used at global governance level to regain public trust and bridge the gap between the citizen and their multi-governance structures. The section aims at showing good examples at macro level that can be followed and adapted in the Ukrainian contexts.
- Analysis of the best practices applied in five selected EU countries. The research focuses on trust building approaches implemented in the Netherlands, the United Kingdom, Austria, Estonia and Bulgaria with a particular attention paid to the implementation of measures that promote transparency, accountability and citizen participation in the decision-making process. The relevant national legal frameworks for promoting the above mechanisms along with soft non-legal approaches for better citizen involvement are presented.

The selection of the countries is based on the diversity of the socio-economic, political and administrative culture that they present. The selected countries present a mixture of highly developed “old” western democracies and new member states that have suffered the hardship of political, economic and social transition. The common feature with all of them is that their good governance approaches have developed and improved during the last decades paving the way to better citizen involvement in the policy process.

As it is hard to measure the impact of individual implementation of the principles of transparency, accountability and participation, the perception of the citizens towards the levels of corruption is used as common denominator on how successfully the selected countries have implemented the good governance concept and managed to “rebuild the ship at sea”⁶. At the same time, the World Bank (WB) voice and accountability index⁷ will be used as valuable indicator showing how the citizen participation is linked to the overall country ranking and good governance perspective.

⁶ See Elster J., 1998. *Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea*, Cambridge University Press

⁷ The WB Voice and Accountability Index captures the perceptions of the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.



The countries, selected for the case studies present a whole range of variety in the index development and aim to show both highly advanced and relatively “standard” practices from a socio-political context that is close to the Ukrainian one.

Structure of the research

The research is divided in four main sections that give general overview of the latest international standards and trends, specific details of some good national practices and recommendations on possible measures to be implemented in Ukraine.

Following this logic, the second section gives an overview of the existing instruments and policies adopted by major international organizations in the area of civil society participation in the policy process.

The third chapter presents different European and national best practices facilitating active civic participation. Following the main principles of good governance discussed above, the chapter is divided in three main subsections focusing on:

- Provisions granting better transparency and openness of the decision-making process (e.g. laws of freedom/access of/to information, e-government applications, etc.)
- Practices for ensuring civic participation (e.g. setting procedures for public consultations and better involvement of citizens in a decision-making process);
- Accountability mechanisms, e.g. establishing strategic partnerships with NGOs to foster consultations and monitoring mechanisms.

Each subdivision presents highlights of the European policies adopted to promote confidence building mechanisms and at the same time elaborates on how these policies have been embedded in the legal framework of the selected EU member states.

Based on the practices and policies presented in the previous two chapters, the fourth one outlines the practices that are potentially applicable in Ukraine and elaborates on proposals for future development of an effective framework of the civil society participation.

III. OVERVIEW OF THE MAJOR INTERNATIONAL INSTRUMENTS AND POLICIES

3.1 The role of the civil society in the provision of democratic governance

Depending on the level and form of democratic development as well as on the political, administrative and social environment, countries across the globe have used different approaches of CSO's inclusion. The Code of Good Practice for Civil Participation in the Decision-Making Process adopted by the Council of Europe gives a very well defined explanation on the different stages of civil society involvement: information, consultation, dialogue and partnership. The so called "ladder of participation" reveals the breadth (the extent to which it is inclusive or exclusive) and may give indications to depth (the extent to which it is superficial or more intensive) of the participation process⁸. It also indicates the process of evolution of the society and the state over time and the level of development of participatory governance practices.

The research on the international practices in this respect, presents in a comparative manner different "levels" and mechanisms ensuring better participation of the society in the policy process.

In order to clarify the notion that stands behind the term "civil society" used in the research paper, the following working definition given by the Centre for Civil Society, London School of Economics and Political Science will be used:

"Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy group".⁹

This definition is broadly used by the European Union institutions and donor organisations¹⁰ as it fits to the newest concepts that have occurred with the process of globalization and the emerging concepts of multi-form, multi-dimensional and multi-level civil society organisations.

During the last decades, the civil society notion has been gradually evolving, changing the citizens and bureaucrats' perspectives about its role and its added value. For many years, governments across the globe have considered civil society organizations as hindrances with obstructive rather than supportive influence towards government activities. The gradual shift towards the understanding that CSOs are indispensable and valuable partners was driven by the need to respond to the diminishing trust in government institutions and the widening gap between the citizens and their authorities. The need for establishing structural dialogue between citizens and their institutions along with the necessity to provide more transparent, open and accountable governance that is responsive to the needs of its citizens, has shaped the current global understanding about the role of the civil dialogue in the decision-making process. At the heart of this new concept is the need to develop participatory democracy and responsive government that mutually reinforce and support each other.

⁸ CIVICUS Participatory Governance Programme 2006-2008, Concept Note, June 2006, World Alliance for Citizen Participation

⁹ http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm

¹⁰ See Council of Europe, 2009, Code of Good Practice for Civil Participation in the Decision Making Process; the definitions given by DIFID (<http://www.dfid.gov.uk/About-DFID/Who-we-work-with1/Civil-society/>) and Civil Society Index Programme of CIVICUS

3.2 European instruments for better civic involvement (EU and CoE)

“This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.”

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union

The entry into force of the Lisbon treaty¹¹ marked a new era in the European democratic development. It brought more transparency, accountability, openness and participation in the European decision-making process thus responding to the citizens' expectations for more efficient and effective governance. It reconfirmed some of the already established democratic values and added new mechanisms for better civic involvement.

The process of identifying, promoting and embedding the above principle at European and national legal frameworks was however not smooth and was preconditioned by the widening gap between the citizens and their institutions.

Acknowledging the constantly decreasing trust in the European and national authorities and the alienation of the Europeans from the political process, in early 2000 the European Commission set the launch of European governance reform as one of its strategic objectives. The new reform agenda was geared towards the understanding that the democratic institutions at both European and national level should try to “reconnect” with their citizens thus ensuring better government performance. In the White Paper on European Governance¹², the Commission further developed its concept stating that the set objective can be only reached through enhancing citizen participation in the policy process and adopting open and transparent decision-making procedures. In practice, the EC committed itself to:

- Provide up-to-date, on-line information on preparation of policy through all stages of decision-making;
- Establish and publish minimum standards for consultations;
- Enhance communication with the general public on European issues thus allowing it to scrutinize the policy-making process throughout all its stages;
- Establish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional consultation in return for more guarantees for openness and representativeness of the organisations consulted.

The Commission outlined five core principles that underpin democracy and good governance:

- **Openness.** The Institutions should work in more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex institutions;
- **Participation.** The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies;
- **Accountability.** Roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level;

¹¹ Treaty of Lisbon was signed on 13 December 2007 in Lisbon and entered into force on 1 December 2009.

¹² Commission of the European Communities (2001), European Governance, A White Paper, COM (2001) 428 final

- *Effectiveness*. Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level;
- *Coherence*. Policies and action must be coherent and easily understood. The need for coherence in the Union is increasing: the range of tasks has grown; enlargement will increase diversity; challenges such as climate and demographic change cross the boundaries of the specific related policies on which the Union has been built; regional and local authorities are increasingly involved in EU policies. Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system¹³.

These principles are applicable to all levels of governance – global, European, regional and national and their implementation is a key mechanism for facing the challenges of the new reform governance agenda. Each of those principles is important by itself. But only the joint application of all of them can guarantee better future and the economic and political development. The application of those principles requires also joint efforts from all stakeholders and shared responsibility. Despite the fact that the responsibility for restoring public trust in the EU and national institutions lies primarily in the hands of the respective institutions, in its White Paper, the Commission explicitly noted that greater involvement of the civil society also means greater responsibility. Providing the new role envisaged for the citizens' organizations, they were urged to follow the same good governance principles and pay particular need to the accountability and openness of their work.

The public consultations on the adopted White paper ran over a period of nine months and received 260 contributions. The public response supported largely the identified five principles of good governance and widely endorsed openness, better involvement and participation as means of reinforcing accountability in the policy making procedures¹⁴.

The need for establishing effective collaboration with the civil society was tackled once again in the Commission's strategic objectives for 2005-2009. In its vision for European renewal, the EC stressed that the perplexity and variety of challenges that Europe is facing can only be tackled jointly. This approach requires:

- All actors to work together: not only institutions but social partners and civil society at all levels;
- The involvement of individual citizens: through clarity about what Europe is trying to achieve, and participation in the common effort;
- Shared responsibility: every European citizen should have a stake in the work of the Union, and every European has to share the responsibility into realizing European common goals¹⁵.

Following the strong conviction that European general public deserves efficient, accountable and service-minded public institutions, in May 2006 the EC published its Green paper on "European Transparency Initiative"¹⁶. The initiative was based on the previous measures undertaken by the community in this area (like access to documents legislation, the Code of Good Administrative Behaviour, different consultation procedures, multi-stakeholders dialogues, etc.) and on the policy highlights of the White Paper on Good Governance. It aimed to help reconnecting Europe with its citizens by overcoming political alienation and misunderstanding of the European policy process. One of the four pillars of the initiative was the provision of greater transparency in the activities of interest representatives (lobbyists). The Green Paper provided definition of lobbying

¹³ Ibid

¹⁴ See European Commission (2003), Report from the Commission on European Governance

¹⁵ Strategic Objectives 2005 – 2009, Europe 2010: A Partnership for European Renewal Prosperity, Solidarity and Security, Communication from the President in agreement with Vice-President Wallström, COM(2005) 12 final

¹⁶ European Commission (2005), Green paper, European Transparency Initiative, Brussels, COM (2006) yyy final

that encompass all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions¹⁷. The guidelines given by the European Commission further classified the following actions as lobbying: “contacting members or officials of the EU institutions, preparing, circulating and communicating letters, information material or argumentation and position papers, organising events, meetings or promotional activities (in the offices or in other venues) in support of an objective of interest representation. This also includes activities that are part of formal consultations on legislative proposals and other open consultations¹⁸. Thus in practice all civil society organisations were included in the scope of the regulation.

In order to enhance their transparency, all interest representatives were requested to disclose financial data providing clear picture on their sources of funding and possible interests that may stand behind their policy recommendations. The registration on the EC’s register requires submission of:

- the overall budget and breakdown of the main sources of funding of NGOs and think-tanks;
- the turnover of professional consultancies and law firms attributable to lobbying EU institutions, as well as the relative weight of their major clients;
- an estimate of the costs associated with direct lobbying of EU institutions incurred by in-house lobbyists and trade associations.

The need for imposing strict transparency rules on all policy shaping attempts arose on one hand from the urge for better involvement of the citizens in the decision-making process and on the other hand, from the peculiarity of the policy shaping process. Despite the fact that policy influencing is a part of the European democratic system, it is marked as highly sensitive process with high corruption risk profile.

As the major policymakers, handling a budget of around 134 billion Euro¹⁹ and representing 492 million citizens from 27 member states, the European Parliament and the European Commission are the European institutions most exposed to pressure and influences – a fact supported by the presence of about 15 000 lobbyists and 2 500 lobby organizations, registered in Brussels alone²⁰. These figures are though just indicative as the number of unregistered lobbyists and pressure groups is unknown. Stressing again on the principle that “with better involvement comes greater responsibility”²¹, the European Commission and European Parliament introduced measures aiming at increasing the openness and outside scrutiny over the relations between EU institutions and interest representatives. Following the establishment of EC’s voluntary lobbying register, the European Parliament²² urged EU institutions to adopt a common joint approach to tighten lobbying regulations and ensure utmost transparency of the policy-shaping process. As initial step, the two institutions agreed²³ to establish a common non-mandatory register of interest representatives²⁴. It was particularly underlined that interest representatives are required to apply the principles of

¹⁷ According to the Green Paper, lobbyists are defined as persons carrying out lobbying activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units (“in-house representatives”) or trade associations’.

¹⁸ European Transparency Initiative – Frequently Asked Questions on the Commission’s register for Interest Representatives (available at: http://ec.europa.eu/transparency/docs/reg/FAQ_en.pdf)

¹⁹ The Budget of the EU for 2009 available at <http://eur-lex.europa.eu/budget/www/index-en.htm>

²⁰ European Parliament, Report on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions(2007/2115(INI))

²¹ Commission of the European Communities (2001), European Governance, A White Paper, COM (2001) 428 final

²² Report on the development of framework for the activities of interest representatives (lobbyists) in the European Institutions, (2007/2115(INI), European Parliament

²³ Joint statement regarding the progress achieved to date High level Working Group on a common register and Code of Conduct for lobbyists (available at: http://ec.europa.eu/archives/commission_2004-2009/kallas/doc/joint_statement_register.pdf)

²⁴ The register can be viewed at http://europa.eu/lobbyists/interest_representative_registers/index_en.html

openness, transparency, honesty and integrity, as legitimately expected from them by citizens and other stakeholders. According to the Code of Conduct this means that as a minimum, the interest representatives will always:

Article 10

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

Article 11

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

Consolidated version of the Treaty on European Union

- “identify themselves by name and by the entity(ies) they work for or represent;
- not misrepresent themselves as to the effect of registration to mislead third parties and/or EU staff;
- declare the interests, and where applicable the clients or the members, which they represent;
- ensure that, to the best of their knowledge, information which they provide is unbiased, complete, up-to-date and not misleading;
- not obtain or try to obtain information, or any decision, dishonestly;
- not induce EU staff to contravene rules and standards of behaviour applicable to them;
- if employing former EU staff, respect their obligation to abide by the rules and confidentiality requirements which apply to them.” (*Code of Conduct for Interest Representatives*)

In its resolution from 8th of May 2008 on the development of the framework for the activities of interest representatives in the European institutions, the European Parliament went further in its proposals

for strengthening the transparency rules. The Parliament proposed the introduction of so called “legislative footprint” (indicative list, attached to a Parliamentary report, of registered interest representatives who were consulted and had significant input during the preparation of the report or legislative proposal) and mandatory registration for all lobbyists who want to access EU institutions. Despite the fact that the proposals have not yet been accepted by the Commission and the Council they are indicative for the way forward and the new tendency for greater openness of the policy formulation process.

The new European vision regarding the role of the citizens in the decision-making process was clearly stressed in the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union as amended after the Lisbon Treaty. The Lisbon treaty practically gave to the civil dialogue a status of fundamental principle, covering all spheres of EU activities. The Treaty on the European Union in its provisions of democratic principles particularly proclaimed openness and civic participation as the core values of the democratic life of the Union. It also obliged the institutions to provide necessary means that will enable citizens and their organizations to have a real say in the European policy process. Providing access to information and holding public consultations have been pointed out as the main channels for communication. The Treaty also introduced a new concept for citizen involvement enabling citizen to have legislative initiative. According to article 11.4, not less than one million citizens coming from a significant number of Member States may invite the European Commission to submit proposal on matters where citizens consider that a legal act of the Union is needed.

Following the new provisions of the Treaty, the European parliament in its Resolution from 13th of January 2009 on the perspectives for developing civil dialogue under the Treaty of Lisbon, called upon the EU institutions to adopt in an inter-institutional agreement and binding guidelines concerning the appointment of civil society representatives, methods for organising

consultations and their funding, in accordance with the general principles and minimum standards for consultation of interested parties²⁵.

The need for better regulations and clearer framework was fed by another challenging issue – the existing mistrust of authorities towards the capacities and representativeness of civil society organisations. In the preamble of the European Charter of Active Citizenship, this paradox is presented as follows: “while citizens and their autonomous organizations are usually asked to contribute with material and immaterial resources to filling the “democratic deficit” of the European Union, they are, at the same time, hardly considered and often mistrusted by Public institutions.” The problem has been linked to the EU normative framework that fails to define the roles, rights and responsibilities of CSOs, as well as the related obligations of public institutions.

The elaboration of the Citizen Charter²⁶ is an attempt initiated by the civil society sector to fill in the existing gap. In order to do so, the Chapter gives definitions on the “autonomous citizens organisations”, explaining their rights and obligations, along with the obligations of the authorities. The right of consultation, access to information and monitoring have been set in the core of the citizen participation process. The obligations to provide information and feedback in a timely manner on the other hand have been highlighted as a core responsibility of the public institutions. They have been also urged to define and apply a set of criteria for identification of citizen organizations when they plan to establish collaboration and partnership. The criteria should be adapted to the concrete situation and should vary according to the type of relationship being considered but by no means should restrict and narrow the dialogue with the civil society.

Building trust and bridging the existing gap between the citizen and their governments is crucial policy area that guarantees proper execution of all horizontal policies and ensures the area of freedom, security and justice within the Union. These efforts should however not be limited only to the internal EU area but should spread beyond the external boundaries and embrace the entire European continent. The institution that plays a central role in this process is the Council of Europe (CoE).

Parallel to the EU framework, the Council of Europe has developed additional tools for building trust between the state and civil society. The framework under which the Council of Europe²⁷ is operating has provided opportunities for wider acknowledgement of the reinforced cooperation. At the same time it enabled elaboration of standards that are applicable to countries, outside the EU area.

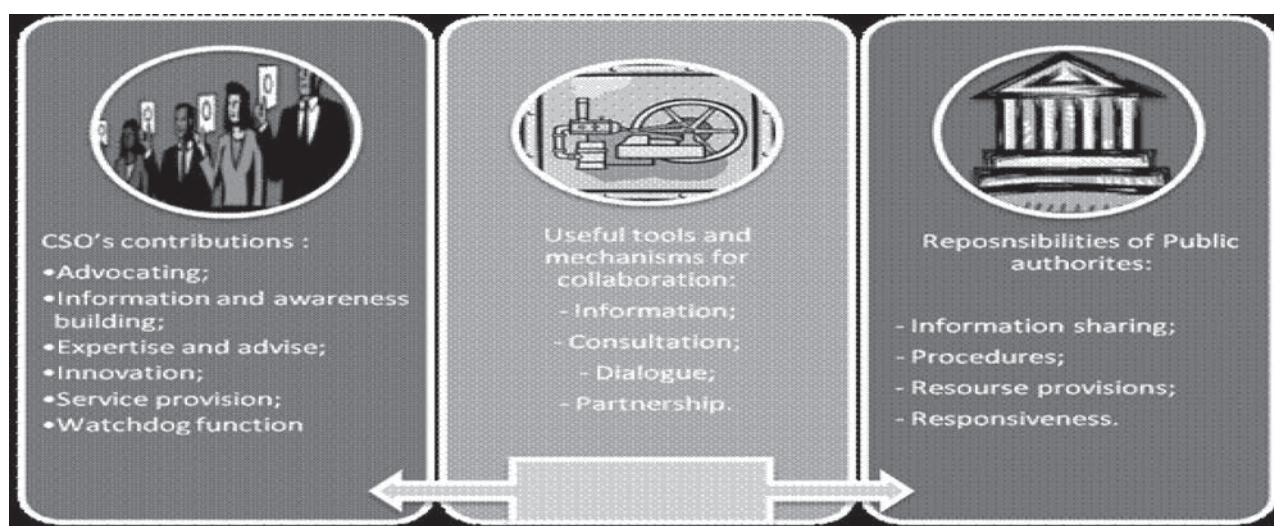
In order to ensure coherent approach towards the civil society organizations, in 2007 the Council of Europe adopted recommendations on the legal status of non-governmental organisations in Europe. The document was built upon the principles embedded in the “Guidelines for the Development and Reinforcement of NGOs in Europe” adopted by the CoE in 1996 and the “Fundamental Principles on the Status of Non-governmental organisations in Europe” elaborated in 2002. The recommendations aimed at giving minimum standards that should be followed when shaping the national CSO legislation. It also stressed that “Governmental and quasi-governmental mechanisms at all levels should ensure the effective participation of NGOs without discrimination in dialogue

²⁵ See the Commission’s communication of 11 December 2002 entitled “Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission” (COM(2002)0704).

²⁶ The text of the European Charter of Active Citizenship is the outcome of a project managed by Active Citizenship Network with the participation of World of NGOs (Austria); Consumers Defence Association (Czech Republic); Sozialburo Main-Taunus (Germany); Ghaqda-tal-Konsumatori (Malta); Association of Polish Consumers (Poland); Animar (Portugal); Romanian Association for Consumer Protection (Romania); Legal Information Center for NGOs (Slovenia); Helsinki Citizens Assembly (Turkey). The project was supported by a grant from the DG Education and Culture of the European Commission and Unicredito.

²⁷ Council of Europe has 47 members and virtually covers the entire European continent. The Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. (information available at: <http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en>)

and consultation on public policy objectives and decisions... This participation and co-operation should be facilitated by ensuring appropriate disclosure or access to official information.”²⁸ The practical guidelines on what kind of mechanisms for better civic involvement should be established were given in the Code of Good Practice for Civil Participation in the Decision-making Process adopted in October 2009 by the Conference of International Non-Government organizations²⁹. The Code not only outlined the parameters of civil society engagement but stressed that “acting in the public interest requires openness, responsibility, clarity and accountability from both the NGOs and public authorities, with transparency at all stages”³⁰. It also highlighted the main role of a CSO in the different stages of policy process, the respective responsibilities of the authorities and the main mechanisms to bridge the gap between the two actors.



Source: Code of Good Practice for Civil Participation in the Decision Making Process, CONF/PLE(2009)CODE1

In order to illustrate and clarify the relations marking CSOs interventions in the different stages of a policy process, a matrix of civil participation was elaborated (see Annex 1).

The Code of good practice have identified four levels of participation, dependent on the intensity of participation in the decision-making process. These levels are

- **Information** – this level is a base for development of all other steps of intervention. Usually at this point, the process is concentrated towards provision of information from the authorities to the civil society sector. Not much interaction or involvement of the CSOs at this step;
- **Consultation** – Comments, feedback and recommendations are expected from the CSOs upon request. Usually the initiative to organize consultations lies with the public authorities. Consultation is in the heart of all steps of the decision-making process, especially for drafting, monitoring and reformulation;
- **Dialogue** – Highly valued approach, applicable at all stages of policy process. The initiative can be taken from either parties and be comprised of two-way communication built on mutual interests in a specific field (a collaborative dialogue) or on broader policy agenda (a broad dialogue). The forms vary from open hearings to regular or ad hoc specialized meetings;

²⁸ Article 76, Recommendation to member states on the legal status of non-governmental organisations in Europe (CM/Rec(2007)14).

²⁹ With participatory status in the Council of Europe

³⁰ Code of Good Practice for Civil Participation in the Decision Making Process, CONF/PLE(2009)CODE1

- **Partnership** – the highest form of participation that implies shared responsibilities during all stages of policy process. It may take the form of participatory forums, joint co-decision bodies or outsourcing the delivery of some services to CSOs.

The participation in the decision-making process however can be effective only if mutual trust has been built not only from the civil society perspective but from the governmental side as well. In order to respond to the greater responsibilities vested to the civil society sector, the Platform of European Social NGOs explicitly stated that non-governmental organisations should be “representative of their mandate, accountable, transparent, and effective. European NGOs and the Commission should together examine ways of elaborating these and other standards, and NGOs themselves should develop guidelines in this area”³¹. The above criteria have been listed among the main tools for facilitating trust in the CSO activities and opinions.

In its discussion paper on building partnership with NGO sector³², the European Commission have proposed that some of the transparency measures may include setting objective and pre-established criteria that could include the following:

- Structure and membership of NGOs;
- Transparency of their organisation and the way they work;
- Previous participation in committees and working groups;
- Track record as regards competence to advise in a specific field;
- Capacity to work as a catalyst for exchange of information and opinions between the Commission and the citizens.

It has been an acknowledged thought that the use of these criteria may not be always feasible or appropriate. Useful alternative in these cases may be self-selection by the NGO Community, through appointment of representatives and setting of networks or platforms.

The European Economic and Social Committee has further communicated the need for developing clear criteria for the EU interest groups. In its Opinion on the White Paper on European Governance, the Committee defined nine representativeness criteria that should be met by European organizations in order to legitimately express the views of EU citizens in the consultative procedures:

- Exist permanently at a Community level;
- Provide direct access to its members’ expertise, and hence to rapid and constructive consultation;
- Represent general concerns that tally with the interest of European society;
- Comprise bodies that are recognised at a member-state level as representatives of particular interests;
- Have member organisations in most of the EU member states;
- Provide accountability for its members;
- Have authority to represent and act at a European level;
- Be independent and mandatory, not bound by instructions from outside bodies;
- Be transparent, especially financially, and in its decision-making structures³³.

The Explanatory Memorandum to CoE’s Recommendation on the Legal Status of Non-Governmental Organisations in Europe sets additional transparency and accountability requirements. Following the Memorandum, the NGOs that receive public financial support should annually submit a report on the activities they have undertaken and accounts for the public money spent. In order to grant greater transparency and overcome the mistrust on whether the money of the NGOs are spent for public good, the NGOs may also be asked to disclose their proportion in fundraising and administrative overheads and be subject to independent audits.

³¹ Democracy, Governance and European NGOs, Building a Stronger Structured Dialogue, 2001, Platform of European Social NGOs

³² Commission Discussion Paper, The Commission and Non-Governmental Organisations: Building a Stronger Partnership”, COM(2001) 11 final (available at: http://ec.europa.eu/civil_society/ngo/docs/communication_en.pdf)

³³ Opinion of the Economic and Social Committee on European Governance – a White Paper (COM(2001) 428 final)

3.3. International framework for citizens participation in the decision-making process (OECD, UN)

Similarly to the CoE's Code of Good Practices, the Organisation for Economic Cooperation and Development (OECD) has identified³⁴ three main stages marking government-citizen relations: information, consultation and active participation (partnership). The basic preconditions for the development of each of these stages are:

- The provision and access to information requires clear legal framework, sound institutional setting, strict oversight mechanisms and society that knows its rights and acts accordingly. While the adoption of laws and policies of freedom of information along with the setting of relevant institutional mechanism is a pure responsibility of state authorities, the creation of strong watchdogs that will monitor the law's implementation along with building strong civic culture are areas that require active civil society involvement.

When government engages in "active" provision of information it may use different tools (e.g. annual reports, leaflets, catalogues) and delivery mechanisms which can be either direct (information and call centres) or indirect (media coverage, advertisements, etc.);

- Consultation practices in different countries vary from setting strong normative framework (e.g. laws and government decisions) to establishing informal rules and practices. The legal framework may be either broad (establishing petition rights, referendums on certain topics, general obligation to consult) or narrow (mandatory obligation for consultation on a concrete issue with certain groups: trade unions, professional communities, minorities, etc.) The process is further fostered by the creation of permanent or ad hoc advisory bodies and committees with the participation of CSO.

The tools used by the governments to receive feedback on policy proposals may vary from opinion pools and surveys, to workshops, public hearings, focus groups, comments and notice periods, etc (in case of legislative proposals);

- Active participation recognises the ability of CSO to identify and formulate policy proposals independently. It requires the governments to share their reform agenda and to take into consideration the proposals elaborated jointly by CSO and public authorities. The framework may vary from legal regulations to flexible policies allowing citizens to take more active participation in the decision-making process (e.g. working groups). The active engagement of the citizens may be fostered by using the tools provided by citizen's agora, consensus conferences, etc.

It should be however clearly underlined that no single approach or tool is suitable for every country or situation. The OECD has stressed that the choice of tools will very much depend on the resources, skills and timeframe. It also has noted that often a mix of tools is required to be adapted to the local culture and environment. The first step however always remains the same: clearly defining the objective of the exercise on the basis of which the target group is identified (this approach is largely coherent with the approach applied by the European Commission as well).

The guiding principles for engaging citizens in policy-making elaborated by OECD are attached as Annex 2.

In order to support the government officials in their confidence building efforts, in 2001 OECD issued a Handbook on Information, Consultation and Public Participation in Policy-making. The Handbook is designed as a road map for building efficient framework for provision of information, consultation and participation. It gives concrete guidelines on how to put principles into practice. The Handbook has also provided 10 tips on how the government-citizen relations could be strengthened. In summary, the tips are as follows:

³⁴ Engaging citizens in policy making: Information, Consultation and Public Participation, 2001, OECD Public Management Policy Brief, N 10

Take it seriously: Producing lots of brochures and videos is not enough to strengthen government-citizen relations. The main questions to be answered before the start of each campaign should be: What happens to these products? What information do they carry? Do they reach the public, or do they lie around in some cupboard? Do citizens actually use the information, or do they reject it? Does government acknowledge and value the reactions of citizens – or does it turn a deaf ear? Do its activities strengthen relations with citizens, leave them unaffected or worse?

Start from the citizen's perspective: Consider the citizen's perspective first and treat them with respect. Why should citizens be interested in being informed or giving input in the first place? In order to catch citizens' attention and encourage them to engage, governments must adapt their activities to citizens' needs. This means adapting language and style to the public while making the interaction attractive and interesting, friendly, honest, and non-condescending;

Deliver what you promise: Keeping your word and building trust is essential. If governments want to strengthen their relations with citizens, then they have to deliver what they promise;

Watch the timing: Information, consultation and active participation need time – there is no quick fix. To put it bluntly, citizens are not suddenly going to show greater trust in government, just because it has just started to engage them in a single policy initiative. Nor are citizens able to contribute to policy-making without having time to become familiar with the issues and to develop their own proposals;

Be creative: Relations between government and citizens are not the same from country to country. This is why governments need to develop their activities in the context of their specific situation and challenges – creatively and innovatively;

Balance different interests: Information, consultation and active participation may lead to a broad accommodation of interests and broad consensus. However, they can also reveal divergent views and raise open questions from different sides. What strengthening government-citizens relations does, is to foster understanding and clarification of a policy issue, to provide citizens and interested parties with the opportunity to have their voices heard, to provide their input and to share it with others;

Be prepared for criticism: The golden rule in information, consultation and active participation is: if you invite citizens to say what they think then do not be surprised if they end up doing exactly that;

Involve your staff: Governments may use information, consultation and active participation activities as an occasion to look into the mirror and ask themselves: How do we deal with policy-making and implementation internally, within the government? Are employees informed about new policy initiatives? Is their input requested and taken into account? Do employees actively participate in developing and planning policies and their implementation?

Develop a coherent policy: Strengthening government citizen relations is itself a policy. Governments may want to consider how far it makes sense to formalise this policy. A basic set of formal laws, rules and structures seems to be adequate in order to provide the framework for relations to be developed further. Transparency, accountability, responsibility and the need for oversight apply in this, as in any other, field of policy;

Act now: Prevention is better than cure. Restoring lost trust in government is much harder than keeping it. For governments with little previous experience with the tools it is important to make a start – but not necessarily with everything at once. A step-by-step approach is called for. Governments may start by building the overall legal, policy and institutional framework and launching specific pilot actions to gather experience

Source: Summary of the tips provided in the Handbook for governments on information, consultation and public participation in policy-making, 2001, OECD

While these tips are directly targeted to the everyday work of public servants and policy makers, they can be easily applied by civil society organisations as well.

A good example on how civil participation may be streamlined when it comes to a very concrete but yet policy with global importance are the guidelines for participation of Major Groups and

Stakeholders elaborated by the United Nations Environment Programme (UNEP). The document aims at providing clear and balanced engagement framework and is guided by the understanding that “Engagement between UNEP and civil society is necessary, both for UNEP and for the protection of the planet’s fragile web of life. In this engagement lies the potential for resurgence of democracy and ecological awareness...”³⁵. The document describes the main expectations that UNEP and the Major Groups and stakeholders have in regard to their mutual collaboration. It also outlines the framework for management of the Major Group input to the UNEP policy work. In order to facilitate better cooperation, the following consultative mechanisms are used:

- Establishment of a Global Major Groups and Stakeholders Forum (the successor of the «Global Civil Society Forum»). The aim of the forum is to increase major groups and stakeholders influence and inputs into decision-making process;
- Organisation of regional consultation meetings on annual basis. The meetings are also used as a networking and capacity building platform and provide opportunity for exchange of views at a regional level;
- Establishment of UNEP Major Groups Facilitating Committee (successor of the Global Civil Society Steering Committee). The role of the Committee is to provide guidance and to coordinate the engagement of Major Groups in the Global Civil Society Forum cycle.

The global concern about the diminishing citizen trust has also been in the focus of the 7th UN Global Forum on reinventing government held in 2007 in Vienna. In its Vienna Declaration on building trust in government, the participants elaborated a set of recommendations on the ways to build trust in the public authorities. The recommendations were related to:

- Securing the legitimacy of the government;
- Prioritizing the service delivery and access;
- Increasing transparency and accountability to fight corruption;
- Improving access to ICTs;
- Support effective civil society engagement;
- Engaging the constructive interest of a free media;
- Bringing government closer to the citizens;
- Enabling public private partnerships;
- Promoting innovations in the public sector reform;
- Rebuilding trust in crisis and post-conflict countries.

The recommendations once again reconfirmed the main principles and tools to be followed in the process of trust building. They also showed the growing understanding and policy synergy of all major international organisations regarding the need and the mechanisms for bridging the confidence gap between citizens and their governments.

³⁵ Guidelines for Participation of Major Groups and Stakeholders in Policy Design at UNEP, 2009, United Nations Environmental Programme

IV. EUROPEAN BEST PRACTICES FACILITATING ACTIVE CIVIC PARTICIPATION

4.1. Openness and Transparency – provision of information

“... Democracy depends on people being able to take part in public debate. To do this, they must have access to reliable information... and be able to scrutinize the policy process in its various stages”.

White Paper on European Governance, European Commission, 2001

The principles of openness and transparency are closely related to the fundamental human right to receive information and hold into account public authorities for their actions. In 2001, when the Vice-president of the European Commission Kallas launched the European Transparency Initiative, he underlined that “information sharing is a well-proven confidence building measure that can regain citizens trust in the capacity of the state authorities to govern in efficient and effective manner³⁶.”

The same notion has been further developed in the explanatory report to the Council of Europe Convention on Access to Official Documents where transparency of public authorities is described as “a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist, opposed to all forms of corruption, capable of criticising those who govern it, and open to enlightened participation of citizens in matters of public interest. The right of access to official documents is also essential to the self-development of people and to the exercise of fundamental human rights. It also strengthens public authorities’ legitimacy in the eyes of the public, and its confidence in them”.

Deriving from this understanding, the Council of Europe urged the national legal systems to recognise and properly enforce the right of access for everyone to official documents produced or held by the public authorities. Thus, in order to ensure access to public information and to increase public awareness on issues related to the state governance, public authorities should at least:

- Publish annual and periodic reports about their activities;
- Make available online the statutes and the by-laws regulating the functions of the given state authority;
- Strictly observe the regulations stipulated in the relevant freedom of information acts;
- Implement «one stop shop» principle in the process of delivery of information.

In the context of the constantly growing public expectations for provision of more transparent and open governance, the CoE Convention on access to official documents introduced the principle that public authorities should become proactive agents and at their own initiative make public official documents they hold “in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest” (Article 10).

Despite the fact that transparency and openness have been long acknowledged as main principles for provision of trustworthy governance, the right of access to information has become widely recognized only in the last 20 years. From 1990 onwards, more than 90 countries worldwide have adopted specialized laws regulating the access to information. The majority of the national legal frameworks of the EU Member States have been based on the principles stipulated in the following founding documents:

³⁶ Extract from “Communication to the Commission from the President, Ms. Wallstrom, Mr. Kallas, Ms. Hubner and Ms. Fischer Boel. Proposing the Launch of a European Transparency Initiative. Memorandum to the Commission”.

- Recommendation N R (81) 19 of the Committee of Ministers to Member States on the Access to Information Held by Public Authorities (Adopted by the Committee of Ministers on 25 November 1981 at the 340th meeting of the Ministers' Deputies);
- Recommendation N (2002) 2 on Access to Official Documents (Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies);
- UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted on 25th June 1998 at the Fourth Ministerial Conference in the "Environment for Europe" process);
- A Model Freedom of Information Law, elaborated by Article 19 NGO in 2001;
- Council of Europe Convention on Access to Official Documents (Adopted by the Committee of Ministers on 27 November 2008 at the 1042bis meeting of the Ministers' Deputies).

The main principles stipulated in the Model law and in the CoE Convention on access to official documents were once again reconfirmed in the Brisbane Declaration³⁷ adopted at the UNESCO World Press Freedom Day conference in Australia. The declaration urges its members:

- To enact legislation guaranteeing the right to information in accordance with the internationally-recognized principle of maximum disclosure. Such legislation should establish limited exceptions, proactive obligations to disclose information, clear and simple procedures for making requests, an independent and effective oversight system, and adequate promotional measures;
- To ensure the effective implementation of the right to information by allocating sufficient financial and human resources for the structures and systems that are required to successfully implement legislation;
- To ensure that the wider legal environment is consistent with and supports the right to information, including by protecting freedom of expression and press freedom, by establishing other disclosure systems, and by bringing secrecy rules into line with the principle of maximum disclosure;
- To foster public awareness about the right to information and to develop the capacity of everyone to exercise that right, placing particular emphasis on disadvantaged and vulnerable groups, including women, minority language groups, indigenous peoples and disabled persons;
- To harness the power of information communication technologies (ICTs) to realize the right to information and to foster enhanced pluralism in information flows³⁸.

The right of access to information is also explicitly stipulated in the Charter of Fundamental Rights of the European Union. In particular, article 42 prescribes that "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium"³⁹. The procedures for access to information and official documents are further developed in the Code of good administrative behaviour, adopted by the European Parliament in 2001. These principles are broadly implemented in national legal frameworks of the EU Member states through the adoption and enforcement of laws for freedom of information.

A study commissioned in 2006 by the Open Society Institute tried to identify the impact and the added value of the adoption of specific laws related to free access to information. The empirical evidences gathered by the report proved that the freedom of information laws increase the responsiveness and have significant positive impact on the overall governance environment. It also revealed that the main factors that have influenced the development of the legal framework include: political will and external political incentives. The study showed that active involvement

³⁷ Freedom of Information: The right to Know, declaration adopted by the participants at the UNESCO World Press Freedom

³⁸ Full text available at: http://portal.unesco.org/ci/en/ev.php_URL_ID=30318&URL_DO=DO_TOPIC&URL_SECTION=201.html

³⁹ Charter of Fundamental Rights of the European Union, (2007/C 303/01)

of civil society organisations in the process of drafting, adopting, and implementing access to information laws leads to increased responses in more instances than in countries where civil society movements were not as active in the processes. Based on the findings of the study, the following main recommendations for better access to information were drawn:

- National and local legislatures should adopt laws and implementation regulations that provide all persons access to information held by government bodies and bodies performing public functions;
- National governments should make clear to officials, civil servants, and all other relevant personnel in public bodies that discrimination in treatment of information requests and in provision of information is unacceptable and will result in disciplinary and possibly legal consequences;
- Civil society organizations should monitor freedom of information practices, investigate suspected instances of discrimination, file lawsuits in instances where discrimination is found, and seek the imposition of penalties as set forth in anti-discrimination laws;
- Public bodies should respond to requests for information in a consistent manner. They can achieve this by training officials, civil servants, and other relevant personnel and by establishing transparent, internal systems and procedures for processing requests for information. Such systems and procedures might include assigning responsible officials to manage responses to information requests and introducing a tracking system for such requests⁴⁰.

How these principles and recommendations are implemented in practice?

Following the adoption of the Amsterdam Treaty⁴¹, in 2001 the European Council and the European Parliament adopted regulation No 1049/2001 on public access to European Parliament, Council and Commission documents. The implementation of the regulation is guided by the internal rules adopted by the three institutions and goes beyond the former framework providing more openness and transparency of the policy process by:

- Providing framework for access to unpublished documents of the EU institutions and bodies through register of documents or following individual requests;
- Extending the access to documents originating with third parties (e.g. Member States, third countries, the other institutions);
- Creating the rule that even if a document is protected by an exception (other than the protection of public interest or of privacy) it can still be released where serving the public interest is more important than protecting the document;
- Reducing the time limits to 15 working days and creating document register⁴².

In order to facilitate the implementation, European Commission has issued a Guide explaining in a simple manner how to get access to information. The Guide is divided in two main subsections: the first explains how to get access to information which has already been published and the second how to get access to unpublished documents. Further standards regarding openness and provision of information are embedded in the Code of Good Administrative Behaviour for the General Secretariat of the Council of the European Union and its Staff in their Professional Relations with the Public⁴³ and in the Code for Good Administrative behaviour in relation with the public adopted by the European Commission. The Codes establish general standards for provision of information and dealing with public requests. Following the provisions, all information

⁴⁰ Transparency and Silence, A Survey of Access to Information Laws and Practices in Fourteen Countries, 2006, Open Society Institute, New York

⁴¹ The Treaty introduced in its Article 255 citizens right of access to European Parliament, Council and Commission documents

⁴² The Commission register is accessible at http://ec.europa.eu/transparency/access_documents/index_en.htm#

⁴³ Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behavior for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public

(unless protected by a particular law) should be provided in a clear and comprehensive manner. If a staff member considers that he/she is unable to divulge the information requested, the reasons why such information cannot be provided shall be given to the person concerned. All channels of communication – mail, telephone or email are considered equally valid for sending and receiving request for information. In order to promote the accountability principle, the Codes oblige their staff to identify themselves, their service and position when interacting with the public.

Provisions for access to documents

	General rule in statutory or constitutional regulation	Need to give reasons	Possible charge for copies
Austria	Obligation of officials to inform the public	No	No
Belgium	Yes	Only when asking for documents of personal matter.	Yes
Cyprus	Yes	Yes	
Czech rep	Yes	No	Yes
Denmark	Yes	No	Yes
Estonia	Yes		
Finland	Yes	No	Yes
Greece	Yes	No	Yes
Hungary	Yes	Yes	
Ireland	Yes	No	Yes
Italy	Yes		
Latvia	Yes	Only when asking for restricted info	Yes
Lithuania	Yes	No	Yes
Netherlands	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes
Slovenia	Yes	No	Yes
Spain	Yes	Yes: individual petition must be formulated	Yes
Sweden	Yes	No, generally not. In certain cases, and only if it is necessary, the authority may ask for reasons in order to be able to decide whether the document may be made available.	No
UK	Yes		

Source: Principles of Good Administration, In the Member States of the European Union, 2005, Swedish Agency for Public Management

Stipulations similar to the provision given by the EU Regulation and the Codes of good administrative behaviour can be found in national legal frameworks of the majority of the EU Member states. The right to access information is considered a fundamental right that is broadly guaranteed by constitutional provisions. The basic prevailing tendencies in the majority of the legal acts are summarised in a study⁴⁴ conducted by the Swedish Agency for Public Management and are described as follows:

⁴⁴ Principles of Good Administration, In the Member States of the European Union, 2005, Swedish Agency for Public Management

- The right of access to documents may be restricted when disclosure of information may damage state/public service/commercial or bank secrets or may threaten the foreign policy. Access to documents may be also denied when they contain private information about third person;
- The person requesting the information is not in general expected to identify himself nor explain the reason for the request;
- There are usually established charges for provision of information, but they should not exceed the expenses for the searching and coping of the documents and information.

In addition, the development of e-technologies have reshaped the delivery of public services and substituted many of the traditional governmental mechanisms. The e-technologies and e-governmental applications slowly “invaded” the governance space and provided solutions to long lasting problems that have puzzled governments around the world. Accordingly, the means for provision of information have changed giving more room to the Internet tools as better and faster channels for government-citizen communication.

In the 21st century, e-Government has become a synonym for a modern and innovative state in which quality, trust and speed are central elements. E-Government solutions have transformed governments by making them more accessible to their citizens, more accountable, effective and transparent. The properly implemented e-government mechanisms have the ability to strengthen the cement between government and citizens and subsequently enable governments to gain public trust by implementing policies that have been influenced by citizens’ inputs. Therefore, governments across the globe have actively promoted the use of e-governance tools in all spheres of interaction with their citizens. The provision of information to the wider public in this respect is a major cornerstone.

Access to information and e-solutions in selected member states

Estonia

In Estonia, the main legal instrument that guarantees access to public information is the Estonian constitution. Its stipulations have been further developed in the Public Information Act aiming among other things to create applicable mechanism for monitoring the activities of the public bodies. In order to do so, the law explicitly obliges the authorities to take proactive position in the process of information delivery and sets requirements for the information that should be mandatory disclosed (Article 28). Such information includes: draft laws, reports, concepts and policy papers, statistics, draft budgets and use of assets and budgetary funds, etc. Article 4 further stipulates that in order to ensure the democratic process, public authorities should provide the requested information in the quickest and easiest manner possible. The law also binds public institutions to clearly explain the procedures for access to information and to further assist the person making request for information. The requests can be made either orally, or in writing by the means of post, fax or electronic mail.

A good example on the practical implementation of the Estonian Public Information Act is the webpage of the Estonian Tax and Customs Board (www.emta.ee). The webpage provides all needed information to the taxpayers by displaying tax return forms, guidelines for filling in the tax returns, the texts of legal acts, etc. Thorough information is provided also in regard to telephone accessibility, written questions, service bureaus, as well as refund of income tax to taxpayers who have submitted their income tax returns via E-Tax Board.

Over the last decade, Estonia has systematically pursued the development of the e-state and e-government as a bridging tool between citizens and their institutions. As a result, the World Economic Forum ranked the country 25th out of 134 countries in the Networked Readiness Index⁴⁵ for 2009-2010 which made Estonia the highest-ranking Central and Eastern European country.

⁴⁵ The Global Information Technology Report 2009–2010, ICT for Sustainability, World Economic Forum

Excellent illustration on how new technologies can foster the provision of information and thus enable greater government transparency and openness, is the X-Road system applied in Estonia. The X-Road tool enables secure access to public services including e-elections, e-schools, e-government, e-police, e-health and the e-tax office. In 2008, 88% of income taxes were declared on this system. The parliamentary elections in 2007 were the second opportunity for Estonian citizens to vote from home and turnout using this method represented 5.5% of the total.

X-Road has promoted culture of transparency in the public sector and active citizen participation in decision-making processes. The system has facilitated data transfer between digital state databases and enabled secure data transfer between individuals and state institutions⁴⁶. Parallel to the development of the X-Road tool, the Government created a web portal called “Today I Make Decisions” in 2001. Public Institutions were urged to upload all their draft bills and amendments there, allowing people to review, comment and make proposals on the legislative process as well as propose amendments to existing legislation. Proposals made through the web page have been forwarded to responsible ministries for compulsory response (see more information in the next chapter).

Austria

In Austria, the Fundamental act on the duty to grant information and the Act on the duty to grant information provide the general legal framework for access to information. The main responsibilities for defining the concrete scope of the information provision lay within the Laender that should adopt rules defining to what extent information shall be given and to what extent special institutions shall be in charge of complying with such duty to give information. The Federal law however prescribes that everyone is entitled to request information in writing, orally or by telephone. The information should be given without undue delay, at the latest within 8 weeks after the receipt of the request for information.

Since 2001 one of the main channels for information exchange between Austrian authorities and their citizens is the web portal “Help”⁴⁷. HELP provides information on nearly 200 different topics related to official procedures, including the required documents, applicable fees, deadlines and online forms and templates. The portal technology provides 24/7 interface between the state authorities and their citizens. Since its launch, the portal has provided growing number of procedures that can be performed online. It delivers information on all sorts of dealings with Austrian authorities such as, childbirth, marriage, housing, or passport matters and enables the electronic processing of some of these procedures. The content of the website is organised in four main sections, targeting different groups: citizen, business, young people and senior citizens. The common criteria around building the services are transparency, comprehensiveness, clarity of information, and focus on essential facts.

Parallel to this, the government has launched online federal government legal information system⁴⁸ which provides free access to the entire Austrian legislation. The system simplifies and standardises the procedure and enables citizen to get acquainted with the new legislative bases in the moment of its promulgation.

The **Finish** web portal “Suomi.fi”⁴⁹ – one address for public services” is build following the same logic stated behind the elaboration of the Austrian HELP portal. Suomi.fi provides information on all major situations during lifetime. Some of the information packages provided are collections of web pages aimed at specific target groups, while others contain general information on Finnish society and the public sector in Finland. The main purposes of the portal are:

- to strengthen the openness, visibility and unity of the public sector;

⁴⁶ More information available at: <http://www.ria.ee/indexphpid27309>

⁴⁷ <http://help.gv.at>

⁴⁸ <http://www.ris.bka.gv.at>

⁴⁹ <http://www.suomi.fi/suomifi/english/index.html>

- to promote a common standard among the public sector in web-services;
- to improve accessibility and quality of public sector services for the needs of citizens;
- to make it easier to find public sector information;
- to promote interactivity between citizens and authorities;
- to minimize the overlapping of work among authorities;
- to advise citizens to find the right authority in their special needs.

Netherlands

The Government Information Act is based on the constitutional right of access to information. It creates presumption that documents created by public agencies should be available to everyone. The decisions on request for information should be given verbally or in writing but in case of refusal, the applicant may request written notification. The application should be examined at the earliest possible opportunity, and in any event no more than two weeks after the date of receipt of the application. If for some reasons the authority cannot answer within this timeframe, it should notify the applicant in writing explaining the reasons for the delay. This should be done before the first two-week period has elapsed.

The law also obliges the public authorities to provide on their own initiative information on their policies and implementation, whenever the provision of such information is in the interests of effective, democratic governance. This information should be provided in comprehensible form and in such a way that it can reach as many interested members of the public as possible at a time which will allow them to make their views known to the administrative authority. In order to fulfil these requirements the Dutch authorities have been extensively using different e-tools.

E-technologies have been used for improving information exchange, service delivery and interactive participation by introducing new partnerships between citizens and government. This is achieved by giving more choices but also more responsibilities to the public. In order to stimulate the development of e-government from a citizen's point of view, the Dutch government established e-Citizen Programme. It is an independent forum involving citizens in the policy process by enabling them to advise government bodies and monitor progress. To help citizens in their new role, the e-Citizen Program has developed e-Citizen Charter. The Charter is based on conducted surveys of citizen expectations and existing quality systems. It summarises the vision of the Dutch citizens on the government as a whole. Despite the fact that its provisions are not obligatory for the administrations, the principle: "Comply or Explain" is promoted. The e-Citizen Charter contains the following ten principles that are largely based on the internationally recognized principles of good governance and on the modern trends in government delivery:

With the launch of eCitizen programme, the Dutch government has recognised the importance of building transparent official websites as a way to boost citizen trust. Therefore in 2007 a set of Web Guidelines were introduced. The Guidelines are mandatory for all government websites and consist of 125 requirements that deal with all aspects of the digital relationship: accessibility, transparency, clarity, openness, predictability. To measure the performance of its websites, the Dutch government uses self-assessment tool that covers 78 out of 125 criteria to measure performance.

The close link between the transparent provision of information and in particular the transparent websites of government authorities was once again reconfirmed by a study made by Federal Communications Commission in the United States. After surveying data from 36,000 visitors to federal websites in 14 participating agencies they found out that when citizens find a website highly transparent, they are 85% more satisfied than citizens who rate a federal website's transparency poorly. Citizens who perceive a federal website to be highly transparent tend to trust the overall government activities more (46%) and are more likely to participate by expressing their thoughts and ideas with that agency in the future, offline or online (40%). These kinds of citizen behaviours and attitudes are qualified as "the holy grail of open, cost-effective, democratic, efficient government"⁵⁰.

⁵⁰ The Inaugural ForeSee Results', E-Government Transparency Index: Quantifying the Relationship Between Online Transparency and Trust in Government, 2010, Larry Freed

Choice of Channel: As a citizen I can choose for myself in which way to interact with government. Government ensures multi channel service delivery, i.e. the availability of all communication channels: counter, letter, phone, e-mail, Internet.

Transparent Public Sector: As a citizen I know where to apply for official information and public services. Government guarantees one-stop-shop service delivery and acts as one seamless entity with no wrong doors.

Overview of Rights and Duties: As a citizen I know which services I am entitled to under which conditions. Government ensures that my rights and duties are at all times transparent.

Personalized Information: As a citizen I am entitled to information that is complete, up to date and consistent. Government supplies appropriate information tailored to my needs.

Convenient Services: As a citizen I can choose to provide personal data once and to be served in a proactive way. Government makes it clear what records it keeps about me and does not use data without my consent.

Comprehensive Procedures: As a citizen I can easily get to know how government works and monitor progress. Government keeps me informed of procedures I am involved in by way of tracking and tracing.

Trust and Reliability: As a citizen I presume government to be electronically competent. Government guarantees secure identity management and reliable storage of electronic documents.

Considerate Administration: As a citizen I can file ideas for improvement and lodge complaints. Government compensates for mistakes and uses feedback information to improve its products and procedures.

Accountability and Benchmarking: As a citizen I am able to compare, check and measure government outcome. Government actively supplies benchmark information about its performance.

Involvement and Empowerment: As a citizen I am invited to participate in decision-making and to promote my interests. Government supports empowerment and ensures that the necessary information and instruments are available.

Source: E-Citizen Charter, Citizenlink, Netherlands (available at: <http://www.burgerlink.nl/englishsite/e-citizen-charter/e-Citizen-Charter.xml>)

United Kingdom

The Freedom of Information Act aims at increasing government accountability, making public authorities' work more visible. It also ensures that policy-making processes are fair, democratic and open. The act creates obligation for the public institutions to disclose requested public information and to inform in writing the applicant in case the request should be forwarded to another competent authority. The law also binds the institutions to provide advice and assistance to persons who propose to make or have made requests for information. Following the law, all public authorities are required to adopt and maintain publication schemes. The publication scheme is a commitment to routinely and proactively provide information to the public. A model scheme (see Annex 3) that contains seven classes of information has been elaborated. These classes are:

- Who we are and what we do;
- What we spend and how we spend it;
- What our priorities are and how we are doing;
- How we make decisions;
- Our policies and procedures;
- Lists and registers;
- The services we offer⁵¹.

⁵¹ Model Publication Scheme available at: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/generic_scheme_v1.0.pdf

Sample catalogue of public information

1. Basic details of the catalogue	
Title of the body	- Full title of the body, or of bodies which, in accordance with Article 2(3) of the Decree on the provision of public information, can draw up a joint catalogue
Responsible officer	- (Academic title), full name, (professional title), position of the responsible officer
Date of the first publication of the catalogue	- Date on which the catalogue was adopted
Date of the last change	- Date (last day of the month when a change was last entered)
Web address at which the catalogue can be accessed	- Web address
Other forms of the catalogue	- Hard copy, CD, DVD or other media and details of its physical accessibility
2. General details about the body and the public information at its disposal	
2a. Organisational chart and details of the body's organisation	
Brief description of the area in which the body works	- Description of the field of work as set out in the founding acts
List of all internal organisational units	- Title of an organisational unit - Address of the unit - Contact details for the unit (for each unit separately) - Note (link to the catalogue of bodies, if the internal organisational unit is an independent body)
Organisational chart of the body	Link to a separate document
2b. List of other bodies in the area of work (only for ministries)	
List of all other bodies in the area of work	- Title of the body - Address of the body - Contact details for the body (for each unit separately) - Note (link to the catalogue of bodies)
2c. Contact details of officer(s) responsible for providing information	
Responsible officer	- Full name, title, position, address, telephone number, email address
2d. List of laws, implementing acts and regulations of the European Communities concerning the area in which the body works (via the national, local or European register of regulations)	
National regulations	- Link to the national register of regulations
Local authority regulations	- Link to the local register of regulations (only for local authority bodies)
EU regulations	- Link to the European register of regulations
2e. List of proposed regulations (via the national or local register of regulations)	
Proposed regulations	- Link to the national or local register of regulations - Link to the EU portal
2f. List of strategic and programming documents by subject area	
List of strategic and programming documents	- Adopted strategic and programming documents by subject area – links to separate documents - Proposed strategic and programming documents by subject area – links to separate documents
2g. List of types of administrative, judicial or legislative procedures	
Types of procedures conducted by the body	- Types of procedure - Details of the conditions relating to individual types of procedure in accordance with Article 10 of the Decree
2h. List of public records managed by the body	

List of records	<ul style="list-style-type: none"> - Title of the record - Record based on (legal basis) and contains data on (substantive framework as defined in the legal basis) - How the body obtains information to enter into the record (ex officio, on the basis of submissions) - Description and conditions of access to the records in accordance with Article 10 of the Decree - Links to other public records
2i. List of other computerised databases	
List of databases	<ul style="list-style-type: none"> - Name of the computerised database - Brief description of purpose of the database - Brief description of how data is obtained from the database - Description of access to the database
2j. Most important subject areas for other public information or list of individual documents	
Areas of information – following the description of the area in which the body works, broken down	<ul style="list-style-type: none"> - Other public information in accordance with Article 11 of the Decree - Breakdown of other subject areas - List of important documents (optional)
3. Description of method of access to other public information	
Description of access to individual areas of information	<ul style="list-style-type: none"> - Description of access via the web stating the technical conditions and forms in which the public information exists - Description of “physical” access stating office hours, premises and method of viewing information - Description of access for people with special needs in accordance with Article 13 of the Decree - Description of partial access - Link to the cost schedule
4. List of most frequently requested public information	
List of the ten most frequently requested items or subjects of information (automatically generated list determined by demand for particular information)	<ol style="list-style-type: none"> 1. 2. 3. 4.....

Source: Decree on the provision of public information, published in the Official Gazette of the Republic of Slovenia, no. 76/05, on 12. august 2005

The implementation of the law on freedom of information is further facilitated by adoption of the Code of Practice on the discharge of public authorities' functions. The Code aims to transform the “culture of the public sector to one of greater openness, enabling members of the public to better understand the decisions of public authorities, and ensuring that services provided by the public sector are seen to be efficiently and properly delivered.” The Office of the Information Commissioner has produced specific guidelines to show the types of information the particular authority is expected to publish.

In addition, the British government has launched an online platform that provides citizens with a single point of access to public sector information and services. The portal (www.direct.gov.uk) is used as a focal point for delivery of information, on-line services and provision of opinion on issues put under discussion from the government. Five sections provide additional information for specific groups like young people, Britons leaving abroad, parents, disabled and people caring for someone.

Similar to the publication schemes in the UK, the **Slovenian** government adopted a common approach to the delivery of public information. The decree on the provision of public information lays down the method, by which public information should be provided, published in Internet and the method by which a catalogue of public information shall be drawn up. The government has bound all public institutions to provide updated catalogue of public information on their websites. The model catalogue, annexed to the governmental decree is the following:

Bulgaria

The Law on Access to Information was adopted in 2000 with the aim to provide more transparency in the decision-making process and enable citizens to make well-informed choices while at the same time to monitor the implementation of the state policies. The law provides everyone with the right to access any kind of information available in all public bodies. The application for information may be written or oral, requested also by using the means of Internet technologies. All requests should be answered within 14 days of the application date. If for any reason the required information cannot be provided within the time frame, the authority should notify the applicant about the extension of the processing period. The overall deadline for answering the request however cannot exceed 24 days. The authorities are also obliged to announce information, which has been collected, or came to their knowledge during the performance of their activities in two specific cases:

- if the information disproves a previously disseminated incorrect information that affects important social interests;
- could be, of interest to the public.

In order to secure greater transparency, public authorities are bound to publish on a regular basis up-to-date information containing:

- description of their powers as well as data on the organizational structure, functions and responsibilities of the administration;
- list of the acts issued within the scope of their powers;
- description of the data volumes and resources used by the respective administration;
- the name, address, telephone number and working hours of the respective administration's office which is authorized to receive applications for access to public information.

In addition, some public authorities have launched additional transparency initiatives such as live on-line broadcasting of the meetings of Sofia Municipal Council. The debates in the local Assembly are then archived and posted on the webpage of the municipality. In 2009, in order to facilitate transparency and enable citizen to have a "close look" at the deliberations during Ministerial meetings, the Government launched a new e-system providing the full version of the minutes and decisions taken during government meetings. They are published in special section on the government website at the day of the discussion. Government decisions dating back up to 1990 were scanned and posted on the web as well. Thus CSOs, media and citizen are enabled to follow the policy development, to get acquainted with the grounds for adoption/overruling, to monitor the process and hold the ministers into account.

A key role in the monitoring of the implementation of the Bulgarian Public Access to Information law plays a NGO called: Access to Information Programme (AIP). The foundation was established in 1996 by a group of Bulgarian journalists, lawyers, sociologists, and economists who worked in the area of human rights. For the years of its existence, the foundation managed to become the major watchdog in the area but at the same time a governmental partner, whose opinions are respected and usually complied with. The main activities of the AIP are related to:

- Monitoring the freedom of information legislation in Bulgaria and participating in the debates for its compliance with the international standards in the area;
- Work with an established network of journalists in 26 cities throughout the country that monitors the access to information implementation practices and gives recommendations for their improvement;

- Provision of consultations on cases concerning the right of access to information and legal help in individual cases of information seeking;
- Organising specialized freedom of information trainings for civil servants and local administration officials, journalists, and nongovernmental organizations;
- Preparation and publishing of handbooks on how to exercise the right of access to information, as well as publications clarifying particular aspects of the access to information legislation⁵².

Since 2006, the AIP issues regular evaluation on the implementation for active disclosure of information on the Internet sites of the executive authorities. On a yearly basis it evaluates the implementation of the Access to Information Law. In 2010 after 10 years of implementation, AIP evaluated the development of the freedom of information framework like this: “The implementation of the law has passed different stages in Bulgaria. From complete ignorance by the administration, through unwillingness and resistance against the implementation of the provisions, to the increase of the number of paragon public bodies which Access to Information Programme (AIP) awards on the Right to Know Day”⁵³.

In the era of ICT, provision of information and e-technologies go hand in hand. This tendency is explicitly visible in the legal framework of access to information that with the development of the e-technologies embedded and promoted them as equally viable source of communication as the standard models applicable so far.

The following table presents a comparative overview on how some of the major international standards that foster confidence building between citizen and their authorities are applied in the freedom of information legislation acts of some EU member states.

Major international standards and their application in the freedom of information legislation acts of some EU member states.

International Instruments Addressing Freedom of Information	Similar provisions in Freedom of Information Laws of EU member states
<p>Article 19: Global Campaign for Free Expression</p> <p>Definition Information should be defined broadly. “Information” includes all records held by a public body, regardless of the form in which the information is stored (document, tape, electronic recording and so on), its source (whether it was produced by the public body or some other body) and the date of production.</p>	<p>Poland: The Law On Access to Public Information Article 1 of the Law on Access to Public Information defines public information as “any information on public matters constitutes public information in the understanding of the Act.”</p> <p>Bulgaria: Access to Public Information Act Article 2.1 defines “public information shall be any information relating to the social life in the Republic of Bulgaria, and giving opportunity to the citizens to form their own opinion on the activities of the persons having obligations under this act. (2) The information under sub-article 1 shall be deemed public irrespective of the kind of its physical bearer.”</p> <p>Estonia: Public Information Act § 3. (1) Public information is information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof.</p>
<p>Principle 2. Obligation to Publish</p> <p><i>Public bodies should be under an obligation to publish key information</i></p>	<p>Bulgaria: Access to Public Information Act Access to Public Information Act of the Republic of Bulgaria provides the following mechanism for publication of up-to-date public information.</p>

⁵² More information is available at: http://www.aip-bg.org/index_eng.htm

⁵³ Access to Information Report 2009, Access to Information Programme, 2010, Bulgaria

Freedom of information implies not only that public body accede to requests for information but also that they publish and disseminate widely documents of significant public interest, subject only to reasonable limits based on resources and capacity.

Council of Europe Convention on Access to Official Documents

Article 10 – Documents made public at the initiative of the public authorities

At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

Duties for disclosing public information

Art. 14. (1) The bodies shall inform of its activities by making publications or using other form of announcements.

(2) The bodies shall be obliged to announce information, which has been collected, or came to its knowledge during the performance of their activities, where such information:

1. is of a nature to prevent some threat to the citizens' life, health or security, or to their property;
2. disproves a previously disseminated incorrect information that affects important social interests;
3. is, or could be, of interest to the public;
4. must be prepared and released by virtue of law.

Art. 15. (1) In order to achieve transparency of the administration's activities, and for the purpose of maximum facilitation of access to public information, every chief officer of an administrative structure within the system of the executive power shall publish on a regular basis up-to-date information containing:

1. description of his/her powers as well as data on the organizational structure, the functions and the responsibilities of the administration led by him/her.
2. list of the acts issued within the scope of its powers;
3. description of the data volumes and resources, used by the respective administration,
4. the name, address, telephone number and working hours of the respective administration's office which is authorized to receive applications for access to public information.

Estonia: Public Information Act

§ 28. Obligation of holder of information to disclose information

(1) A holder of information is required to disclose the following existing information relating to the duties thereof:

- 1) generalised economic statistics and economic forecasts of the state and local governments;
- 2) generalised statistics relating to crime and misdemeanours;
- 3) statutes of state or local government agencies and their structural units;
- 4) formats of petitions and other documents submitted to state and local government agencies and instructions for the completion thereof;
- 5) job descriptions of state and local government officials;
- 6) positions in state and local government agencies, and the given names, surnames, education, areas of specialisation, telephone numbers and electronic mail addresses of officials filling the positions prescribed in such agencies;
- 7) information concerning danger posed to the life, health and property of persons;
- 8) reports on work results and the performance of duties in state and local government agencies;
- 9) names and electronic mail addresses of members of the supervisory boards and management boards of legal persons in public law;
- 10) management reports and income / expense statements of legal persons in public law;
- 11) budgets and draft budgets of state agencies, local governments and local government agencies, and reports on the implementation thereof;
- 12) information concerning the receipt of state budget revenues;
- 13) information concerning the state of the environment, environmental damage and dangerous environmental impacts;

14) precepts or decisions relating to state supervision or supervisory control as of the entry into force thereof;

15) draft Acts prepared by ministries and draft Government of the Republic regulations, together with explanatory memoranda, when such drafts are sent for approval or presentation to the Government of the Republic;

16) draft regulations of ministers and local governments together with explanatory memoranda before such drafts are presented for passage;

17) draft concepts, development plans, programmes and other projects of general importance before such drafts are presented to the competent bodies for approval, and the corresponding approved or adopted documents;

18) information concerning research and analyses ordered by state or local government agencies;

19) information concerning unfilled positions in state or local government agencies;

20) information concerning public procurements which are being organised or have been organised by the state or local governments;

21) information concerning the use of assets and budgetary funds which the state or a local government has transferred to legal persons in private law founded by the state or local government or with the participation thereof;

22) programmes of public events;

23) changes in the work and duties of state and local government agencies which are related to services provided for persons, not later than ten days before implementation of the changes;

24) information concerning the office hours of heads of state and local government agencies;

25) salary rates and guides valid in state and local government agencies, and the procedure for payment of additional remuneration and the grant of fringe benefits in such agencies;

26) information concerning the price formation of companies which have a dominant position in the market or special or exclusive rights or which are natural monopolies;

27) information concerning the provision of public services and concerning changes in the conditions and price for provision of the service before implementation of such changes;

28) lists of the members of political parties;

29) court judgments which have entered into force;

30) information in general national registers and state registers to the extent prescribed by law;

31) the document register of the agency;

32) other information and documents concerning which the obligation to disclose is provided by an international agreement, an Act or legislation passed on the basis thereof or which the holder of information deems necessary to disclose.

Netherlands: Act of 31 October 1991, containing regulations governing public access to government information

Section 8

1. The administrative authority directly concerned shall provide, of its own accord, information on its policy and the preparation and implementation thereof, whenever the provision of such information is in the interests of effective, democratic governance.

	<p>2. The administrative authority shall ensure that the information is supplied in a comprehensible form and in such a way as to reach the interested party and as many interested members of the public as possible at a time which will allow them to make their views known to the administrative authority in good time.</p> <p>United Kingdom - Freedom of Information Act Publication schemes.</p> <p>19. (1) It shall be the duty of every public authority-</p> <p>(a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a "publication scheme"),</p> <p>(b) to publish information in accordance with its publication scheme, and</p> <p>(c) from time to time to review its publication scheme.</p> <p>(2) A publication scheme must-</p> <p>(a) specify classes of information which the public authority publishes or intends to publish,</p> <p>(b) specify the manner in which information of each class is, or is intended to be, published, and</p> <p>(c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.</p> <p>(3) In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest-</p> <p>(a) in allowing public access to information held by the authority, and</p> <p>(b) in the publication of reasons for decisions made by the authority.</p> <p>(4) A public authority shall publish its publication scheme in such manner as it thinks fit.</p>
<p>Article 19: Global Campaign for Free Expression</p> <p>Principle 1. Maximum Disclosure Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information. Everyone present in the territory of the country should benefit from this right.</p> <p>A Model Freedom of Information Law</p> <p>Part II: The Right to Access Information Held by Public and Private Bodies Freedom of Information</p> <p>3. Everyone shall have the right to freedom of information, including the right to access information held by public bodies, subject only to the provisions of this Act.</p> <p>Council of Europe Convention on Access to Official Documents</p>	<p>Estonia: Public Information Act Article 4.2 of the Public Information Act provides that access to information shall be ensured for every person in the quickest and easiest manner possible.</p> <p>Poland: Law on Access to Public Information Article 2. Each person is entitled to the right of access to public information, hereinafter referred to as "the right to public information".</p> <p>Austria: Fundamental Act on the duty to grant Information The organs of the Laender, of the municipalities as well as of the self administration as regulated by Laender legislation, shall give information on matters within their scope of activities, to the extent not being in contradiction with a statutory duty of secrecy.</p> <p>§ 2. Anyone is entitled to request information.</p> <p>§ 3. The Laender legislation regulates to what extent information shall be given and to what extent special institutions shall be in charge of complying with such duty to give information. Laender legislation shall provide for professional organisations that they are only liable to give information to persons being their members and only to the extent as this does not prevent the proper compliance with their statutory duties.</p> <p>Netherlands: Act of 31 October 1991, containing regulations governing public access to government information Section 3</p> <p>1. Anyone may apply to an administrative authority or to an agency, service or company carrying out work for which it is accountable to an administrative authority for information contained in documents concerning an administrative matter.</p>

<p>Article 2 – Right of access to official documents</p> <p>Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.</p> <p>Article 5 – Processing of requests for access to official documents</p> <p>3. Requests for access to official documents shall be dealt with on an equal basis.</p> <p>4. A request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.</p>	<p>2. The applicant shall specify the administrative matter or the document relevant to it as to which he wishes to get information.</p> <p>United Kingdom – Freedom of Information Act</p> <p>1. (1) Any person making a request for information to a public authority is entitled–</p> <p>(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and</p> <p>(b) if that is the case, to have that information communicated to him.</p>
<p>Article 19: Global Campaign for Free Expression</p> <p>Principle 5. Processes to Facilitate Access</p> <p>All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information.</p> <p>Council of Europe Convention on Access to Official Documents</p> <p>Article 4 – Requests for access to official documents</p> <p>1. An applicant for an official document shall not be obliged to give reasons for having access to the official document.</p> <p>2. Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.</p> <p>3. Formalities for requests shall not exceed what is essential in order to process the request.</p>	<p>Bulgaria: Access to Public Information Act</p> <p>Art. 24. (1) The request for granting access to public information shall be made in the form of a written application or verbal request.</p> <p>(2) The application is deemed written also in cases where it is <i>sent electronically</i> subject to conditions determined by the respective body.</p> <p>Czech Republic: The Law on Free Access to Information</p> <p>§ 13 Application for providing information</p> <p>(1) The application asking for information is submitted either in writing or orally, and also by <i>means of telecommunications equipment</i>.</p> <p>United Kingdom – Freedom of Information Act</p> <p>Request for information.</p> <p>8. (1) In this Act any reference to a “request for information” is a reference to such a request which–</p> <p>(a) is in writing,</p> <p>(b) states the name of the applicant and an address for correspondence, and</p> <p>(c) describes the information requested.</p> <p>(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request–</p> <p>(a) is transmitted by electronic means,</p> <p>(b) is received in legible form, and</p> <p>(c) is capable of being used for subsequent reference.</p>
<p>Article 19: Global Campaign for Free Expression</p> <p>Principle 5. Processes to Facilitate Access</p> <p>Public bodies should also be required to assist applicants whose requests relate to published information, or are unclear, excessively broad or otherwise in need of reformulation.</p>	<p>Estonia: Public Information Act</p> <p>§ 15. Obligation of holders of information to assist persons making requests for information</p> <p>(1) Holders of information are required to <i>clearly explain</i> the procedure for and the conditions and manners of access to information to persons making requests for information.</p> <p>(2) Officials and employees of holders of information are required to <i>assist persons</i> making requests for information in every way during the making of requests for information and the identification of the information necessary for the persons making requests for information, the location of the information and the most suitable manners of access thereto.</p>

<p>A Model Freedom of Information Law</p> <p>Part II: The Right to Access Information Held by Public and Private Bodies</p> <p>Request for Information</p> <p>8(2) Where a request for information does not comply with provisions of the law, the official who receives the request shall render such reasonable assistance, free of charge, as may be necessary to enable the request to comply with the law.</p> <p>Council of Europe Convention on Access to Official Documents</p> <p>Article 5 – Processing of requests for access to official documents</p> <p>1. The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.</p>	<p>(3) An official or employee of a holder of information who is not competent to comply with a request for information is required promptly to send the person making the request for information to an official or employee who has the corresponding competence, or promptly to communicate the request for information in writing to the specified official or employee.</p> <p>Netherlands: Act of 31 October 1991, containing regulations governing public access to government information</p> <p>Section 4 If the application concerns documents held by an administrative authority other than that to which the application has been submitted, the applicant shall, if necessary, be referred to that authority. If the application was made in writing, it shall be forwarded and the applicant shall be notified accordingly.</p> <p>United Kingdom – Freedom of Information Act</p> <p>16. (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.</p>
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4.2. Participation – citizens involvement in the decision-making process

“The quality of... EU policy depends on ensuring wide participation throughout the policy chain – from conception to implementation.”

White Paper on European Governance,
European Commission, 2001

For many years, public consultations have been perceived as useless and time consuming exercises. On one hand, public institutions believed that the only valuable expertise is concentrated within their own internal system and considered the “interference” of outside parties as cumbersome and fruitless. On the other side, the civil society organizations were dispirited by the lack of response to their comments and the general neglect towards their opinion.

The process of globalization, combined with the fall of the “iron curtain”, the strengthening of advocacy capacities of the civil sector and the declining citizen trust in political systems gradually lead to the change of this perspective and brought along a new governance “thinking”. Public consultations have gradually taken their right place as key policy mechanism, fostering the notion that consulting the public can only be comprehended as a “win-win” solution. This was explicitly underlined in the Explanatory Memorandum to the Recommendation on the Legal Status of Non-Governmental Organisations in Europe where the Council of Europe stated that “Notwithstanding the different perspective of NGOs and public authorities, it is in their common interest and that of society as a whole for them to have available effective mechanisms for consultation and dialogue so that their expertise is fully exploited. Certainly competent and responsible input by NGOs to the process of public policy formulation can contribute greatly to efforts to find solutions to the many problems that need to be addressed”⁵⁴. The CoE urged its members to adopt techniques that facilitate CSOs input through bodies playing a co-ordinating role.

Realising that the civil society organisations play an important role of facilitators of broad policy dialogue, in 2001 the European commission proclaimed public participation as one of the five core

⁵⁴ Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe, Council of Europe

principles of good governance. In its White Paper on European Governance it clearly signalled that: “the quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies”⁵⁵. And while the White Paper on European Governance dealt with the principle of participation at macro level, the Model Code of Good Administration adopted by the Council of Europe went beyond the policy level, stipulating that even at the level of individual decisions, “unless action needs to be taken urgently, public authorities shall provide private persons with the opportunity through appropriate means to participate in the preparation and implementation of administrative decisions which affect their rights or interests”⁵⁶.

At the same time, the European commission explicitly stressed that the culture of consultations cannot be achieved only through adoption of legal rules but should be underpinned by a code of conduct that sets minimum standards, prescribing what to consult on, when, whom and how to do it. This will not only help regaining public trust but will promote culture of consultation, will institute it and efficiently implement it within public institutions.

How these principles are implemented in practice?

At European level, the Green Papers published by the European Commission are among the main tools enabling wider public debate. The Green Papers are documents aiming to stimulate discussion on given topics at a European level. They invite the relevant parties (bodies or individuals) to participate in consultation process and debate on the basis of the proposals put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers. The comments and proposals received are usually integrated in the Commission’s suggestion for policy launch summarised in White Paper.

With the adoption of the General principles and minimum standards for consultation of interested parties (see Annex 4) in 2002, the EC took a leading role in shaping the consultative process in Europe and provided practical example on how Member States should implement the principles embedded in the White Paper on European governance. The Code of standards was aimed at reshaping the current EC’s consultation practices and providing structured and consistent approach in the area. It was also aimed at ensuring that all interested parties have equal access to information and are equally presented in the policy formulation process. The observance of this principle grants that the proposals of the EC are widely agreed, technically viable, practically workable and based on a bottom-up approach.

Following the good practices that the EC wanted to introduce, the draft Minimal standards for public consultations were also consulted with the interested parties. The proposals and recommendations received along with the information about the parties that submitted them were posted on the website of the Commission. By doing this, the EC not only ensured the openness and transparency of the policy process but made sure that the same principles apply to the civil society organizations that contributed to the elaboration of the standards. Thus the Commission reconfirmed its belief that “for the consultation relationship to succeed, the commitment to these principles cannot be unilateral: both sides involved in the consultation process have a role in applying them effectively”⁵⁷. Viewed through the lenses of better civil involvement, the application of the principles of good governance in practice means that the Commission will:

⁵⁵ European Governance – A White Paper” of the Commission of the European Communities. Brussels, 25.7.2001. COM (2001) 428 final.

⁵⁶ Article 8, Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration

⁵⁷ Communication from the Commission, Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, COM(2002) 704 final

- Consult as widely as possible on major policy initiatives and in particular legislative proposals (**Participation**);
- Make sure that both those who are directly involved and the general public have clear understanding on:
 - what issues are being developed;
 - what mechanisms are being used to consult;
 - who is being consulted and why;
 - what has influenced decisions in the formulation of policy;
- Require all interested parties that are seeking to contribute to EU policy development to submit information regarding the interests they represent and on how inclusive that representation is (**Openness and Accountability**);
- Start the consultation process as early as possible and make sure that the interested parties will be involved at a stage where they can have impact on the formulation of the main aims, methods of delivery, performance indicators and, where appropriate, the initial outlines of that policy (**Effectiveness**);
- Ensure that there is consistency in the operations of its own departments and will provide mechanisms for feedback, evaluation and review (**Coherence**).

The adopted general principles and minimal standards for consultations aimed at providing practical guidelines, answering three main questions: who to consult, how to consult and when to consult. However, to make them more effective and to ensure their proper implementation, the EC envisioned the following accompanying measures:

- Provision of practical guidelines, including best practices examples assessable via the Commission's Intranet website;
- Establishing a help-desk facility using mail-box, to which staff can send questions on the application of the general principles and minimum standards;
- Provision of trainings and awareness rising measures.

In order to create a clear framework of CSO involvement in the decision-making process, in 2004 the European Commission published Guidelines on Principles and Good Practices for the Participation of Non-State Actors in the development dialogues and consultations. The document gives practical guidelines to the EU Delegations on how to promote "confidence building" and trust between Governments and non-state actors. One of the first recommended measures to start with is the conduct of "a mapping study" on the situation of NSAs in the country or in the region. The study can support the launch of participatory process by reviewing the CSOs networks and the most relevant existing process of dialogue at a country/region level. The study may also assess the capacity of the CSOs, the role they play and the constraints they face, in terms of advocacy, monitoring, policy dialogue and service delivery. In order to achieve its objectives, the study should analyse the following organizational benchmarks:

- mission and functions of the CSOs and their ability to carry out them;
- relations vis-à-vis each other;
- level of involvement in policy dialogue, monitoring and implementation both at central and district levels, with either the national authorities or the donors community; including the current status of participation in relation to the EC and other donors' co-operation;
- voice of the grassroots;
- funding environment and strategies (legislative framework on funding and foreign aid dependency);
- civil society organisations' views, expectations and strategies on partnership with central and local government;
- flow of information within the civil society and between CSOs themselves at central and community levels: nature ("backward", i.e. from central level to the districts and to the

communities, and/or “forward”, i.e. from communities to the districts and to the central level) and contents;

- flow of information between donors, government and civil society: nature (“backward”/“forward”) and contents (strategies, policies, accountability, procedures, access to funding, etc);
- Indication (geographical, sector, etc) as to where CSOs are not organised and capacity-building is needed, taking into consideration of possible synergies and linkages with programmes and initiatives already existing within this field⁵⁸.

The European Commission paid special attention to the creation of new ad hoc civil society dialogue structures other than those already existing. It have underlined that establishment of new structures should be avoided in principle as to avoid donor-driven or government-driven structures for dialogue with civil society. The opposite may create structures that will be neither truly representative of the interest of civil society, nor be part of civil society genuine dynamics, and will exist with the very reason of benefiting from donor funding. The existence of such CSOs usually undermines the government trust in the CSOs activities as a whole and raises questions regarding their objectives and interest that stay behind them.

The European Commission have also noted that the consultation process requires a good balance between economic and social partners and NGOs representing various groups or areas of concern. The inclusive approach in the consultation grants the ownership of the agreed policy initiative at all levels. The Guidelines have prescribed that apart from the monitoring process over the citizen participation in the decision-making process, a monitoring on the trends of the CSOs attitudes should also be carried out. It should assess the CSOs capacities and their added value for policy formulation, their willingness to ensure inclusive and transparent processes etc. The following three main questions should be addressed in this respect:

- Are CSOs willing to capitalise on opportunities to get involved in the development process (by increasing their own capacities, by raising awareness)?
- Are CSOs willing to reinforce networks (central level to give voice to the grassroots, to inform constituencies to prepare consultations, to provide feed-back on consultations, etc.)?
- Are inputs provided by CSOs in consultations and dialogues of good quality and relevance?

IPM Achievements

- *The IPM tool is used in the context of the European Business Test Panel, a joint project between the European Commission and Member States aimed at evaluating the impact of new proposals on business. Launched in 2003, the European Business Test Panel now includes more than 3.200 companies of all sizes and sectors, located in all EU Member States.*

- *The IPM technology has been used in the “Feedback Mechanism” (2000–2005) project, which aimed at collecting problems relating to different EU policies that citizens and businesses encounter in their daily life, through a network of 300 contact points (such as Euro Info Centres, European Consumer Centres and the Citizens Signpost Service). This project has been given a new impetus through the “SME feedback” lead by DG Enterprise, which focuses on the problems that SME encounter while doing business in Europe.*

- *IPM also serves internal communication and staff management, as internal surveys are regularly conducted within the European Commission, and is used by Commission services to prepare events and conferences (registration, etc), to conduct websites users surveys, etc. (Information available at http://ec.europa.eu/yourvoice/ipm/index_en.htm)*

⁵⁸ Guidelines on Principles and Good Practices for the Participation of Non-State Actors in the development dialogues and consultations, DG Development, European Commission (available at: http://ec.europa.eu/europeaid/what/civil-society/documents/guidelines_principles_good_practices_en.pdf)

The monitoring will allow identifying the weak spots and the aspects to be improved, including the appropriate entry points.

The European NGO Confederation for Relief and Development in its opinion⁵⁹ towards the draft Commission document strongly supported the introduction of the mapping studies. It noted that specific efforts are needed in order to “segment” opinion in consultation and to allow for the diversity of different viewpoints while at the same time a “conflict sensitive approach” should be adopted in politically instable countries. Indicators for assessing CSOs participation should be elaborated at a country level in close cooperation with CSOs representatives.

One of the widely used tools that accommodate the concept of diversity interest representation is the European Commission’s Interactive Policy Making Initiative (PMI) launched in 2001. At the backbone of the initiative are the e-technologies that enable wider public involvement. The Internet based IPM tool is an application used to create and conduct surveys and public consultations. It provides easy-to-use and straightforward online questionnaires making it easier for respondents to participate and for policy makers to analyse the results. It enables policy developers to get more rapid and targeted response to controversial issues and problems and to improve the assessment of the impact of policies. The initiative rapidly became a major instrument for evaluating existing EU policies and facilitating open consultations on new initiatives. Since its launch, the IPM tool has fostered more than 100 public consultations, available on the web portal “Your voice in Europe”. The “Your voice for Europe”⁶⁰ is a “single access point” allowing the general public to receive information and get involved in various consultation processes and discussions. The collection of comments and recommendations coming from a wide variety of organisations has twofold purpose. Apart from getting a second opinion on the draft policies, the Commission uses them as a valuable source of expert opinion.

Given the new competences and tasks allocated to the European Commission, expert knowledge has become critical factor for delivery of sound and better policies. And since in many cases the needed knowledge has become increasingly technical, the need for external expertise has grown and has marked the need for establishment of expert groups.

The expert groups are consultative bodies set up by the EC to provide advice in the preparation of legislative proposals and policy initiatives as well as to support the EC in its tasks of monitoring, coordination and cooperation with the Member States. They may comprise of representative from the national, regional or local authorities, representatives from civil society organizations or other interested parties as well as individuals possessing high expert knowledge in the relevant field.

In order to ensure high level of transparency, the lists of experts group along with information on those groups (e.g. the lead department in the EC, the group’s tasks as well as the category of participants) are published at the public register of Commission’s expert groups. In addition the websites of the relevant Directorates-General may provide lists with the names of the experts, the organizations they represent, summaries, conclusions or other working documents from the group. The work of the expert groups can be complimented by other means of mobilising expertise, including publication of consultative documents (green papers, white papers and communications), internet consultations, hearings, workshops, conferences, seminars, etc. With the extension of the competences of the EC, the number of expert groups has gradually increased from 537 in 1975 to 1041 in August 2010.

The large number of expert groups attached to the European Commission made this mechanism for consultation a rather standardised and very significant element of the European governance structure.

And while the experts groups act primarily as an EC’s supportive policy tool, the European Parliament has established another tool for “hearing the voice” of the civil society. The European

⁵⁹ Available at: http://www.concordeurope.org/Files/media/0_internetdocumentsENG/olddocumentsFRE/3_Sujets_traites/3_2_sujets_traites/3_2_16_acteurs_non_etatiques/3_2_16_1_2_documents_de_concord/documentsdediscussiondecondord.pdf

⁶⁰ http://ec.europa.eu/yourvoice/index_en.htm

Parliament's Citizen Agora is consultation mechanism, set by the European Parliament to bridge the gap between:

- The European institutions and citizens: the Agora is direct and large-scale tool for improving communication and mutual understanding of the European institutions and people living in the Union. It facilitates the European Parliament's understanding about citizens' expectations and needs;
- The different sectors of European civil society: often, civil society organizations may have diverging interests when it comes to sensitive issues. In the consultative process they act separately, rarely setting their arguments against others thus letting the European authorities reach often unbalanced compromises on their own. The Agora facilitates consultation between whole sectors of European civil society that are usually ignorant of each other.

By setting the Citizen Agora, the European Parliament tried to establish structured dialogue with European civil society and create close link with the tens of thousands nongovernmental organisations and the millions of members of civil society in Europe. The aim of the Agora is to discuss the major topics of the European Agenda by providing open and transparent tool for public consultations. At the same time, the Agora can be used as a tool for dissemination of information and confidence building as the first Agora was taken by civil society to be a genuine sign of trust.

The Agora is made up of 500 organisations which have been identified by the parliamentary committees with areas of responsibility relevant to the subject of the Agora and all members of the European Parliament concerned. Each organisation invited may be represented by no more than one person per Member State. This rule makes it possible also to invite organisations from outside the European Union.

The first Agora was organized in 2007 and discussed the future direction of Europe – principally the new Treaty and opportunities ahead; the second one took place in 2008 and was focused on climate change. With the second Agora the testing phase of the initiative was completed. Its future will be decided by Parliamentary bodies and, as appropriate, the other European institutions after the completion of its monitoring.

Similar form to the Citizen Agora, but this time, initiated by the civil society sector is the European Citizens Consultation Project. The European Citizens' Consultations (ECC) 2009 were run by a unique consortium of more than 40 independent European partner organisations, that include foundations, NGOs, universities and think-tanks from all 27 European Union Member States.

On the eve of the 2009 European elections, the ECC 2009 provided to the EU citizens a platform for pan-European dialogue on the challenges brought by the economic and financial crisis.

During the first stage of the project, about 200 000 citizen have visited the online consultation platform and expressed their ideas on the ways of shaping the economic and social future of the Union. These ideas were further discussed at national consultation stages that took place in all 27 Member States and involved a total of 1,600 randomly chosen citizens. Ten

“European Citizens” Consultations provide a unique opportunity for the public to discuss their concerns and ideas with each other, and with policy-makers. They inform and enrich the debate on how to shape effective policies to address the challenges we face, adding to the information we get from opinion polls and consultations with stakeholders.”
José Manuel Barroso, President of the European Commission

recommendations for action at the EU level at each specially organised national event were produced. At a later stage, all participants were asked to vote and choose their top 15 policy recommendations from all proposals generated at the national events. These recommendations were discussed with top EU policy-makers, including the European Commission, European Parliament, the EU Presidency.

The ECC 2009 is built up on the success of ECC 2007, which established a new model for citizen participation enabled by the first pan-European

participatory project. The European Citizen Consultations' objectives are very much the same as the objectives set by the European Parliament in the process of establishing Citizen Agora. The ECC 2009 aimed at:

- Fostering debate between citizens and policy-makers in the run-up to and after the European elections;
- Closing the gap between the EU and its citizens by bringing the EU closer to citizens and citizens closer to the EU;
- Mainstreaming trend-setting and long-term oriented citizen consultations at the European level;
- Feeding citizens' opinions into the political debate at both European and national levels;
- Increasing the general public's interest in the EU: generating substantial media coverage of the dialogue between the EU and its citizens;
- Deepening European co-operation within existing civil society networks and their respective partner networks, as well as e-participation providers⁶¹.

The European Citizen Panel is another civil society initiative very similar to the one, promoted by the ECC but in contrast to the ECC it was focused on a specific policy field. The panel was launched in 2006-2007 as a pilot initiative engaging citizens from ten different regions of Europe to discuss issues that affect rural areas. The objective of the initiative was to promote a bottom-up driven policy approach and create mechanism that empowers citizens to disseminate proposals on the future policy on the European rural areas. The initiative operated at two levels: regional and European.

- At the regional level, citizens, who have been randomly selected and who capture the diversity of populations, participated in panels to debate rural issues and make recommendations to their respective policy-makers. Their work was facilitated by the information provided by key stakeholders and experts with interest in rural affairs;
- At the European level a number of citizens from each regional panel have met to deliberate and reflect on the future roles of rural areas.

The initiative established 8 panels in ten regions in Europe. All regional panels followed a common methodology of deliberation. After the regional meetings, 87 delegate citizens from all regions took part in the final Pan-European deliberative session. The participants compared their views and developed a common report on their perceptions and recommendations of the future for rural areas in tomorrow's Europe. The European citizens' opinion was publicly addressed to the relevant European and regional authorities from the offices of the EU's Committee of the Regions.

The mechanisms for public consultations adopted in the Member States broadly follow the EU trends in involving citizen in the decision-making process. The different countries however due to their different political, economic and administrative development have adopted different approaches. The most distinctive and innovative of them will be presented in the following section.

Bulgaria

The general mechanisms for public participation in the decision-making process are stipulated in the Law on Normative Acts, Administrative Procedure Code, Law on Local Governance and Local Administration as well as in a variety of sub normative acts adopted by the government. This framework ensures that the involvement of interested parties is legally guaranteed at all levels of public life – from adoption of legal acts at the national level, to elaboration of local policies and individual administrative acts.

The Law on Normative Acts prescribes that all citizens have the right to participate in the legal drafting procedures by initiating legal changes for improving the current legal

⁶¹ More information about ECC 2009 is available at <http://www.european-citizens-consultations.eu>

framework or by consulting already drafted legal acts. The obligation to consult with the public is explicitly stipulated as a main principle of legal drafting procedures along with the principles of validity, stability and openness. Consultation on draft normative acts may take place at two stages:

- Before the submission of the act to the Council of Ministers:
- All draft bills should be published on the website of the relevant authorities along with the grounds for their adoption. A minimum of 14 days is given to the general public to submit its comments and recommendations. Only after the expiration of this period and review of the comments and suggestions, the draft act can be submitted to the Council of Ministers.
- Before the adoption of the act by the National Assembly:
- Following article 28 of the Rules of Organisation and Procedure of the National Assembly, the meetings of Standing Committees are open and members of the public may attend them. Representatives of civil, trade unions, professional and industries' associations have the right to attend the meetings, submit written opinions and participate in the Standing Committees' deliberations on draft legislation concerning their activities and issues of interest.

The same principle is applied at the level of local government. The Act on Local Government and Local Administration prescribes that among the main tasks of the local standing committees are to study community's needs in the relevant field and to make proposals as to how the problems are to be settled. In this process the committees may ask for support of external experts and consultants. All citizen and their organizations have the right to submit proposals and opinions related to the issues discussed. The sessions of all committees and the local assemblies are public and may be broadcasted.

Participation of the interested parties in solving issues of "local" or "specific" character is regulated by the Administrative Procedure Code. The Code prescribes that the general public may participate in the process of elaboration of general administrative acts⁶² by submitting comments and proposals. The public authority issuing the act is obliged to open the proceedings on issuing of the general administrative act by announcing it in public through the mass media, by sending the draft to organisations of the interested persons or in another suitable way. The notification should include main reasons for the issue of the act, as well as forms of participation of the interested persons in the proceedings. One of the following forms of participation may be chosen:

- written proposals and objections;
- participation in consultative bodies, supporting the body who is issuing the act;
- participation in the meeting of the body, issuing the act, when it is collective;
- social discussion.

The period for public consultation may not be shorter than one month from the day of the notification. The general administrative act may be issued only after all facts and circumstances significant for the case have been clarified and all proposals and objections of the interested citizens and their organizations have been considered. The finalized general administrative act should be announced by the same means the notification for it was made. If separate interested persons or organisations have participated in the proceedings, a separate announcement for the issue of the act shall be sent to them (article 72.2).

In addition to the legal framework, the Council of Ministers has published guidelines for public consultations. They aim to give practical information to public authorities on how to intensify and better facilitate public involvement in the policy process. The guidelines are geared around six main steps that outline how, when and who should be consulted. The main consultation phases are identified as follows:

⁶² Article 55, Administrative Procedure code prescribes that general administrative acts are acts with one-time legal action, by which rights or obligations will be created or rights, freedoms or legitimate interests of indefinite number of persons will be directly affected, as well as the refusals to be issued.

- Preliminary planning of consultation procedures;
- Identification of interested parties;
- Preparation of the documents to be consulted;
- Choosing and conducting consultative procedures;
- Analysis of the received comments and suggestions and their integration;
- Feedback to the interested parties.

In order to facilitate the national consultations on draft legal acts and national policies, a public consultation portal was created (www.strategy.bg).

Estonia

The Estonian Civil Society Development Concept (EKAK) was adopted by the Estonian Parliament in 2002. Its objective is to outline the main roles, principles and mechanisms for cooperation of public authorities and CSOs.

The Concept prescribes that public authorities should support citizen actions by creating favourable legislative environment, informing the public about their work, involving citizens and their associations in the planning and implementation of relevant decisions. In the process of policy development citizen associations and public sector commit themselves to:

- co-operate in establishing, implementing and assessing policies of different areas through their authorized members or representatives according to their areas of activity and competence;
- arrange the collection of opinions necessary for establishing policies and initiating legal acts, present them to the authorized bodies systematically and according to the agreed time schedules and form;
- consider each other's experience in establishing policies and initiating legal acts. Consult with various citizens' associations during the drafting stage, giving them sufficient time for drafting their own opinion;
- assess the effect of various policies and legal acts on the society and environment both in the drafting stage and later;
- enhance the competence of their representatives for participating in the process of establishing, implementing and assessing policies;
- in devising the policies concerning minority groups, consider opinions and viewpoints of the citizens' associations representing such groups, and involve them in the drafting of legislation and in political debates;
- jointly draft and follow the good co-operation practices in order to organize the drafting, implementation and assessment of policies and to involve the non-profit sector in the law-making process⁶³.

With the adoption of EKAK the Estonian Parliament committed itself to organise deliberations of its implementation once every two years.

Based on the principles stipulated in the EKAK, the Estonian Code of Good Practices on Involvement for public institutions was published. The Code does not have binding character but public authorities are in general advised to follow it. It aims to harmonise public consultation practices and provide common standards for involving CSOs in the decision-making process. The document is geared upon eight major principles of participation, namely:

1. The goals of the consultation process should be clearly and comprehensively explained along with the expectations regarding the engaged parties and the feedback from them;
2. The interested parties should be clearly identified and their wishes, needs, and distinctive features will be taken into consideration. The public authorities will organise the registration of interest groups, in order to guarantee that all affected parties are informed about the beginning of preparation of and/or consultation on strategic documents;

⁶³ Decision of the Estonian Parliament on the Approval of the Estonian Civil Society Development Concept, Tallinn, December 12, 2002

3. All interested parties will be involved in the preparation of drafts as early as possible and will continue the engagement throughout the entire course of the process;
4. Detailed plans for engagement should be prepared before the launch of the consultation procedures. The chosen form of engagement should correspond with the content of the draft document, its potential effects, needs, opportunities, and other conditions of the engaged parties;
5. Smooth communication on the draft documents should be ensured thus granting that the public, interest groups, and those possibly affected by the strategic document will be timely informed;
6. An interim summary and analysis of feedback should be provided to track whether the consultation process is proceeding smoothly and according to plan. Based on the interim summary, it should be decided if supplemental forms or methods of engagement are needed or if the circle of parties need to be expanded;
7. All engaged parties should be informed on the results of the engagement. They are entitled to receive summary answer from the initiator of the engagement, which will include all the proposals that have been presented, both those that have been accepted and those that have been rejected. The rejection of proposals should be explained. The engagement and applicability of its results should be assessed. The assessment results should be considered in the planning and implementation of the next engagement processes.

The Code does not limit the scope of documents that should be consulted but does sets out minimal obligatory standards. As a must, at least the following documents should be consulted:

- Drafts of laws and their amendments;
- Drafts of regulations and directives of the Government of the Republic;
- Drafts of Ministers' decrees;
- Documents, concepts, policies, development plans, and programs that are important for the development of the country;
- Drafts of legislation of European Union institutions and other strategic documents (i.e. green and white books);
- Instruction and procedures for rendering public service;
- Conventions and international agreements, as well as documents that are worked out within their framework, and that influence the society.

The process of public consultation in Estonia is very much linked to the electronic means of communication that over the last years has become a major channel for exchange of opinions.

One of the practical implementation tools of the principles stated in EKAK is the Estonian participation portal (www.osale.ee) launched in 2007. The aim of the portal is to establish bilateral communication with constituencies thus providing greater transparency of the policy process at a governmental level. The portal has three main functions:

- To provide a platform where citizens and interest groups can launch initiatives for new legislative proposals, present ideas and critique to government and submit petitions. All proposals submitted to the portal are subject to comments and voting by other users. After receiving feedback from other interested parties, the proposals are forwarded to the relevant government departments, which then post an official response explaining what action was or was not taken and why;
- To enable citizen participation in public consultations/hearings. Citizens and CSOs can publicly give their opinion about draft legislation prepared by government agencies. All government agencies have been advised how to publish their draft policy papers, development plans, laws or provisions on the consultation website. Submission is however voluntary and is not regulated by administrative procedures;
- To become a focal point of easily assessable public information: Public authorities are in general advised to publish information about forthcoming policy decisions and relevant

public consultations. The portal also enables search for legal acts according to their stage of preparation (i.e. from policy proposal to adoption in the parliament).

The OSALE portal also serves as a tool for enabling people to better understand the aims and procedures of administrative agencies while at the same time it provides authorities with valuable feedback about public expectations. It integrated the web-based e-participation application known as TOM – the acronym for “Today I Decide” launched in 2001 by Estonian Chancellery.

The use of internet technologies and the active civic participation has inspired the launch of large citizen initiatives like the “Let’s Do it” campaign where 50,000 volunteers helped to clean up waste in 2008 and the “My Estonia” campaign in 2009. My Estonia campaign was a civil initiative aiming to improve the quality of life in Estonia by using the natural interoperability of people as well as the means provided by the information technologies. On the 1st of May 2009 more than 11,000 people convened on brainstorming sessions to discuss common problems and support each other in achieving common goals. For this purpose, organizers provided 400 think tanks in cultural centres, schools and other popular institutions. Discussions were simultaneously held online and later linked to the central website. Brainstorming sessions were also organized by Estonian communities in 12 other countries.

Austria

In 2008 the Austrian Chancellery adopted Standards of Public Participation⁶⁴ with the aim to help the Austrian public servants ensure high-quality participation processes. The Standards were prepared by an inter-ministerial working group with the participation of legally established representations of interest, NGOs and external experts. The document covers the three main phases of the participation process: preparation, implementation, monitoring and evaluation and is applicable every time policies, plans, programmes, and general legal instruments are developed. The Standards recommend an obligatory conduct of public consultation especially in cases where:

- many people are affected by / interested in the topic;
- the topic might be controversial;
- the implementation of the policies, plans, programmes, and legal instruments requires the cooperation with those affected and interested;
- broader comprehension, acceptance, and result of a high quality are aimed at.

Transparency and traceability are among the main principles proclaimed to govern the participatory process. The Standards underline that public participation requires joint responsibility for the jointly performed work and its outcome. This is believed to improve both the quality of the outcome and people’s identification. The Standards are divided into three main categories:

- standards for informative participation (information);
- standards for consultative participation (consultation);
- standards for cooperative public consultation (cooperation).

They are elaborated in the form of questionnaires that should be answered during the conduct of each participation process. If all questions can be answered and be affirmed, it is considered that the standards of high-quality public participation are met. In order to facilitate application of the Standards, a practical manual have been elaborated. The Manual targets both civil servants and citizen by giving them easily comprehensible and clear information on the tools and mechanisms they may use during the public participation procedures. The Manual also provides a list of success stories that illustrate the participatory mechanisms implemented in practice and show the impact of the citizen involvement in the decision-making process. The start of every participatory process is recommended to be linked to the following activities:

- Getting and spreading information;
- Assessing if the conditions necessary for a formal participation process are fulfilled;

⁶⁴ The standards are available at: http://www.participation.at/standards_pp.html

- Measuring possible benefits of an informal participation process;
- Identifying possible forms of a participation process with other stakeholders, politicians and the administration.

All these guidelines are written in a way that enables their application by both civil society and public servants, irrespectively who initiates the participatory process.

Along with the Standards and the Manual, a public consultation web portal (<http://www.partizipation.at>) was created. The portal provides synopsis of all needed information regarding the participation process, additional information on best practices and platform for exchange of views. It also contains useful information on the selection of appropriate methods for participation.

Apart from the portal, among the most interesting Austrian e-participation projects implemented in 2006 stands out the *mitmachen.at* project. It represents e-participation procedure enabling young citizens to develop politically relevant future concepts for Austria. The project aims at connecting youth with the public institutions while at the same time builds trust in the young generation about the way their country is governed. The project focuses on the target group of young people living in Austria or abroad. During the project implementation, all Austrian schools informed their students about the project in their information technology classes. Beside schools, all youth-organisations (youth-groups, Austrian Employment Service, Austrian students union, etc.) were included in the same way. The project adopted a 3-step-model. The content of considerations in Phase 1 (Contributions or Deliberation) is citizen-produced and the concepts aggregated by experts in Phase 2 have been verified in Phase 3 by citizen prioritisation. In Phase 1, 2,074 contributions were received, geared around 8 topics. During Phase 2, 174 future concepts were aggregated based on contributions from phase 1. Phase 3 received 2,578 questionnaires (54,626 hits on single questions). The project took place directly after the Austrian national elections and was considered as supportive information on youth topics for future political actions.

Netherlands

In 2005, the vigorous discussions on the need for changing the Dutch electoral system came to a dead end. Since no agreement on a political party level was reached, the Dutch government decided to use an innovative approach and to consult the voters – the ones with the greatest unbiased interest in the electoral system. Inspired by the British Columbia experience⁶⁵, the Dutch government announced the setting of Electoral System Civic Forum. The task of the Forum was to identify the most suitable electoral system for the Lower House of Parliament. The Civic Forum was built as entirely independent platform that performed its work as transparently as possible. The plenary meetings were open to the public and the media. The Forum's work was divided in three phases: training phase; consultation phase and a decision-making phase. The Forum was comprised of 142 citizens who were chosen after first being selected as a random sample of 50,000; then those interested within the sample were asked to self-nominate; then lots were drawing from that group. The group was chosen to include equal numbers of men and women, to ensure geographical distribution of the country's population. It was also constructed in a way to match the age distribution of Dutch population as closely as possible. The Civic Assembly conducted its meetings from March to November 2006 and submitted its recommendations to Parliament in December 2006.

Similar approach was adopted by the Dutch government to assess the citizen expectations from the e-government implementation. The e-Citizen Program was established as an independent forum which stimulates the development of e-government from the citizen's point of view. The forum was part of the Dutch implementation organization for ICT and government. A specially created Steering Committee was representing citizen's interest and supervising the programmes

⁶⁵ The Civic forums are relatively new method for civic engagement implemented first in Ontario and Canadian British Columbia.

activities. The main objectives of the e-Citizen Programme was to elaborate an e-Citizen Charter to regularly conduct surveys regarding citizen expectations, and to give Web Awards for good practices.

The e-Citizen programme was succeeded in 2007 by the Citizenlink (Burgerlink). The Citizenlink is an initiative of the Dutch Government aiming to improve performance of the public sector through citizen involvement. As such, Citizenlink is entitled with the promotion of quality standards, measuring citizen satisfaction and stimulating e-Participation. The platform enabled the development of four e-Participation instruments that reflect the three main level of participation (political, policy and social participation):

- **Voting Assistant and Voting Tracker** (watstemtmijnraad.nl) are examples of the Dutch success in using e-technologies for electoral and accountability purposes. The Voting Assistant provides comparison between the programmes of political parties on the basis of 30 main issues thus helping voters to make their choice. About 5 million voters used the assistant (almost half of those eligible to vote) during the latest national elections. The Voting Tracker on the other side assembles the voting record of parties and politicians and thus makes transparent what their positions have been on certain issues. In this way, the voters can make their electoral choices on actual behaviour rather than on future promises.
- **e-Petitions** (www.petities.nl): According to the Dutch law, apart from the right to petition, citizens have also the right to launch citizens' initiatives. If enough people support the issue, it can be tabled with a representative body like a city council or the parliament, which has to discuss it. As getting the requested number of signatures may be hard, the internet site facilitates the process. A number of Dutch municipalities have created their own platforms to stimulate citizen e-initiatives.
- **WeEvaluate** (wijwaarderen.nl) is a web platform where citizens can give their judgement about services with a social importance. The website is based on the examples of ratings of commercial websites (restaurants, hotels, etc.). Citizens can either design their own rating system or can use a simplified model of the National Citizen Satisfaction Survey, based on the criteria of the e-Citizen Charter.

United Kingdom

In July 2008, the Ministry of Justice published "A National Framework for Greater Citizen Engagement" reflecting on the Governance of Britain Green Paper proposals for constitutional renewal. The paper outlined the following issues of national importance that should be obligatory discussed and jointly elaborated with the citizens:

- issues that may result in significant constitutional change;
- issues where individuals themselves need to act in addition to the government to make a significant impact – for example, on behavioural issues such as smoking or obesity;
- where there are several policy options on which government has an open mind;
- where there is public benefit in exploring complex and difficult trade-offs between different policy options – for example, between a personal desire to purchase cheap flights and the societal need to reduce carbon emissions⁶⁶.

The consultation paper also set the main criteria that distinguish the effective mechanisms for building people's trust and elaborated on two new forms that can be used along with the standard consultation procedures:

- **Citizen summits:** They bring together a large body of people (usually between 500-1000) to deliberate on an issue or a number of related issues. This can either take place face-to-face or online. The recommendation of a summit would then be put to Parliament for consideration;

⁶⁶ A national framework for greater citizen engagement. A discussion paper, July 2008, Ministry of Justice, UK

Any mechanisms to strengthen people's engagement with democratic processes and enhance trust will only do so if they meet the following criteria:

- **They register with the appropriate public.** To achieve this, they must be viewed as a beneficial experience and participants should feel better informed as a result;

- **They are as broadly representative and accessible as possible** involving a broad spread of the population and ensuring that a good cross section of relevant audiences are engaged as part of the process;

- **They are credible** so that people believe they matter. To achieve this, there should be a robust objective standard in place for how engagement mechanisms should be applied to a national policy issue and effectively delivered: there must be feedback to participants in deliberative engagement exercises and a commitment to appropriate levels of evaluation;

- **They are open and transparent** in that participants must be aware in advance of the degree of influence they might have, and the way in which the government will consider and take on their conclusions. There must be a shared understanding of when and how these mechanisms will be used;

- **They are systemic and embedded in the policy making process** otherwise people could regard them as gimmicks damaging the legitimacy of the process;

- **They are consistent with the fundamental principles of representative democracy.** Government and Parliament must continue to have the space to consider the impact of any changes in policy, for example where there are substantial resource implications. The Government believes it is important that these mechanisms should complement and not challenge the supremacy of our system of representative democracy and there should be a clear understanding of the relationship to the parliamentary consideration of issues.

(Source: A national framework for greater citizen engagement. A discussion paper, July 2008, Ministry of Justice, UK)

- **Citizens' Juries:** an independent forum for members of the public to examine and discuss an important issue of public policy. The citizens juries to a great extent resemble the juries in the court system. The jury receives expert information about the issues in question, may ask questions to the experts involved and after that takes its decision. Government then should publish a response, either as part of a broader response to any wider consultation exercise or as a stand-alone public document;

- **Petitions for Westminster:** The House of Commons Procedure Committee has proposed a system for e-petitioning, to run alongside the traditional petitioning system. It is proposed that on three occasions each year, certain e-petitions to be debated by the House of Commons.

The e-Petition principle was also introduced as valuable mechanism for public participation in the [Local Government White Paper](#)⁶⁷. But even before the introduction of the policy paper, many local authorities have voluntarily introduced e-petitioning to run alongside with the paper process. The e-tool have proved to be among the most effective mechanisms for provision of greater citizen involvement in the local decision-making process.

Following its commitment for more responsible and transparent policies, the UK government has also launched consultation platform "Have your say" (<http://www.homeoffice.gov.uk/about-us/consultations>). The portal reflects the main principle embedded in the Home Office Work, namely that the change of every policy should be preceded by public consultations. For that purposes, the Home Office publishes consultation proposals on a particular issue and requests comments and recommendations. Each consultation paper contains instructions on how to respond and what is the deadline for submission of comments. The mechanism is very similar to the Green and White Paper consultation one, adopted by the European Commission.

⁶⁷ Strong and prosperous communities. The Local Government White Paper, Department of Communities and Local Government, October 2006, London

Germany

Citizen Juries as mentioned in the UK Government proposal constitute a strong tool for civic participation. In the period 2001-2003 the city of Berlin joined the “Social City Programme” that involves authorities from Federal, Landers and communes level. During the three year period, Citizen Juries were launched in the 17th Berlin neighbourhood with the aim of:

- mobilizing citizen participation;
- improving the image of public officials;
- rationalisation of public expenditures.

Half of the Juries were comprised of randomly selected citizens and the other half of citizen representatives of local civil society. The Juries deliberated on projects presented by different citizens and had the power to decide whether to finance the project according to its “usefulness” and general quality. Final decisions were generally taken through secret-ballot voting. The juries met at an average 15 times per year to evaluate about 72 projects. Half of them were eventually financed.

4.3. Accountability – monitoring mechanisms

In the last decade accountability has become a central part of the international political and social agenda. The term “accountability” has been generally applied to a range of different forms of interactions between different groups and stakeholders and is seen as a crucial prerequisite for building an efficient and effective democratic state. Accountability as such is never an aim or an end by its self, but a mechanism for achieving much broader goals as social justice, equity and proper redistribution of resources (J. Gaventa, 2006).

In general it can be described as a legal, political or moral duty to provide account, to explain and justify one’s actions and to respond questions about a particular matter. Accountability includes also the liability to moral, legal or political sanctions for those who fail to meet the set criteria. The concept of accountability prescribes two major dimensions for achieving effective accountability: answerability (the right to make claims and demand response) and enforceability (mechanism for sanctioning non-responsiveness). Accountability from institutional prospective is a set of relationships and mechanisms of control. From political and social point of view, it is a general obligation to comply with the will of the electorate and general public.

Accountability is often conceived as operating in deferent dimensions – political, social, administrative and legal. The current research focuses on the social accountability, identified by the World Bank as “approach towards building accountability that relies on civic engagement, i.e. in which it is ordinary citizens and/or civil society organizations who participate directly or indirectly in exacting accountability”⁶⁸. Social accountability mechanisms often aim at shedding or reinforcing the activities of different horizontal accountability actors by leveraging change through media and law. They rely to a great extent on the readiness of the state to tolerate criticism and on the presence of easily assessable and functional legal system that can back up the claims of the citizens towards the state.

Social accountability reflects the fundamental democratic right of citizens to demand accountability and is a part of the “social compact” between the agents in democracy⁶⁹.

Positive social accountability is a prerequisite for going beyond mere protest towards political decisions by building constrictive and systematic process that increases the chances of positive change and better civic engagement. Namely the active participation and involvement of the citizens distinguishes social accountability from other kinds of accountability where general public is perceived as observer or as passive actor to which the authorities should report.

⁶⁸ World Bank web site; <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTPCENG/0,,contentMDK:20509424~menuPK:1278120~pagePK:148956~piPK:216618~theSitePK:410306,00.html>

⁶⁹ Carmen Malena, Reiner Forster and Jenmejay Singh (2004), “Social Accountability, An Introduction to the Concept and Emerging Practice”, Social Development Papers – Participation and Civic Engagement, #76, World Bank

Accountability is among the core values of the European governance process. It has been proclaimed by the White Paper on European Governance as one of the five key good governance principles. Accountability is comprehended as a universal principle applicable not only to EU and national institutions but to the civil society sector as well.

The mechanisms for holding public authorities into account are often used in conjunction with transparency, accountability and participatory measures. The close interaction of the accountability principle with the rest of the good governance principles is very clearly outlined by the World Bank Institute working paper⁷⁰ on social accountability. The paper refers to the following three practical approaches to enforce accountability:

- **Scrutiny:** initiatives that enhance assessment, analysis and scrutiny of government actions, focusing on the power of information to extract accountability. Such initiatives are most often led by CSOs (e.g. expenditure tracking) or by the legislative and/or judiciary branches of government (e.g. ombudsman);
- **Proximity:** these initiatives are usually led by governments and aim to reduce the “distance” between citizens and governments. They often seek to identify citizens’ needs or preferences but are not designed to seek direct public participation in government actions (e.g. public consultations, community cabinets).
- **Engagement:** these initiatives are essentially government-led and effectively incorporate citizens in the decision-making process itself (e.g. participatory budgeting) in the budgeting cycle⁷¹.

The three approaches may either be combined in the functions of one body or be scattered and allocated in different forms of accountability tools. Malena, Foster and Singh (2004) have suggested that “social accountability initiatives are most effective when these are “institutionalized” and when the states’ “internal” (horizontal) accountability mechanisms are “more transparent and open to civic involvement”. Thus, transparency and accountability are ultimately linked to each other.

Civil Councils and Social Compacts as monitoring mechanisms

UNDP CSO committees are both participatory and accountability tools that enable civil society organization to take active stand in shaping the priorities and monitor the activities of the UNDP offices all around the globe. The first CSO Committee was established in 2000 at the UNDP headquarters as advisory platform aiming to ensure that senior management receives proper guidance on policy issues critical to the future directions of the organization. The committee comprises of 14 CSO leaders working in areas of mutual concern such as: poverty reduction and sustainable debt; inclusive globalization – democratizing trade and finance; conflict prevention and peace-building; human rights and human development; private-sector engagement. The CSO Advisory Committee provides mechanism for mutual agenda-setting, policy debate, individual accountability, and eases the exchange of opinions between senior managers and civil society leaders on the UNDP future directions. These elements provide a sound basis for building strong partnership based on principles of horizontality and trust. The positive experience of the first CSO committee encouraged the establishment of local CSO advisory committees at the UNDP country offices.

The role of civil society organizations in the global decision-making and monitoring process is further facilitated by their involvement in the UN Economic and Social Council (ECOSOC). The Council is an advisory body that coordinates the economic, social, and related work of the 14 UN specialized agencies, functional commissions and five regional commissions. It serves

⁷⁰ J.Caddy, T. Peixoto, M. McNeil, 2007, Beyond Public Scrutiny: Stocktaking of Social Accountability in OECD Countries, World Bank Institute

⁷¹ Ibid

as a platform for discussing international economic and social issues and formulating policy recommendations. In order to facilitate civic participation in the policy process and raise the trust in its activities, ECOSOC carries out broad consultations with academics, business sector and over 3,400 nongovernmental actors. Civil Society Organisations have consultative status and depending on the level of participation may gain one of the following statuses:

- **General Status:** applies to large international NGOs whose interests cover most of the ECOSOC's agenda. They may speak before delegates, circulate statements up to 2,000 words long, and place items on the agenda. They must provide a quadrennial report outlining their contributions to the UN;
- **Special Status:** concerns NGOs with "special competence in some fields of activity of the Council". They must provide a quadrennial report, but cannot place items on the agenda. Written statements are limited to 500 words;
- **Roster NGOs:** concerns NGOs with one or more specific issues. They may attend meetings, but cannot speak or circulate statements⁷².

The eligibility criteria requires NGOs to have: at least 2 years of existence, established headquarters; democratically adopted constitution; authority to speak for their members; representative structure, appropriate mechanisms of accountability and democratic and transparent decision-making processes.

In order to facilitate efficient communication and to boost the dialogue with the increasing number of NGOs enjoying consultative status, the NGO Branch, Office for ECOSOC Support and Coordination, has developed a CSO net web portal (<http://esango.un.org/irene>) devoted to non-governmental organizations, the United Nations agencies, funds and programmes. The web portal enables CSOs and UN Agencies to share best practices, submit recommendations and consultative opinions, raise questions and point out weaknesses to be addressed.

Similarly to the ECOSOC, the European Union has established its own consultative structure in the face of the European Economic and Social Committee (EESC). Following the stipulations of the Treaty on the Functioning of the European Union, the EESC consists of "representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas"⁷³. The Committee's aim is to ensure better civil involvement in the European agenda setting and bridge the gap between the EU institutions and European civil society. While the role and composition of the EESC was first set in the Treaty of Nice, the Lisbon treaty increased additionally its functions explicitly binding the European Commission to submit reports on a wide variety of issues. At the same time it stated that the European Parliament, the Council and the Commission will be assisted by the Economic and Social Committee in its advisory capacity⁷⁴. In 2009, the EESC reconfirmed its active role as a bridge between civil society and EU institutions by elaborating "A Programme for Europe: proposals of civil society". The programme has reflected the main challenges the EU should address in order to support progress-oriented and sustainable economic and social recovery. The Committee's proposals are grouped under four headings: economic recovery; fundamental rights and the European social model; sustainable development and governance. In the area of democratic governance, the Committee stressed that basic precondition and legitimising basis for civil society participation is the adequate representativeness of those speaking for organised civil society and noted that representativeness must be qualitative as well as quantitative.

The EESC and ECOSOC models have been successfully applied at the level of Member states as well.

⁷² Information from: http://www.un-ngls.org/spip.php?page=article_s&id_article=799

⁷³ Article 300, Treaty on the Functioning of the European Union, Official Journal of the European Union, C83

⁷⁴ Article, 13.4, Treaty of the European Union, Official Journal of the European Union, C83

Ireland

The National Irish Economic and Social Council has a long standing tradition in bridging the gap between civil society and public authorities dating back from 1973. The Council consists of representatives of trade unions, employers, farmers' organisations, NGOs, key government departments and independent experts. The main functions of the Council are related to:

- Submission of analysis and reports to the Prime Minister on strategic issues related to the efficient development of the economy and the achievement of social justice;
- Development of strategic framework for cooperation facilitating relations and negotiations between the government and social partners.

The first social partnership agreement was reached in 1987 with the adoption of the National Recovery Programme, followed by seven other agreements, with the most recent one titled "Towards 2016: Ten Year Framework Social Partnership Agreement 2006-2015".

Slovenia

A good example of advisory body that has a strong say in the decision-making process is the National Council of the Republic of Slovenia. According to the Slovenian Constitution, the Council is a representative body for social, economic, professional and local interests and consists of representatives of labour and social interests and representatives of local interests. The National Council has 40 members from the following CSO groups:

- four representatives of employers;
- four representatives of employees;
- four representatives of farmers, crafts and trades, and independent professions;
- six representatives of non-commercial fields;
- 22 representatives of local interests.

The National Council provides platform where interest groups can deliberate and address issues of mutual concern. But its role goes far beyond that. According to the Slovenian Constitution, the National Council may:

- propose to the National Assembly the passing of laws;
- require the National Assembly to decide again on a given law prior to its promulgation;
- require the calling of a referendum;
- require inquiries on matters of public importance;
- convey to the National Assembly its opinion on all matters within the competence of the National Assembly.

The vast competences of the National Council make it a major policy influencing body at the national level. The work of the Council is organized in working groups that deal with individual issues related to legislation, initiatives and requests within specific sphere of competence. The opinions formed by the working groups are being sent to the National Council for approval, or directly to the National Assembly and its working bodies. The National Council holds regular sessions once a month. Extraordinary sessions may be also convened when there is need for a decision on urgent matters. All sessions of the Council and its working bodies are open to the public.

Bulgaria

The Economic and Social Council (ESC) perceives itself as a "civil parliament" that bridges the gap between the citizen and national government. It was established in 2001 with the Law on Economic and Social Council. The Act states that the ESC is a "consultative body expressing the will of civil society organisations regarding the economic and social development" (article 1). The Council succeeded the National Tripartite Council and provided wider civil participation in the decision making process. It expresses and protects civil society interests by communicating agreed statements and proposals to the executive and legislative authorities. In this relation, ESC

adopts opinions on draft policies and draft laws; issues resolutions and analyses; organises public consultations on key economic, social, demographic, health or other issues. The main objectives of the Council are:

- to ensure wider participation of civil society organizations in the social and economic life of the country;
- to serve as a permanent institutional form for social dialogue and consultations on economic and social policies between the government and structures of the civil society;
- to answer to legal aspirations of social and economic groups and structures of the civil society;
- to express opinion, statements and proposals regarding acts of the legislative and executive authority;
- to affirm the principles of direct democracy and apply experience and best practices of the European Economic and Social Committee and other similar organizations.

The Council comprises of 36 members, divided in three main groups:

- 12 members appointed by the managing bodies of the representative organisations of employers on the national level acknowledged by the Council of Ministers by the order of the Labour Code;
- 12 members appointed by the managing bodies of the representative organisations of workers and employees on the national level acknowledged by the Council of Ministers by the order of the Labour Code.
- 12 members of CSO distributed as follows:
 - ✓ one representative of the organisations of agricultural producers;
 - ✓ one representative of the organisations of industrial cooperations;
 - ✓ one representative of the organisations of craftsmen;
 - ✓ one representative of the professional branch organisations;
 - ✓ one representative of the organisations of consumers;
 - ✓ one representative of the organisations of women;
 - ✓ one representative of the ecological organisations;
 - ✓ one representative of the organisations of the disabled;
 - ✓ one representative of the organisations of the retired;
 - ✓ one representative of the organisations supporting the socially weak, disabled or persons in need of care;
 - ✓ two independent scientists – specialists on the issues of economic and social policy appointed by the Council of Ministers upon proposal of the Minister of Economy and the Minister of Labour and Social Policy.

The basic principle of participation is that one organisation may be represented only in one of the groups. The mandate of the chairman and of the council members is 4 years.

Parallel with the ESC framework, different specialised acts provide opportunities to establish public consultative bodies at the local level. These bodies aim at combining efforts of the local interested parties while at the same time providing opportunities for controlling and monitoring of the activities of local authorities and public institutions in a concrete field of public interests. The typical areas they supervise are:

- **Social Support:** Following the stipulations of the Law on Social Patronage, the Municipal Councils may establish public committees consisting of maximum 9 representatives from the civil society sector, business, citizen and local government;
- **Tourism:** The Law on Tourism provides the opportunity for mayors to create public committees on tourism. Their activities, mandate and composition are subject to decision of the Municipal council;
- **Employment:** The Act on Stimulating Employment prescribes the creation of two types of public bodies: a committee on employment and a council for collaboration. These bodies

are established at the regional level by the decision of the Council of Ministers. Their concrete terms of references are adopted by regional councils for regional development;

- **Culture:** Public committees on culture are created to support municipal administration in promoting cultural heritage.
- **Education:** The Law on Education prescribes the establishment of two types of public consultative bodies: a board of trustees and pedagogical councils. The councils are attached to the management structure of schools and kindergartens.

In addition, the Law on Local Governance and Local Administration vests local authorities with the competence to create public consultative bodies that are not mentioned in any law. The aim of these bodies is to support and monitor the work of local governments in specific fields of particular local importance.

United Kingdom

The Compact on Relations between the Government and Voluntary and Community Sector in England was established in 1998. Its objective is to outline the relationship between the government and the third sector thus enhancing the efficiency of their joint interventions. The Compact does not aim to create a legally binding structure but rather to establish a framework that sets out common principles and undertakings for both government and CSOs. The main guiding principles of the Compact's partners include:

- **Respect:** Government and the third sector are accountable in different ways, but both need to act with transparency and integrity. Effective partnerships are built on mutual understanding and an appreciation of the differences between partners of the Compact;
- **Honesty:** It is only through open communication that strong partnerships can be built and maintained. Full and frank discussions should be the basis for resolving difficulties;
- **Independence:** The independence of the third sector is recognised and supported. This includes its right within the law to campaign, to comment on and to challenge government policy (whatever funding or other relationship may exist with government) and to determine and manage its own affairs;
- **Diversity:** The Government and the third sector value a thriving civil society, which brings innovation and choice through a multitude of voices;
- **Equality:** Fairness for everyone, regardless of their background, is a fundamental goal, and government and the third sector will work together to achieve this;
- **Citizen empowerment:** By working together, the Government and the third sector can deliver change that is built around communities and people, meeting their needs and reflecting their choices;
- **Volunteering:** The energy and commitment of people giving their time for the public good contributes to a vibrant society, and should be recognised and appreciated⁷⁵.

The Compact describes the main stages of policy development and affirms the commitments of the government and the third sector in the policy process. On one side, the Compact draws clear guidelines for the government officials regarding whom, when and how to consult. For the third sector, it outlines the commitment for effective involvement that helps establishing valuable links between the two sectors and build the government's trust.

The Compact was widely recognised by the third sector and was signed by the Local Government Association (representing English and Welsh local authorities) and the Compact Voice (an independent body representing the voluntary and community sector with more than 2,000 members representing over 20,000 voluntary and community groups).

In order to further stimulate the application of the Compact, the Cabinet Office has elaborated the Code of Practice on Consultations. The Code is used in conjunction with the Code of Good Practice on Consultation and Policy Appraisal developed as part of a broader Compact on relations between

⁷⁵ The Compact on relations between Government and the Third Sector in England, December 2009, U

the government and the voluntary sector. Both documents are of legally non-binding character but are regarded as mandatory for all UK departments and their agencies. Apart from addressing many of the conventional principles (e.g. early involvement in the policy-making process, clarification of objectives, feedback on the views received, etc) the Codes install explicit responsibilities on CSOs such as: to organise efficiently, to demonstrate their legitimacy and to consult their own constituents.

At the local level, the Local Strategic Partnerships (LSP) are another trust building initiative that brings together local councils, public sector agencies, business sector, and voluntary organisations with the aim of identifying and delivering priorities for the local community. LSPs are non-statutory, non-executive organisations that operate at the level which enables strategic decisions to be taken and is close enough to individual neighbourhoods to allow actions to be determined at community level⁷⁶.

Each LSP has the freedom to decide what its roles and responsibilities will be. The responsibilities of the LSP are usually set out in written constitutions, terms of reference or protocols. In terms of internal structures, virtually all 152 LSPs with Local area agreement responsibilities have adopted similar management model: they have established main core group/board that monitors the delivery of the Sustainable Community strategy and the Local government agreements.

In order to better explain their role, terms of reference, mandate and methodology of work, a number of LSPs have published “governance handbooks”. A good example of such a handbook is the Newcastle Partnership Guidance. The Guidance outlines the way the LPS will work for the elaboration and implementation of the long-term Sustainable Community Strategy (SCS) and the shorter-term, a 3-year long Local Area Agreement (LAA). The main working approaches are:

- making sure partners work well together, with a common purpose and a commitment to the SCS and LAA;
- involving the public, private, community and voluntary sectors in the partnership, including hard-to-reach groups such as disabled people, older people, young people and those from faith, black and ethnic minority communities;
- monitoring and managing the SCS and LAA – and making sure it improves overall conditions and narrows the gaps between deprived communities and the rest of the city and the country;
- making sure the public knows about its achievements and where to go for information and help;
- consulting the community in a coordinated and organised way;
- developing a common performance management framework across all the partner organisations;
- linking all the funding available to help deliver the SCS and LAA priorities;
- aiming to simplify all the partnerships, plans and initiatives already in place, reducing duplication and getting everyone working together;
- encouraging partnership members to constantly improve their skills, knowledge and ways of working⁷⁷.

The Handbook also contains detailed terms of references for an agreement between the Delivery Board and delivery Partnerships, the List of “Duty to Cooperate” public partners, Voluntary and Community Sector Compact and Partnership Structure.

Liaison Offices

Following the international trend, many governments in Central and Eastern Europe have established NGO liaison offices in order to enhance their cooperation with the civil society sector. A study published in 2005 in the International Journal of Not-for-Profit Law revealed that liaison offices in the region fall into four distinct models:

⁷⁶ Local Strategic Partnership. Governmental Guideline, March 2001, Department of the Environment, Transport and the Regions: London

⁷⁷ Newcastle Partnership: Guidance and Members’ Handbook, 2009, New Castle Partnership

- “Five out of ten countries examined (Poland, Croatia, Slovenia, Czech Republic, and Slovakia), have the functions of the NGO liaison office carried out by a bureaucratic unit and a broadly representative advisory body, which work in partnership as stipulated in laws, decrees, or charters;
- The Directorate of Institutional Analysis and Relations with Associative Environment in Romania and the Directorate for Civil Relations in Hungary, both Government entities, represent a second model. These offices oversee NGO-government cooperation alone, without an advisory body;
- In Latvia and Estonia, existing departments handle NGO-government liaison functions in addition to their other responsibilities, which include society integration, local government, and regional administration;
- Lithuania does not have a single, centralized NGO liaison office. Instead, various government departments are responsible for coordinating with NGOs in their areas of authority⁷⁸.

The definition adopted by the study prescribes that “Liaison office refers to a variety of structures with two common characteristics: (1) they are institutionalized within the government and have some measure of government authority to act; and (2) they have responsibility for further strengthening cooperation with civil society”⁷⁹.

Estonia

With the adoption of the Estonian Civil Society Development Concept, the Ministry of Interior has been assigned with the responsibility to coordinate and support the work of the Joint Committee of the Government and representatives of citizens’ associations. The Committee was formed in 2003 with the mandate to elaborate system for evaluation of the preparation, implementation and completion of the activity plans for EKAK. Since then, the Committee has developed two action plans for the period 2004-2006 and 2007-2010. The Committee consists of 16 representatives from umbrella organisations of specialised citizens’ associations and 11 representatives from the public sector. The main objective of the Committee has been to elaborate and launch a system to evaluate preparation, implementation and completion of the implementation plans for the Estonian Civil Society Development Concept.

The Committee is chaired by the Minister of Regional Affairs and its work is divided between three working groups: legislation and involvement; citizens’ education and public awareness; and sustainability.

The main responsibilities of the Ministry of Interior in supporting the work of the groups are concentrated towards:

- delivering the Action Plan for the implementation of the Development Plan for Civic Initiative Support;
- evaluating and supplementing the Development Plan for Civic Initiative Support if necessary;
- actively informing and engaging other associated institutions, incl. other ministries, public authorities, non-profit and business sectors, in supporting the development of civil society;
- Representing Estonia and the Estonian positions in respect of supporting the development of civil society at the international level, incl. in the international organisations associated with the government area of the Ministry of the Interior⁸⁰.

⁷⁸ M. Gerasimova, *The Liaison Office as a Tool for Successful NGO-Government Cooperation: An Overview of the Central and Eastern European and Baltic Countries’ Experiences*, 2005, *The International Journal of Not-for-Profit Law*, Vol. 7, Issue 3

⁷⁹ *Ibid*

⁸⁰ *Development Plan for Civic Initiative Support 2007-2010*, Ministry of Interior, Estonia

Poland

The methods of collaboration between the CSOs and the government in Poland have been described in the Law on Public Benefit Activities and Volunteerism adopted in 2003. The law established a Council on Public Benefit Activities that serves as an advisory and opinion-forming body to the minister responsible for social security issues. Following article 35, the main duties of the Council include:

- to express its opinion on the issues relevant for the application of the Law;
- to express its opinion about government's legal acts concerning public benefit activities and volunteering;
- to provide assistance and express its opinion concerning conflicts between public administration institutions and public benefit organizations;
- to participate in the process of inspection;
- to collect and analyse information about the performed inspections and their outcomes;
- to express its opinion in the field of public tasks, to commission non-governmental organizations and entities to perform such tasks, and to recommend standards of performing public tasks;
- to create, in co-operation with non-governmental organizations and entities, public dissemination mechanisms related to the standards of performing public benefit activities and instances of violating such standards.

The Council has the mandate of 3 years and consists of 20 members:

- 5 representatives of the central administration;
- 5 representatives of local government authorities;
- 10 representatives of NGOs nominated chosen from the candidates proposed by civil society organisations.

Participatory Budgeting – how a citizen can get involved in the money allocation

As the budgets and their execution reflect the policy decisions and their implementation, the participatory budgeting is key mechanisms for “installing” more accountability in the policy process. By enabling public access to budget information, citizens can exercise their legitimate right for transparent fiscal policy and public expenditure management that reduces corruption and ensures that resources are allocated in a more inclusive and equitable way. Major international organizations such as the World Bank, UNDP and the Asian Bank for Development have supported the efforts of CSOs in the participatory budgetary process where the main role of the CSOs as partners of local government emerged in areas such as:

- Having a say in the local development planning and budgeting processes;
- Holding local governments accountable in the allocation of local resources;
- Tracking the use of resources and the impact of local policies and programs.

A study conducted by the Manchester Community Pride Initiative⁸¹ on the current best practices in participatory budgeting outlined the following main strengths and weaknesses of the participatory budgeting process:

Main Strengths

- Improvement of provision of services and infrastructure;
- Strengthening of community organizations and voluntary sector;
- Renewing democratic and political process;
- Tackling neighbourhood deprivation;
- Attractive to business and international recognition.

⁸¹ Citizen Budgeting. Regenerating local democracy through community participation in public budgeting, Manchester Community Pride Initiative

Main weaknesses

- Complexity and bureaucracy;
- The need for strong commitment;
- The need for capacity building;
- The danger of rising expectations.⁸¹

Thus two main preconditions for enabling efficient participatory budget process were outlined: sufficient information and opportunities for the CSOs to participate in the budget process; and sufficient knowledge enabling CSOs to understand and advocate for better policies.

Based on the need for the latter, the International Budget Partnership (IBP) was formed within the Centre on Budget and Policy Priorities in 1997⁸². The aim of the initiative is to help the CSOs better understand, deliberate and participate in the budgetary process thus creating mutual trust and confidence in the ways public authorities spend public money. Presently IBP collaborates with CSOs from over 100 countries in the world, with the bulk of them based in developing countries and new democracies.

Participatory Budgeting was first developed in Brazil in the 1980s as part of a larger effort to establish democracy and citizen participation after decades of military dictatorship, political patronage and corruption. Despite the different political environment, it became well recognised practice in “old” Europe where increasing number of local governments have introduced the process thus ensuring transparent, accountable, and effective budget processes and growing citizen trust. A number of European cities have initiated participatory budgeting processes in Spain, Belgium, Italy, Germany, France, Portugal, Denmark, Switzerland, the Netherlands and the UK.

Among them it was the UK and France who got top two positions in the world by the Open Budget Index⁸³ for 2008, while two new member states – Slovenia and Poland – got into the top 10 countries out of those 85 surveyed.

The implementation of participatory budgeting in the Central and Eastern European countries however follows a slightly different trend preconditioned by the differences in political development. A study conducted within the framework of the World Bank’s Public Sector Governance and Accountability series outlined that the implementation of participatory budgeting in CEEC should take into consideration the following conditions, characterizing their political, administrative, legal and social environment:

- Historically citizens have been detached from decisions that affect them, they are mistrustful of collective action, and are passive receivers of public services;
- Collective forms of political and social organization, such as political parties and civil society organizations (CSOs), are relatively new, as is an elected, independent, and autonomous local level of government;
- Intergovernmental fiscal relations systems are still being developed; roles and responsibilities are weakly and ambiguously assigned to local levels;
- The expenditure responsibilities of local governments do not match their revenue capacity, and transfers from upper levels are non-transparent and unreliable;
- Local governments have insufficient authority to make decisions and often they are still developing the capacity to use resources effectively and efficiently to solve local problems;
- Citizens are dissatisfied with local services but do not believe that they can affect them or that local governments are able to do anything to alleviate or solve problems⁸⁴.

⁸² Information about the Centre’s activities is available at: <http://www.cbpp.org>

⁸³ More info available at :<http://openbudgetindex.org/>

⁸⁴ A.Shah, Participatory Budgeting, 2007, Public Sector Governance and Accountability series, The International Bank for Reconstruction and Development / The World Bank

United Kingdom

The Salford City Council was the first local authority in the UK that expressed its commitment to introduce participatory budgeting in its procedures. A special group was set to elaborate the concrete steps of introduction in 2003. The Salford City Council introduced the devoted budget scheme that enables each community committee to make decisions on how allocated budget sums (approximately £3.00 per person) should be spent. The Community committees assess all submitted applications and elaborate recommendations on how the money should be spent. The Committees comprise of local residents and local councillors that gather to discuss how to most efficiently deliver priorities in the community action plans.

In 2006 the City Council allocated £100,000 from highway funding to each of the eight community committees in the city which were entitled to decide on how the money will be spent. The initiative aimed at identifying schemes which are important to the local people and let them prioritise those schemes directly through an open scoring process. The participatory budgeting process was designed as follows: First potential schemes for funding have been generated by local councillors, by direct proposals from citizens, proposals elaborated at residents' group meetings etc. Potential schemes have been then briefly assessed by a highways engineer, who provides a comment on viability of the scheme, its design and the estimated cost. Viable schemes costing £100,000 or less are then presented in large public discussion events. The process enables large number of local citizens to get involved and decide on their own living environment thus not only building effective collaboration schemes but preventing potential social conflicts.

The launch of the initiative was further supported by the introduction of the Local Strategic Partnerships and the government funding for 12 pilots in 2007. The UK government also expressed its support to have all local authorities engaged with their citizens in policy budgeting by 2012.

The Local Government White Paper published in 2006 gave additional incentive to the process. The main steps for bridging the gap between citizens and their authorities, recommended in the White Paper are:

- **Informing citizens** – providing good, accessible information on how to access services and on how local services are performing; through, for example, newsletters, information on websites, text messages, local media, or staff working in neighbourhoods;
- **Consulting citizens and communities** – about the shape of local services and policies using, for example, surveys, focus groups or neighbourhood and parish plans;
- **Involving citizens directly in designing, delivering or assessing a service** – for example by co-opting a group of young people to help manage a youth centre;
- **Devolving responsibility for the delivery of a service** – for example through community management and ownership of a local community hall.

The document also advised that each authority should jointly with its partners from CSOs decide how best to discharge the duties to inform, consult, involve and devolve, taking into account factors such as the cost effectiveness of engagement activities, the amount of discretion and the differing needs and requirements of the different communities within their area⁸⁵.

Netherlands

Similarly to the UK, local authorities have introduced different forms of neighbourhood-based participatory budgeting where citizens can decide on how money is allocated in their area. An example of local authority that distinguishes itself in bridging the confidence gap is the town of Hoogeveen where major competences are transfer to the citizens. The core idea of the local authorities is to give to the citizens the decision-making powers in designing the environment they live in, while at the same time stimulating their social participation and collaboration. Neighbourhood Based Revitalization Budgets were introduced to enable citizen to plan, spend

⁸⁵ Strong and prosperous communities. The Local Government White Paper, Department of Communities and Local Government, October 2006, London

and monitor the spending of the money devoted to the areas they live. Thus citizens do not only have a say in the policy planning but share the policy making responsibilities, understand better the governance mechanisms and accordingly trust the authorities more.

“Find Your Way in Local Government” is another success story implemented in various local municipalities in Netherlands. The main objective of the project is to give young people aged 14-19 the opportunity to acquire skills necessary to actively take part in local democratic decision-making processes. In order to overcome the wide spread youth disengagement with political process, the project gave young people funding and responsibility to develop and implement local government measures. Participants involved in the project had the chance to create their own plans, determine how to spend their budgets and work with the municipalities on their implementation. The final outputs were regained trust and strong believe that active citizen involvement may bring positive change. The methodology used by the project has been the following:

- Students prepare for the action day during two classes at school that give them general introduction to local government/politics and practical information on the action day;
- During the action day, students are divided into small groups to create policy proposals around a theme or policy field that has been selected by local government in agreement with their teachers. Throughout the day, students meet with politicians, civil servants, council and interest group representatives to discuss their ideas and concerns;
- The elaborated project proposals are presented at a youth council meeting where delegates decide by majority vote which project proposal will be executed. The local government creates a budget to execute the «best» project, selected by students during the action day.

Since its initiation in 1994, between 20 and 30 action days are organized in the Netherlands each year. The project gives unique opportunity for municipalities to “connect” with their future voters and build trust relationship at this early stage of citizen and political involvement.

Assessing the delivery of services

Hungary

The e-Government Assessment, Measuring and Evaluation System project (eGAMES) was launched in Hungary in 2005 with the aim to assess and evaluate public administration services and citizen interest in different issues. E-GAMES is an online forum integrated into the Hungarian governmental portal enabling citizen to provide their views on the quality of the governmental services. In order to ensure effective and responsible communication, all citizens willing to participate in the online forum have been requested to register with the Client Gate and provide their real names and identity. The legal background of the online forum and e-GAMES was defined carefully in order to counterbalance data protection, freedom of expression and the moderation of online contributions. The registration requirement is based on the view that every citizen willing to get involved in the participatory government mechanisms should take the responsibility for his/her actions. Once registered, every user can assess all comments with positive and negative points, providing a value judgment on every user’s participation. The aggregated points show a picture of public opinion. Public officials can also be among the users, but they cannot comment on the opinions expressed.

High level government representatives have been regularly invited to chat with citizens at a predefined time. The responses during these online debates, as well as their other contributions, are measured by points from the users. The opinions expressed by the audience of the forum also carry out a media watch function which is a lot more effective and efficient than software based solutions. Thus in practice eGAMES provides a tool for ex-ante control for decision-makers for the social debate of various planned measures while at the same time it promotes interaction among citizens, and between citizens and the public.

United Kingdom

In the urge of ensuring more accountability and better responsiveness, local authorities in the UK have been widely using means provided by the information technologies. A good example for this is the LoveCleanStreets scheme that allows residents of the Lewisham Borough of London to text or email community problems that require action by the local authority. The pictures appear on a website of the local authority and allow the public to track what action is being taken. It is expected that this initiative will be rolled out across the United Kingdom (U.K.) by the end of 2010.

4.4. Implementing good governance principles in the organisational strategies of CSOs – international trends

Following the need for enhanced transparency and accountability of the CSO sector and in the framework of the Commission's Communication on the Prevention and Fight against Terrorist Financing through Enhanced National Level Coordination and Greater Transparency of the Non-profit Sector, EC published in 2009 a Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union⁸⁶. The aim of the research was to explore the existing government and NPO initiatives which aim to improve NGO accountability and transparency. The study have identified that the strong regulatory role of the state in Central and Eastern European countries has been preconditioned by the relevant immaturity and weakness of the civil society sector. Development of self-regulating regimes has not been very effective as the sector's identity and cohesion is still in formation whereas in Western Europe, the regulatory role of the states has lessened giving way to self regulations as the expectation towards NGOs performance and greater accountability have increased. The study has outlined ten major tendencies on the EU and Member states levels:

1. There is a definite trend towards introducing more accountability and transparency into the NPO sector in all EU member states;
2. Countries across the EU where a comprehensive legal framework for NPOs had not yet been developed, have recently engaged in creating such frameworks. Countries with an existing framework have undertaken comprehensive reforms to revise and improve it;
3. There is a clear trend on behalf of member states to attempt to create a central registry or at least to integrate already existing registration data into a central, publicly available database;
4. In civil law countries, introducing a Public Benefit Organisations (PBO) status seems to have become the most straightforward way of unifying accountability, obligations and corresponding state benefits for NPOs. A range of countries, both from old and new member states that already have some sort of PBO regulation have recently engaged in strengthening the accountability and reporting requirements for PBOs (Bulgaria, Italy, Latvia, Malta, Netherlands, Poland and Romania).
5. A range of countries have recently introduced stricter regulations in relation to fundraising whether in a separate act (e.g. Finland's Money Collection Act) or as part of a more comprehensive reform (e.g. Austria, Bulgaria Ireland). Notably, nearly all reform initiatives involve the principle of using funds for proper purposes and strengthening rules of reporting on the use of funds raised.
6. As an overall trend, self-regulatory initiatives take the lead in attempts to improve NPO governance. These initiatives are taking place on sub-sectoral level, instead of national level;

⁸⁶ Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union, 2009, commissioned by the European Commission Directorate-General of Justice, Freedom and Security and elaborated by the European Centre for Not-for-Profit Law

7. Several countries have revised and clarified the roles of supervision agencies and introduced rules to increase inter-agency cooperation (in Bulgaria). In addition, powers to share information and cooperate in investigations have been extended along with the introduction of higher accountability standards for NPOs (in Austria) and a central registration database in Austria and Hungary;
8. Trend to improve transparency in public funding that aims to influence behaviour by putting forward a framework for the financial relationship between the government and the voluntary and community sector, setting out undertakings for both sides, based on what each of them can expect from the other. Another interesting development in this field is the spread of pre-qualification systems introduced primarily in the field of funding international development, under which NGOs who satisfy certain criteria become eligible for a simplified procedure on administrative checks of the grant applications;
9. Consultation procedures with civil society are taking up slowly in countries where such tradition is lacking. The UK and Ireland are best practice models, especially in regard to early consultations, when the policy approach and the concept for regulation are being developed. This approach seems to be a key in gaining support and cooperation of the NPO sector in the adoption and implementation of legislation. Good models can also be found in Austria, the Netherlands, France, Estonia, Bulgaria and Malta.
10. Partnerships between corporations and NGOs are growing and corporations are increasingly assuming a role and influence in improving accountability and transparency of NPOs.

In response to the need for strengthening the integrity and accountability of civil society organisations, the Independent Sector (leadership forum for charities, foundations, and corporate giving programs in America and around the world) elaborated 33 principles for good governance and ethical practice⁸⁷. The principles are clustered under four main categories:

- **Legal Compliance and Public Disclosure** – responsibilities and practices, such as implementing conflict of interest and whistleblower policies, that will assist charitable organizations in complying with their legal obligations and providing information to the public;
- **Effective Governance** – and procedures that the board of directors should implement to fulfil its oversight and governance responsibilities effectively;
- **Strong Financial Oversight** – policies and procedures that organization should follow to ensure wise stewardship of charitable resources;
- **Responsible Fundraising** – policies and procedures that organizations soliciting funds from the public should follow to build donor support and confidence.
- More or less, the same principles are stated in the European Foundation Centre Principles of Good Practice⁸⁸. The Principles aim at giving general recommendations of the enforcement of good practice, openness and transparency in the European foundation community and refer to both national and international dimension of the foundation's work.

As a response to the growing concerns about the transparency and accountability of the NGOs activities and following the increased role of the CSO sector in the decision-making process, a group of international NGOs have designed and publicly endorsed the first global accountability charter targeting international advocacy. The elaborated self-regulation aims at committing its signatories to clear principles and standards that beneficiaries, supporters, donors and the wider public may use as benchmarks for holding the CSOs into account. The International Non-Governmental Accountability Charter was launched in 2006 by eleven leading international NGOs as a voluntary self regulating initiative outlining the common values, policies and practices that

⁸⁷ The principles are available at: http://www.independentsector.org/uploads/Accountability_Documents/Principles_for_Good_Governance_and_Ethical_Practice.pdf

⁸⁸ Available at: <http://www.efc.be/Legal/Documents/EFCPinciplesGoodPractice.pdf>

should lead NGOs activities. The Charter recognizes that transparency and accountability are essential for good governance and acknowledges that the NGOs should observe the same high standards they demand of others. Seeking to ensure greater transparency of the NGOs activities, the Charter commits its signatories to report at least once a year on their activities and achievements. Report should include:

- Mission and values;
- Objectives and outcomes achieved in programme and advocacy;
- Environmental impact;
- Governance structure and processes, and main office bearers;
- Main sources of funding from corporations, foundations, governments, and individuals;
- Financial performance;
- Compliance with this Charter;
- Contact details⁸⁹.

At the national level, CSOs in the EU Member States have developed different Codes of Conduct that laid down the foundations for the Non-Governmental Accountability Charter. The Estonian Code of Ethics for Non-profit organizations was adopted in 2002 at the General Assembly of the Roundtable of Estonian Non-profit Organizations. The main principles proclaimed in the code are: integrity, equality, dignity, openness, solidarity, collaboration, diversity and reliability. The core principles of action described in the Code relate to:

- Democratic governance;
- Civic courage and care;
- Sustainability and prudence in using funds and resources;
- Responsibility and accountability;
- Openness and transparency;
- Independence and avoiding conflicts of interest;
- Honouring commitments and recognition of authorship of ideas;
- Tolerance.

Complimentary to these initiatives, the Central and Eastern European Working Group on Non-profit Governance has elaborated a Hand book of NGO Governance. The handbook provides a set of guidelines that could promote a shared regional understanding on NGO good governance. The handbook promotes eight founding principles:

- NGOs are accountable to their communities;
- Good governance has a formal structure;
- Good governance is a basic form of accountability;
- Good governance involves the separation of governance and management;
- NGOs are mission-based organizations;
- NGOs promote the highest professional and ethical standards;
- NGOs exercise responsible resource management and mobilization;
- NGOs are responsive to the communities they serve.

The guide provides implementation checklist that can help CSOs to monitor their compliance.

Another self regulation tool aiming at upholding the integrity within the CSO sector and building trust in the government-citizen relations is the Certification scheme that some CSOs use in order to assess integrity compliance. The schemes can be based on self-evaluation or on third party certification.

The self-certification schemes usually follow the adoption of code of conduct/accountability charter and require the CSOs to undergo internal verification process and make a formal declaration of compliance with a clear set of standards. Typical example of such self-certification scheme is the National Chapter Accreditation of Transparency International. The objective of

⁸⁹ International Non Governmental Organizations Accountability Charter, available at: <http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/ingo-accountability-charter-eng.pdf>

the scheme is to ensure that all national chapters meet the highest integrity standards and are strongly motivated, effective and accountable for their actions. The accreditation of a new chapter consists of three main phases:

1. Pre-accreditation process during which the group of persons (individuals or an existing organisation) signs with TI Management a “National Contact Agreement”. This status is granted for two years;
2. Provisional accreditation: Within two years from gaining the National Contact point status, the “National Chapter in Formation” should be established. The status gives the right for attendance of TI Membership Meetings, but it has no voting rights;
3. Accreditation: within two years of gaining the “National Chapter in Formation” if the sufficient determination, diligence and competence to combat corruption are demonstrated the organization may apply for full accreditation. The application sent to TI will include:
 - ✓ Completed National Chapter Self-evaluation form for Initial Accreditation;
 - ✓ Copy of the latest audited or independently examined accounts;
 - ✓ Summary of the finances as requested by the TI Board’s Finance, Committee;
 - ✓ Evidence that registration of the TI name and logo in the National Chapter’s country/territorial entity in the name of TI has been initiated or completed;
 - ✓ Code of conduct;
 - ✓ Publication of a Registry of Interest for the members of National Chapter in Formation’s governing body, along the lines of the TI Conflict of Interest Policy;
 - ✓ Most recent work plan and budget;
 - ✓ Last annual report⁹⁰.

Every three years, the TI National Chapters undergo review aiming to ensure that they continue to comply with the Umbrella Statement, the basic principles and goals of TI. This is done by completion of a self-evaluation form, consisting of answers to a standard accreditation review questionnaire. In addition the Board of the Management Accreditation Committee may at any time initiate review specifying the reasons for it.

Similarly to the self-accreditation scheme, the One World Trust’s Global Accountability Project has developed GAP framework which provides organisations with a practical tool for operationalising accountability. The GAP Framework sets the benchmark for improving organizational accountability towards the stakeholders. The framework has the form of a questionnaire, and is geared around four main dimensions, namely:

- Transparency;
- Participation;
- Evaluation;
- Complaints and response mechanisms.

The integration of these dimensions in the organisation’s practice and processes enables the organisation to give an account to, take account of, and when necessary be held to account by stakeholders. The GAP Framework is elaborated as complimentary instrument to the already existing regulatory frameworks, codes of conducts and accountability initiatives.

In contrast to these schemes, some countries and organizations have introduced third party certification schemes that involve independent organisation verifying the compliance against a set of principles or standards. An example of such a mechanism is the Austrian Seal of Quality for Donations. The tool has been developed after a huge donation scandal that burst out in 1998. In 1999 the Austrian Institute for Fundraising Organisations set a working group with the task to elaborate clear and transparent donation standards. The group consisted of members of NPO umbrella organisations, government departments, the media, fundraising associations and consumer protection organisations. Thus in 2001 the Austrian seal of approval for charities was introduced. It comprised a list of criteria that the organizations should comply with and will

⁹⁰ http://www.transparency.org/about_us/organisation/accreditation#accred

be checked annually against by external accounting. As in Austria all accounting institutions are members of the Austrian Chamber of Chartered Accountants and Tax Advisers, the organizations are free to choose the auditing institution. Similar accreditation systems are built in Netherlands and Germany.

At international level, the International Committee on Fundraising Organizations established standards aiming to help the national accrediting bodies to ensure that the CSO meet high integrity standards and spend public money in the prescribed way. These standards cover five key activity areas:

- Membership and responsibilities of the governing body;
- Fulfilment of public benefit goals;
- Fiscal control, management and reporting;
- Fundraising practices;
- Provision of public information.

They aim at harmonising the national accreditation systems and provide guidelines to be followed by international non-governmental, or not-for-profit, private organizations that raise funds from the public for charitable or public benefit purposes.

The urge for greater transparency and accountability of the civil society sector has become even more vigorous after the terrorist attacks on the 9/11 that put additional pressure on imposing strict accountability mechanisms over the NGO sector. In its Interpretative Note to Special Recommendation on Non-Profit Organisations, the Financial Action Task Force (FATF) among other measures prescribed to the governments to:

- Undertake domestic reviews of their NPO sector or have the capacity to obtain timely information on its activities, size and other relevant features;
- Promote clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs;
- Take steps to promote effective supervision or monitoring of their NPO sector;
- Make sure that NPOs are either licensed or registered and publicly provide information on:
 - ✓ the purpose and objectives of their stated activities;
 - ✓ the identity of the persons who own, control or direct their activities, including senior officers, board members and trustees.

In order to ensure greater transparency and integrity in the work of the civil society sector and thus to prevent terrorist financing, the FATF advises the authorities to oblige CSOs to issue annual financial statements with detailed breakdowns of incomes and expenditures and along with this to provide mechanism for monitoring the compliance of CSOs with the applicable rules and regulations. These recommendations do not differ substantially from the mechanisms already set in place in the majority of the EU countries. Different forms of registers, public databases and monitoring mechanisms have already been established in Ireland, Bulgaria, Malta, Hungary, Austria, Estonia, England, Poland, etc. Some self-regulation initiatives at European and national level have also fostered the implementation of the above requirements (Accountability charter, accreditation system in Netherlands etc.).

At the same time, UNDP has elaborated criteria for assessing the CSOs capacities in the partner selection procedure (See Annex 5). The main criteria have been organised around the following sections:

- Legal status and history;
- Mandate, policies and governance;
- Constituency and external support;
- Technical capacity;
- Managerial capacity;
- Administrative capacity;
- Financial capacity;

The tool provides guidance for selection and is neither meant as a “one size fits all approach” nor as a scorecard for CSOs. It however provides valuable support in ensuring that the partner organizations are equally accountable, transparent and open as their donor organization. The framework acknowledges that countries and CSOs differ from one another in the civil society environments and in the CSOs competences and the role they play in society and therefore advised that the selection framework should be adjusted to the local needs and context. The introduction of accountability measure should by no means lead to overburdening the civil society sector and jeopardize their freedoms to express freely the voice and concerns of the citizens.

V. CONCLUSION

Government –civil society relations in the 21 century

This study has showed modern tendencies in the development of government-citizen relations in the context of building mutual trust and providing good governance that promotes democracy, rule of law and sustainable economic development. It has presented international, European and national practices and notions that reveal the following main trends:

- Civil society organisations play important role in the nowadays policy process. They are comprehended as valuable partners that bring added value and facilitate the elaboration and implementation of governmental policies;
- Civil society organisations are required to be effective and active partners bringing constructive and well balanced opinions and suggestions thus becoming part of the decision-making process;
- The responsibilities and «playing field» of CSOs have enormously increased and many new competences have been given to CSOs at all levels of governance: international, European, national, regional and local;
- With the greater competences come greater responsibilities. The CSOs are expected and required to adhere to the same standards of conduct that are expected from the public authorities;
- Civil society sector and the government authorities have been working together to ensure that the CSOs involved in the decision-making process are representing the true voice of the citizens;
- Accountability, transparency and openness have become key principles equally applied to all partners in the government-civil society relations;

Mechanisms for facilitating citizen-government trust relations

Citizen-government trust building relations are regulated both by hard (legal) and soft (codes of conduct etc.) instruments. The application of the latter depends on the political, administrative and cultural context of the particular country. The most commonly used tools for collaboration are:

- **Provision of information:**
 - The laws on provision/access of information along with the basic national laws (constitutions) are the main guarantees for the provision of timely, and comprehensible information;
 - Guidelines for both public servants and citizens are elaborated to explain in an easy manner the procedures for access to information;
 - The public authorities are required to take an active stand and be proactive in the process of provision of information. The main principle applied is that the authorities must provide all information that citizens may need without prior request;
 - Minimal standards for the information that should be subject to mandatory publication by the public authorities have been elaborated by a number of EU Member states and EU institutions;
 - Public authorities' web sites/ portals have become focal points enabling easy access to information. Standards for unification of delivery of information have been elaborated.
- **Consultation:**
 - Establishing consultative bodies at all decision-making levels. The bodies may have joint membership of public authorities' and civil society organisations' or be

- comprised only of representatives of the CSOs. Their competences vary from pure advisory functions to the right of veto and formulation of certain policy documents;
- The consultation procedures are either regulated within the national legal framework or are adopted as non-binding policy documents;
 - There is a common understanding regarding the main steps and phases of the public consultation process;
 - Codes of good practices/Guidelines are generally comprehended as the best tool for ensuring inclusive, comprehensible and effective consultations;
 - The consultation process is widely based on means provided by the e-technologies. Participation/consultation web-portals have been established to facilitate the exchange of opinions and ensure the involvement of the wider public;
 - Citizens forums/agora/juries have been initiated as tools for “grasping the pulse” of the civil society sector enabling it to actively shape future policies at all policy levels;
- **Accountability:**
 - Monitoring bodies comprised of representatives of civil society organisations have been widely established to ensure that citizen’s interests and their needs are efficiently met;
 - Social compacts/joint statements documents have been adopted as mechanisms ensuring transparency and answerability in the government-civil society relations. The documents describe the main areas of interventions, tools for collaborations and standards of behaviour to be followed by all interested parties;
 - Participatory budgeting initiatives have paved their way as accountability tools at local government level. Apart from holding the public authorities into account for their actions they allow citizens to get actively involved in allocation and spending of public resources thus enabling them to shape the environment they live in;
 - E-technologies have made it possible for the citizens to evaluate the performance of public authorities on a regular basis. Web-applications have been used to access the quality of elaborated policies and performance.

Mechanisms for facilitating government-CSOs trust relations

Mainly soft tools in the form of guidelines and codes of conduct have been used to ensure the representativeness, accountability and openness of the CSOs activities. Initiatives coming both from the government and the CSOs sector have been implemented in the following directions:

- Codes of conduct/accountability charters have been adopted by many CSOs as statements of the values and standards of behaviour they adhere to and can be held into account of;
- Self accreditation and third party accreditation mechanisms have been set in place to ensure that CSOs meet high integrity standards and spend public money in a prescribed way;
- Practical tools for operationalising accountability (in the form of guidelines, gap assessment questionnaires, etc.) have been elaborated to support the implementation of the good governance principles in the CSOs activities;
- There is a clear understanding that transparency, openness and accountability in the citizen-government relations require well defined framework describing the roles, rights and responsibilities of CSOs, as well as the related obligations of public institutions. This also means that CSOs and governments should jointly elaborate a set of criteria for identification of citizen organizations to be involved in the collaboration and partnership initiatives.

VI. PROPOSALS AND RECOMMENDATIONS ON PROMOTION CONFIDENCE BETWEEN THE STATE AND CSOS

Measures to build the citizen trust in the capacity of the public authorities to provide good governance

- Elaboration of a joint statement of CSOs and governance priorities, objectives and mechanisms of work (possible sample suggestions are: the Social compact in the UK or the civil society development concept in Estonia). The aim is to create a clear framework for government-civil society collaboration. At the same time by signing such a document, both the civil society sector and the government will commit themselves to follow common standards of conduct;
- Elaboration of minimal standards for consultation and/or clear guidelines for public consultations;
- Drafting and signing of inter-institutional agreement and binding guidelines concerning the appointment of civil society representatives, methods for organising consultations and their funding. The guidelines should be jointly elaborated by the government and civil society sector.
- Launching of consolidated consultation portal as a focal point of citizen opinions on policy proposals and draft regulations. The portal should provide a platform for bilateral communication between citizen and government institutions (good examples can be seen in Estonia, Netherlands, UK);
- Introducing public database of NGOs possessing expertise in different spheres of public life (the public register of the European Commission may be taken as a sample). The database will enforce transparency and accountability of CSOs. On the other hand it will facilitate cooperation between institutions and CSOs if the state institutions oblige themselves to send drafts of all normative acts to be consulted and discussed to the registered CSOs working in the relevant area. Thus additional guarantees will be built to ensure that all the affected parties are informed at the beginning of the preparation of and/or consultation on strategic documents (see: Estonian and EC procedures as good practices);
- Introduction of a “legislative footprint” (indicative list, attached to a Parliamentary report, of registered interest representatives who were consulted and had significant input during the preparation of the report or legislative proposal);
- Enabling easy access to documents and information by introducing rules on unification of the governmental websites;
- Introducing regulation on lobbying activities;
- Establishing consultative body at the national level with wider advisory functions (good examples are the National Council in Slovenia and the Economic and Social Council of Bulgaria);
- Building the capacities and abilities of civil servants and CSO representatives to actively and constructively communicate and collaborate with the CSOs/State institutions. Support the cultural change and better understanding on the role of CSOs in the decision-making process;
- Enhancing the use of the e-technologies to facilitate public involvement and monitoring. Good example for such initiatives that can be applied are:
 - ✓ the Interactive Policy Making Initiative (Internet based IPM tool provides easy-to-use and straightforward online questionnaires, making it easier for respondents to participate and for policy makers to analyse the results);

- ✓ e-Government Assessment, Measuring and Evaluation System (a tool for ex-ante control for decision-makers for the social debate of various planned measures while at the same time it promotes interaction among citizens, and between citizens and the public);
- ✓ Voting assistant and Voting Tracker

Measures to build government trust in the reliability of CSOs opinions and expertise

- Elaboration of joint Accountability charters/Codes that set out common standards of behavior;
- Introduction of Codes of conduct, self accreditation or third party accreditation;
- Elaboration of CSO yearly reports that may include:
 - Mission and values;
 - Objectives and outcomes achieved in programme and advocacy;
 - Environmental impact;
 - Governance structure and processes, and main office bearers;
 - Main sources of funding from corporations, foundations, governments, and individuals;
 - Financial performance;
 - Compliance with accountability Charter;
 - Contact details
- Defining and applying a set of criteria for identification of citizen organizations with which public authorities will establish relationships of collaboration and partnership. Setting objective and pre-established criteria that could include the following:
 - Structure and membership of the NGOs;
 - Transparency of their organisation and the way they work;
 - Previous participation in committees and working groups;
 - Track record as regards competence to advise in a specific field;
 - Capacity to work as a catalyst for exchange of information and opinions between the authorities and citizens (Commission Discussion Paper, The Commission and Non-Governmental Organisations: Building a Stronger Partnership). Indicators for assessing CSOs participation should be elaborated at the country level in close cooperation with CSOs representatives.

ANNEX 1

**Matrix of Civil Participation, Code of Good Practice for Civil Participation
in the Decision Making Process**

Partnership	Work group or committee	Co-drafting	Joint decision-making Co-decision making	Strategic partnerships	Work groups or committee	Work groups or committee
Dialogue	Hearings and public forums Citizens' forums and future councils Key government contact	Hearings and Q&A panels Expert seminars Multi-stakeholder committees and advisory bodies	Open plenary or committee sessions	Capacity building seminars Training seminars	Work groups or committee	Seminars and deliberative forums
Consultation	Petitioning Consultation online or other techniques	Hearings and Q&A panels Expert seminars Multi-stakeholder committees and advisory bodies	Open plenary or committee sessions	Events, conferences, forums, seminars	Feedback mechanisms	Conferences or meetings Online consultation
Information	Easy and open information access Research Campaigning and lobbying Website for key documents	Open and free access to policy documents Website for key documents Campaigns and lobbying Web casts Research input	Campaigning and lobbying	Open access to information Website for information access E-mail alerts FAQ Public tendering procedures	Open access to information Evidence gathering Evaluations Research studies	Open access to information
Levels of participation						
Steps in the political decision making process	Agenda setting	Drafting	Decision	Implementation	Monitoring	Reformulation

Source: Council of Europe, 2009, Code of Good Practice for Civil Participation in the Decision Making Process

ANNEX 2

Guiding principles for engaging citizens in policy-making

The survey suggests the following guiding principles for successful information, consultation and active participation in policy-making:

1. Commitment

Leadership and strong commitment to information, consultation and active participation in policy-making is needed at all levels - from politicians, senior managers and public officials.

2. Rights

Citizens' rights to access information, provide feedback, be consulted and actively participate in policy-making must be firmly grounded in law or policy. Government obligations to respond to citizens when exercising their rights must also be clearly stated. Independent institutions for oversight, or their equivalent, are essential to enforcing these rights.

3. Clarity

Objectives for, and limits to, information, consultation and active participation during policy-making should be well defined from the outset. The respective roles and responsibilities of citizens (in providing input) and government (in making decisions for which they are accountable) must be clear to all.

4. Time

Public consultation and active participation should be undertaken as early in the policy process as possible to allow a greater range of policy solutions to emerge and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective. Information is needed at all stages of the policy cycle.

5. Objectivity

Information provided by government during policy-making should be objective, complete and accessible. All citizens should have equal treatment when exercising their rights of access to information and participation.

6. Resources

Adequate financial, human and technical resources are needed if public information, consultation and active participation in policy-making are to be effective. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports their efforts.

7. Co-ordination

Initiatives to inform, request feedback from and consult citizens should be co-ordinated across government to enhance knowledge management, ensure policy coherence, avoid duplication and reduce the risk of 'consultation fatigue' among citizens and civil society organisations (CSOs). Co-ordination efforts should not reduce the capacity of government units to pursue innovation and ensure flexibility.

8. Accountability

Governments have an obligation to account for the use they make of citizens' inputs received through feedback, public consultation and active participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny and review are crucial to increasing government accountability overall.

9. Evaluation

Governments need the tools, information and capacity to evaluate their performance in providing information, conducting consultation and engaging citizens in order to adapt to new requirements and changing conditions for policy-making.

10. Active citizenship

Governments benefit from active citizens and a dynamic civil society and can take concrete actions to facilitate access to information and participation, raise awareness, strengthen citizens' civic education and skills as well as to support capacity-building among civil society organisations.

Source: Engaging citizens in policy making: Information, Consultation and Public Participation, 2001, OECD Public Management Policy Brief, N 10

ANNEX 3

Model Publication Scheme⁹¹

This model publication scheme has been prepared and approved by the Information Commissioner. It may be adopted without modification by any public authority without further approval and will be valid until further notice.

This publication scheme commits an authority to make information available to the public as part of its normal business activities. The information covered is included in the classes of information mentioned below, where this information is held by the authority. Additional assistance is provided to the definition of these classes in sector specific guidance manuals issued by the Information Commissioner.

The scheme commits an authority:

- To proactively publish or otherwise make available as a matter of routine, information, including environmental information, which is held by the authority and falls within the classifications below.
- To specify the information which is held by the authority and falls within the classifications below.
- To proactively publish or otherwise make available as a matter of routine, information in line with the statements contained within this scheme.
- To produce and publish the methods by which the specific information is made routinely available so that it can be easily identified and accessed by members of the public.
- To review and update on a regular basis the information the authority makes available under this scheme.
- To produce a schedule of any fees charged for access to information which is made proactively available.
- To make this publication scheme available to the public.

Classes of Information

- *Who we are and what we do.* Organisational information, locations and contacts, constitutional and legal governance
- *What we spend and how we spend it.* Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts
- *What our priorities are and how we are doing.* Strategy and performance information, plans, assessments, inspections and reviews
- *How we make decisions.* Policy proposals and decisions. Decision-making processes, internal criteria and procedures, consultations.
- *Our policies and procedures.* Current written protocols for delivering our functions and responsibilities.
- *Lists and Registers.* Information held in registers required by law and other lists and registers relating to the functions of the authority.
- *The Services we Offer.* Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The classes of information will not generally include:

- Information the disclosure of which is prevented by law, or exempt under the Freedom of Information Act, or is otherwise properly considered to be protected from disclosure.

⁹¹ The model publication scheme is available at the website of the UK Information Commissioner's Office at: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/generic_scheme_v1.0.pdf

- Information in draft form.
- Information that is no longer readily available as it is contained in files that have been placed in archive storage, or is difficult to access for similar reasons.

The method by which information published under this scheme will be made available

The authority will indicate clearly to the public what information is covered by this scheme and how it can be obtained. Where it is within the capability of a public authority, information will be provided on a website. Where it is impracticable to make information available on a website or when an individual does not wish to access the information by the website, a public authority will indicate how information can be obtained by other means and provide it by those means. In exceptional circumstances some information may be available only by viewing in person. Where this manner is specified, contact details will be provided. An appointment to view the information will be arranged within a reasonable timescale. Information will be provided in the language in which it is held or in another language that is legally required. Where an authority is legally required to translate any information, it will do so. Obligations under disability and discrimination legislation and any other legislation to provide information in other forms and formats will be adhered to when providing information under this scheme.

Charges which may be made for information published under this scheme

The purpose of this scheme is to make the maximum amount of information readily available at minimum inconvenience and cost to the public. Charges made by the authority for routinely published material will be justified and transparent and kept to a minimum. Material which is published and accessed on a website will be provided free of charge. Charges may be made for information subject to a charging regime specified by the Parliament.

Charges may be made for actual disbursements incurred such as:

- photocopying;
- postage and packaging;
- the costs directly incurred as a result of viewing information.

Charges may also be made for information provided under this scheme where they are legally authorised, they are in all the circumstances, including the general principles of the right of access to information held by public authorities, justified and are in accordance with a published schedule or schedules of fees which is readily available to the public. If a charge is to be made, confirmation of the payment due will be given before the information is provided. Payment may be requested prior to provision of the information.

Written Requests

Information held by a public authority that is not published under this scheme can be requested in writing, when its provision will be considered in accordance with the provisions of the Freedom of Information Act.

ANNEX 4

*Minimum standards for consultation of interested parties*⁹²

A. CLEAR CONTENT OF THE CONSULTATION PROCESS

All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses.

The information in publicity and consultation documents should include:

- A summary of the context, scope and objectives of consultation, including a description of the specific issues open for discussion or questions with particular importance for the Commission;
- Details of any hearings, meetings or conferences, where relevant;
- Contact details and deadlines;
- Explanation of the Commission's processes for dealing with contributions, what feedback to expect, and details of the next stages involved in the development of the policy;
- If not enclosed, reference to related documentation (including, where applicable, Commission supporting documents).

B. CONSULTATION TARGET GROUPS

When defining target group(s) in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions.

For consultation to be equitable, the Commission should ensure adequate coverage of the following parties in a consultation process:

- those affected by the policy
- those who will be involved in implementation of the policy, or
- bodies that have stated objectives giving them a direct interest in the policy.

In determining the relevant parties for consultation, the Commission should take into account the following elements as well:

- the wider impact of the policy on other policy areas, e.g. environmental interests or consumer policy;
- the need for specific experience, expertise or technical knowledge, where applicable;
- the need to involve non-organised interests, where appropriate, the track record of participants in previous consultations;
- the need for a proper balance, where relevant, between the representatives of:
 - ✓ social and economic bodies;
 - ✓ large and small organisations or companies;
 - ✓ wider constituencies (e.g. churches and religious communities) and specific target groups (e.g. women, the elderly, the unemployed, or ethnic minorities);
 - ✓ organisations in the European Union and those in non-member countries (e.g. in the candidate or developing countries or in countries that are major trading partners of the European Union).

Where appropriate, the Commission encourages contributions from interested parties organised at the European level.

⁹² Extract from the "Communication from the Commission Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission", COM(2002) 704 final

Where a formal or structured consultation body exists, the Commission should take steps to ensure that its composition properly reflects the sector it represents. If this is not the case, the Commission should consider how to ensure that all interests are being taken into account (e.g. through other forms of consultation).

C. PUBLICATION

The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the Internet and announced at the “single access point”.

For addressing the broader public, a single access point for consultation will be established where interested parties should find information and relevant documentation. For this purpose, the Commission will use the “Your-Voice-in-Europe” web portal. However, at the same time it might be useful to maintain more traditional alternatives to the Internet (e.g. press releases, mailings). Where appropriate and feasible, the Commission should provide consultation documents in alternative formats so as to make them more accessible to the disabled.

D. TIME LIMITS FOR PARTICIPATION

The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings.

The main rule is to give those participating in Commission consultations sufficient time for preparation and planning. Consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision-making. In urgent cases, or where interested parties have already had sufficient opportunities to express themselves, the period may be shortened.

On the other hand, a consultation period longer than eight weeks might be required in order to take account of:

- the need for European or national organisations to consult their members in order to produce a consolidated viewpoint;
- certain existing binding instruments (this applies, in particular, to notification requirements under the WTO agreement);
- the specificity of a given proposal (e.g. because of the diversity of the interested parties or the complexity of the issue at stake);
- main holiday periods.

When the deadline for transmission of comments has expired, the Commission will close the consultation and take the next steps in the administrative process (e.g. prepare for the decision by the Commission).

E. ACKNOWLEDGEMENT AND FEEDBACK

Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet.

Depending on the number of comments received and the resources available, acknowledgement can take the form of:

- an individual response (by e-mail or acknowledgement slip) or
- a collective response (by e-mail or on the Commission’s single access point for consultation on the Internet; if comments are posted on the single access point within 15 working days, this will be considered as acknowledgement of receipt).

Contributions will be analysed carefully to see whether, and to what extent, the views expressed can be accommodated in the policy proposals. Contributions to open public consultations will be made public on the single access point. Results of other forms of consultation should, as far as possible, also be subject to public scrutiny on the single access point on the Internet.

The Commission will provide adequate feedback to responding parties and to the public at large. To this end, explanatory memoranda accompanying legislative proposals by the Commission or Commission communications following a consultation process will include the results of these consultations and an explanation as to how these were conducted and how the results were taken into account in the proposal. In addition, the results of consultations carried out in the Impact Assessment process will be summarised in the related reports.

ANNEX 5

UNDP CSO Assessment Tool

PART I. ASSESSING CSO COMMITMENT TO THE UNDP PRINCIPLES OF PARTICIPATORY HUMAN DEVELOPMENT AND DEMOCRATIC GOVERNANCE		
INDICATOR	AREAS FOR ASSESSMENT	APPLICABLE DOCUMENTS AND TOOLS
1.1 LEGAL STATUS AND HISTORY		
<i>Degree of legal articulation and biographical indications</i>		
1.1.1 Legal status	<ul style="list-style-type: none"> ■ Is the CSO legally established? ■ Does the CSO comply with all legal requirements of its legal identity and registration? 	<ul style="list-style-type: none"> ■ Name and name of officers ■ Registration with government or umbrella CSO ■ Legal incorporation documents
1.1.2 History	<ul style="list-style-type: none"> ■ Date of creation and length in existence ■ Reasons and circumstances for the creation of the CSO ■ Has the CSO evolved in terms of scope and operational activity? 	<ul style="list-style-type: none"> ■ Annual reports ■ Biographical note on CSO ■ Media kit ■ Website
1.2 MANDATE, POLICIES AND GOVERNANCE		
<i>Compatibility between the goals of the CSO with those of UNDP and a sound governance structure</i>		
1.2.1 CSO mandate and policies	<ul style="list-style-type: none"> ■ Does the CSO share UNDP principles of human development? ■ Does the CSO share similar service lines to UNDP? ■ Is it clear on its role? 	<ul style="list-style-type: none"> ■ Mission statement/ Charter document ■ Annual report ■ Policy statements
1.2.2 Governance	<ul style="list-style-type: none"> ■ Who makes up the governing body and what is it charged with? ■ How does the independent governing body exert proper oversight? ■ Does the CSO have a clear and communicated organizational structure? 	<ul style="list-style-type: none"> ■ Reports on the meetings of the governing body ■ Profile of board members/ trustees ■ Copies of rules and procedures ■ Minutes of management or decision-making meeting; Code of Conduct ■ CSO organizational chart

INDICATOR	AREAS FOR ASSESSMENT	APPLICABLE DOCUMENTS AND TOOLS
1.3 CONSTITUENCY AND EXTERNAL SUPPORT <i>Ability to build collaborative relationships and a reputable standing with other sectors</i>		
1.3.1 Constituency	<ul style="list-style-type: none"> ■ Does the CSO have a clear constituency? ■ Is the organization membership based/or not? ■ Is there a long-term community development vision? ■ Does the CSO have regular and participatory links to its constituency? ■ Are constituents informed and supportive about the CSO and its activities? 	<ul style="list-style-type: none"> ■ Mission-statement-goal ■ Webpage / webforum ■ Newsletter ■ Report of field visits ■ Media coverage ■ Resource centre or public assembly space
1.3.2 CSO local and global linkages	<ul style="list-style-type: none"> ■ Does the CSO belong to CSO umbrella organizations and/or CSO networks in its own sector? ■ Does the CSO have strong links within the CSO community and to other social institutions? 	<ul style="list-style-type: none"> ■ Membership/affiliation in a CSO umbrella ■ Letters of reference ■ Participation in regional/national/international CSO meetings and conferences ■ Partnerships agreements with other CSOs
1.3.3 Other partnerships, networks and external relations	<ul style="list-style-type: none"> ■ Does the CSO have partnerships with government/UN agencies/private sector/foundations/others? ■ Are these partnerships a source of funding? 	<ul style="list-style-type: none"> ■ Partnerships agreements and/or MoUs ■ Records of funding and list of references ■ Reports on technical external support from national and/or international agencies ■ Minutes of partnership interactions

INDICATOR	AREAS FOR ASSESSMENT	APPLICABLE DOCUMENTS AND TOOLS
2.2 MANAGERIAL CAPACITY <i>Ability to plan, monitor and co-ordinate activities</i>		
2.2.1 Planning, monitoring and evaluation	<ul style="list-style-type: none"> ■ Does the CSO produce clear, internally consistent proposals and intervention frameworks? ■ Does the development of a programme include a regular review of the programme? ■ Does the CSO hold annual programme or project review meetings? ■ Is strategic planning translated into operational activities? ■ Are there measurable objectives in the operational plan? 	<ul style="list-style-type: none"> ■ Well-designed project and programme documents as well as evaluations and reports ■ Action/operational plans ■ Evaluation and monitoring reports
2.2.2 Reporting and performance track record	<ul style="list-style-type: none"> ■ Does the CSO report on its work to its donors, to its constituency, to CSOs involved in the same kind of work, to the local council, involved government ministries, etc.? ■ Does the CSO monitor progress against indicators and evaluate its programme/project achievement? ■ Does the CSO include the viewpoint of the beneficiaries in the design and review of its programming? 	<ul style="list-style-type: none"> ■ Reports on performance ■ Reports to donors and other stakeholders ■ Internal and external evaluation and impact studies
2.3 ADMINISTRATIVE CAPACITY <i>Ability to provide adequate logistical support and infrastructure</i>		
2.3.1 Facilities and equipment	<ul style="list-style-type: none"> ■ Does the CSO possess logistical infrastructure and equipment? ■ Can the CSO manage and maintain equipment? 	<ul style="list-style-type: none"> ■ Adequate logistical infrastructure: office facilities and space, basic equipment, utilities ■ Computer capability and library materials ■ Proper equipment for area of specialisation/inventory to track property and cost

INDICATOR	AREAS FOR ASSESSMENT	APPLICABLE DOCUMENTS AND TOOLS
2.3.2 Procurement	<ul style="list-style-type: none"> ■ Does the CSO have the ability to procure goods, services and works on a transparent and competitive basis? 	<ul style="list-style-type: none"> ■ Standard contracts ■ Examples of how procurement is done ■ Written procedures for identifying the appropriate vendor, obtaining the best price, and issuing commitments

2.4 FINANCIAL CAPACITY

Ability to ensure appropriate management of funds (For detailed guidelines and checklists to assess financial management capacity, please visit: [http://www.undg.org/documents/6642-Framework for Cash Transfers to Implementing Partners.doc](http://www.undg.org/documents/6642-Framework%20for%20Cash%20Transfers%20to%20Implementing%20Partners.doc))

2.4.1 Financial management and funding resources	<ul style="list-style-type: none"> ■ Is there a regular budget cycle? ■ Does the CSO produce programme and project budgets? ■ What is the maximum amount of money the CSO has managed? ■ Does the CSO ensure physical security of advances, cash and records? ■ Does the CSO disburse funds in a timely and effective manner? ■ Does the CSO have procedures on authority, responsibility, monitoring and accountability of handling funds? ■ Does the CSO have a record of financial stability and reliability? 	<ul style="list-style-type: none"> ■ Operating budgets and financial reports ■ List of core and non-core donors and years of funding ■ Written procedures ensuring clear records for payable, receivables, stock and inventory ■ Reporting system that tracks all commitments and expenditures against budgets by line
2.4.2 Accounting system	<ul style="list-style-type: none"> ■ Does the CSO keep good, accurate and informative accounts? ■ Does the CSO have the ability to ensure proper financial recording and reporting? 	<ul style="list-style-type: none"> ■ A bank account or bank statements ■ Audited financial statements ■ Good, accurate and informative accounting system ■ Written procedures for processing payments to control the risks through segregation of duties, and transaction recording and reporting

PART II. ASSESSING CSO CAPACITY FOR PROJECT MANAGEMENT		
INDICATOR	AREAS FOR ASSESSMENT	APPLICABLE DOCUMENTS AND TOOLS
2.1 TECHNICAL CAPACITY <i>Ability to implement a project</i>		
2.1.1 Specialization	<ul style="list-style-type: none"> ■ Does the CSO have the technical skills required? ■ Does the CSO collect baseline information about its constituency? ■ Does the CSO have the knowledge needed? ■ Does the CSO keep informed about the latest techniques/competencies/policies/trends in its area of expertise? ■ Does the CSO have the skills and competencies that complement those of UNDP? 	<ul style="list-style-type: none"> ■ Publications on activities, specific issues, analytical articles, policies ■ Reports from participation in international, regional, national or local meetings ■ Tools and methodologies ■ Evaluations and assessments
2.1.2 Implementation	<ul style="list-style-type: none"> ■ Does the CSO have access to relevant information/resources and experience? ■ Does the CSO have useful contacts and networks? ■ Does the CSO know how to get baseline data, develop indicators? ■ Does it apply effective approaches to reach its targets (i.e participatory methods)? 	<ul style="list-style-type: none"> ■ Evaluations and assessments ■ Methodologies/training materials ■ Use of toolkits, indicators and benchmarks/capacity-development tools ■ Databases (of CBOs, partners, etc.)
2.1.3 Human resources	<ul style="list-style-type: none"> ■ Does the CSO staff possess adequate expertise and experience? ■ Does the CSO use local capacities (financial/human/other resources)? ■ Does the CSO have a strong presence in the field? ■ What is the CSO's capacity to coordinate between the field and the office? 	<ul style="list-style-type: none"> ■ Profile of staff, including expertise and professional experience ■ Staff turnover ■ Chart of assignments of roles and functions ■ Reports on technical experience from national or international agencies for operations and capacity-building

Source: *A Toolkit for Strengthening Partnership*, UNDP 2006

REFERENCES

A Toolkit for Strengthening Partnership, 2006, United Nations Development Programme

Accountability series, International Bank for Reconstruction and Development / The World Bank

Andrea Cornwall and John Gaventa, 2001, Bridging the gap: citizenship, participation and accountability, PLA Notes 40

Anwar Shah, Participatory Budgeting, 2007, Public Sector Governance and

CIVICUS Participatory Governance Programme 2006-2008, Concept Note, June 2006, World Alliance for Citizen Participation

Civil Dialogue – Making it work better, 2006, Civil Society Contact group, Brussels

Commission of the European Communities (2001), European Governance, A White Paper, COM (2001) 428 final

Communication from the Commission, Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission, COM (2002) 704 final

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2010/C 83/01

Council of Europe Convention on Access to Official Documents, (CETS No. 205)

Council of Europe, Recommendation to member states on the legal status of non-governmental organisations in Europe (CM/Rec (2007)14).

Decision of the Estonian Parliament on the Approval of the Estonian Civil Society Development Concept, Tallinn, December 12, 2002

Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public

Democracy, Governance and European NGOs, Building a Stronger Structured Dialogue, 2001, Platform of European Social NGOs

Engaging citizens in policy making: Information, Consultation and Public Participation, 2001, OECD Public Management Policy Brief, N 10

European Charter of Active Citizenship, July 2006, Active Citizenship Network

European Parliament resolution of 13 January 2009 on the perspectives for developing civil dialogue under the Treaty of Lisbon (2008/2067(INI))

European Parliament resolution of 8 May 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institutions (2007/2115(INI))

Explanatory Memorandum to Recommendation CM/Rec (2007) 14 of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe

General principles and minimum standards for consultation of interested parties by the Commission" COM (2002)704.

Governance for sustainable human development. A UNDP policy document, available at: (<http://mirror.undp.org/magnet/policy/chapter1.htm>)

Guidelines for Participation of Major Groups and Stakeholders in Policy Design at UNEP, 2009, United Nations Environmental Programme

Guidelines on Principles and Good Practices for the Participation of Non-State Actors in the development dialogues and consultations, DG Development, November 2004

Handbook for governments on information, consultation and public participation in policy-making, 2001, OECD

International Non Governmental Organisations Accountability Charter, 2003, International Non-Governmental Organisations

Interpretative Note to Special Recommendation VIII: Non-Profit Organisations, 2006, Financial Action Task Force

J. Court, E. Mendizabal, D. Osborne, J. Young, 2006, Policy Engagement. How Civil Society Can be More Effective, Overseas Development Institute, UK

L. Freed, 2010, The Inaugural ForeSee Results', E-Government Transparency Index: Quantifying the Relationship between Online Transparency and Trust in Government

Local Strategic Partnership. Governmental Guideline, March 2001, Department of the Environment, Transport and the Regions: London

Malena, C, Forster, R. and Singh, J. 2004. Social Accountability: An Introduction to the Concept and Emerging Practice. Washington: The World Bank, Social Development Paper No. 76

Marilyn Wyatt, Hand book of NGO Governance, 2003, European Centre for Not-for-Profit Law

New Perspectives for Learning, Engaging People in Active Citizenship, 2003, Briefing Paper 44 (available at: <http://www.pjb.co.uk/npl/bp44.htm>)

P. Blind, Building Trust in Government in the Twenty-First Century, Review of Literature and Emerging Issues, 7th Global Forum on Reinventing Government Building Trust in Government, 26-29 June 2007, Vienna, Austria

P. Newell and J. Wheeler, 2006, Rights, Resources and Politics of Accountability, Zed Books LTD, New York

Principles for Good Governance and Ethical Practice A Guide for Charities and Foundations, Independent Sector, October 2007

Principles of Good Administration In the Member States of the European Union, 2005, Swedish Agency for Public Management

R. Wohlgemuth, 2010, Compendium of International Legal Instruments and other Inter-Governmental Commitments Concerning Core Civil Society Rights, World Alliance for Citizen Participation

Recommendation CM/Rec (2007)7 of the Committee of Ministers to member states on good administration

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

Report on the development of framework for the activities of interest representatives (lobbyists) in the European Institutions, (2007/2115(INI), European Parliament

Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000

Standards of Public Participation, 2008; Austrian Council of Ministers
Strategic Objectives 2005 – 2009, Europe 2010: A Partnership for European Renewal Prosperity, Solidarity and Security, Communication from the President in agreement with Vice-President Wallström, COM (2005) 12 final

Strong and prosperous communities. The Local Government White Paper, Department of Communities and Local Government, October 2006, London

Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union, 2009, European Centre for Not-for-Profit Law

The Compact on relations between Government and the Third Sector in England, December 2009, UK

The Global Information Technology Report 2009–2010, ICT for Sustainability, World Economic Forum

The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector” COM (2005) 620 final

Transparency and Silence, A Survey of Access to Information Laws and Practices in Fourteen Countries, 2006, Open Society Institute

Transparency and Silence, A Survey of Access to Information Laws and Practices in Fourteen Countries, 2006, Open Society Institute, New York

Vienna Declaration on building trust in government, UN Headquarters, Vienna, 26 – 29 June 2007

NATIONAL AND INTERNATIONAL MECHANISMS OF FUNDING CIVIL SOCIETY

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Дане видання містить три дослідження, проведені Координатором проектів ОБСЄ в Україні упродовж 2010–2011 років, які аналізують та наводять приклади кращих практик регіону ОБСЄ щодо ефективного функціонування організацій громадянського суспільства шляхом запровадження успішних схем фінансування й покращення діалогу між державою та громадянським суспільством.

Підписано до друку 18.11.2011 р.
Формат 60x84/8. Друк офсетний.
Умовн. друк. арк. 39,99
Наклад 400 прим. Зам. 11-526

Віддруковано в друкарні "Видавництво "Фенікс".
Св-во суб'єкта видавничої справи
ДК №271 від 07.12.2000 р.
03680, м. Київ, вул. Шутова, 13б.
www.kniga.kiev.ua