

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

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By Nilda Bullain and Radost Toftisova,
European Center for Not-for-Profit Law

Introduction

This Report is prepared to provide the background of a European perspective to the project Development of Civil Society in Latvia – Elaboration of Civil Society Development Strategy For Latvia (Ref. EuropeAid/115919/D/SV/LV). It aims to provide information and analysis on existing policies and practices in current EU member states as well as accession countries and other Central and Eastern European countries regarding government – NGO cooperation.

The Project Team asked us to develop a comparative overview of the following four areas key to the successful realization of the Project:

1. Description of institutional governmental mechanisms in different countries to facilitate civil society.
2. National and local government level funding mechanisms for NGOs and public initiatives, including direct and indirect funding methods, grant giving systems, subsidies, financing delegated public functions; with a specific view on the distinction between service and advocacy organizations.
3. Review of Policy documents that exist in different countries for facilitating civil society (best examples in Europe).
4. Eastern European government policies to assist NGOs in participating in EU policy-making (e.g. in formulation of national positions and in cooperation with other European organizations), and providing co-financing and pre-financing opportunities for NGOs to participate in EU projects.

In response to these questions, the Report is structured in four main chapters, dealing with (i) the institutional frameworks, (ii) financing, (iii) the overall policy framework of cooperation and (iv) EU accession. We aimed to look at best practices as well as learning points from failures; innovative solutions as well as common practices; and to include more information rather than less in order to facilitate “cherry-picking” within a certain subject area.

The European Center for Not-for-Profit Law works to strengthen a supportive legal environment for civil society in Europe by developing expertise and building capacity on legal issues affecting civil society organizations and public participation. It is the hope of the authors that the information and insights provided in this paper will help lead to the optimal solutions for a meaningful engagement of Latvian citizens and NGOs in the development of civil society.

TABLE OF CONTENTS

1. Analysis of the institutional framework regarding cooperation between NGOs and government	3
I.1. Parliament.....	4
I.2. Government.....	4
I.3. Ministries.....	5
I.4. Councils, joint committees.....	5
I.5. Agencies and authorities.....	6
I.6. Quangos.....	7
I.7. Specific bodies.....	8
I.8. Local forms of cooperation.....	9
<i>I.8.1. Innovative examples of local cooperation.....</i>	<i>10</i>
I.9. The question of NGO representation.....	13
II. Analysis of government level funding policies and mechanisms for NGOs and public initiatives	15
II.1. General policy considerations in support to NGOs.....	16
II.2. Policy considerations in providing direct support to NGOs.....	17
II.2.1. <i>Service provision.....</i>	<i>17</i>
II.2.2. <i>Principles and mechanisms for direct financing of services that the state should ensure.....</i>	<i>19</i>
II.2.3. <i>Advocacy organizations.....</i>	<i>20</i>
II.3. Forms of direct government support.....	22
II.3.1. <i>Subsidies.....</i>	<i>22</i>
II.3.2. <i>Grants.....</i>	<i>23</i>
II.3.3. <i>Procurement.....</i>	<i>25</i>
II.3.4. <i>Normative support.....</i>	<i>26</i>
II.3.5. <i>Vouchers.....</i>	<i>26</i>
II.4. Policy considerations in indirect support.....	27
II.4.1. <i>Public benefit activities.....</i>	<i>27</i>
II.4.2. <i>Tax benefits.....</i>	<i>28</i>
II.5. Forms of indirect support.....	29
II.5.1. <i>Use of public property at no cost or at reduced rates.....</i>	<i>29</i>
II.5.2. <i>Tax exemptions on income.....</i>	<i>30</i>
II.5.3. <i>Tax incentives for philanthropy.....</i>	<i>31</i>
II.5.4. <i>The so-called “1%” tax designation mechanism.....</i>	<i>32</i>
II.6. Summary recommendations on an “NGO funding guide”: What shall we consider in setting up a system for government financing of NGOs?.....	32
III. Analysis of the framework for cooperation between NGOs and governments in Europe: policy documents on cooperation (PDC)	35
III.1. What are policy documents on NGO – Government cooperation?.....	35
III.2. Why are PDC important?.....	35
III.3. What is the scope of PDC?.....	36
III.4. What do PDC cover?.....	37
III.5. How and by whom are PDC “ratified” (adopted, approved)?.....	39
III.6. What are learning points from the implementation of PDC?.....	41
III.7. The importance of local policy documents.....	43
III.7.1. <i>Adoption of local policy documents on the basis of national PDC.....</i>	<i>43</i>
III.7.2. <i>Adoption of local policy documents as a starting initiative.....</i>	<i>44</i>
IV.1. Was NGO empowerment part of policy development during the accession?.....	45
IV.2. Government Support to NGOs.....	48
IV.2.1. <i>Capacity building.....</i>	<i>48</i>
IV.2.2. <i>Financial means.....</i>	<i>49</i>
IV.3. Government efforts to apply EU principles on consultation and social dialogue.....	49
IV.3.1. <i>Involving NGOs in the decision-making processes.....</i>	<i>49</i>
IV.3.2. <i>Assisting NGO representation in EU bodies.....</i>	<i>50</i>

1. Analysis of the institutional framework regarding cooperation between NGOs and government

By institutional framework regarding cooperation between NGOs and government we mean various structures, agencies and mechanisms that are implementing concrete tasks related to the cooperation centrally and locally. There is no one model of such a framework and the forms it may take are even more diverse and more country and context specific than the policy documents analyzed in section III.

First of all, the use of the word “framework” may be misleading, as in European countries there is generally no one single planned and centrally organized scheme that would neatly accommodate the various institutions of cooperation between the two sectors. Rather, these institutions evolved over time – for decades, sometimes centuries, in the Western part of Europe and for the past 10-15 years in the Eastern part.

In fact, in Western Europe, the general level of “sector consciousness”, i.e. the identification of the thousands of nonprofit and nongovernmental organizations as one sector (e.g. the voluntary or the third sector) is a new phenomenon and has still not taken root in many countries. Rather, the institutions of cooperation have developed in some specific areas where the need emerged over time (typically, in the social services field, in the environmental field or in international development aid). Nevertheless, some principles and practices emerged from the specific fields that have been elevated to a more general level (e.g. by such policy documents as described in section III) and extended to include the whole NGO sector and even the wider civil society. Such overarching basic principles include, for example, the principle of subsidiarity, access to information or consultation with interest groups (social dialogue).

In general, the elements of an institutional framework will address the following aspects (functions) of cooperation:

- Registration and oversight of NGOs
- Ensuring NGO participation in decision-making
- Financing NGOs
- Coordination and information between the two sectors

From another perspective, the institutional framework can be analysed based on the structural location of the actual institutions within the public administration structure:

- Parliament
- Government
- Ministries
- Councils, joint committees
- Agencies
- Quangos
- Specific bodies
- Local government

For the purposes of this report, we propose to analyze the institutional framework from the structural rather than the functional point of view, as other sections of this report and other reports of this project will look in more detail into the functional aspects.

I.1. Parliament

In terms of the Parliament, **special committees** dealing with NGO related issues will be typical institutional forms of cooperation. In Hungary, for example, a Parliamentary Committee for the Support of Civil Organizations has existed since the early 1990s, which used to grant budget subsidies to national associations. More recently it assumed responsibility for legislative policy concerning the sector (while its grant giving role will be transferred to the newly established National Civil Fund – see below).

In Germany, a subcommittee of the Committee for Family Affairs, Senior Citizens, Women and Youth (Subcommittee of Civil Engagement) was established as recently as in May 2003. Its task is to help realize the recommendations of a major study concerning civil society in Germany¹, and to discuss related bills and initiatives.

In addition, in Hungary there is also a **Civil Office of the Parliament** that fulfills an informational role; e.g. maintains a database of NGOs to which it sends out the Parliament's legislative agenda sorted by area of interest (e.g. if an NGO wants to receive the legislative plans on environment related laws, they can sign up for such option); answers NGO inquiries; coordinates and arranges NGO participation in the various Committee meetings etc.

I.2. Government

As for the Government, there may be a **central department** responsible to liaise with the NGOs independently from the line ministries. For example in Hungary, in 1998, a Department for Civil Relations was established in the Prime Minister's Office that was responsible for development and coordination of policies affecting the non-profit sector as a whole. This department developed the Government Strategy towards the Civil Sector, a comprehensive strategy for the support and development of the non-profit sector (see section IV). (The Department became part of the newly established Government Office for Equal Opportunities as of January 1, 2004).

In Croatia, the Government Office for Cooperation with NGOs is also located at the governmental level. The Office was originally established in 1998 with the task of building confidence and developing cooperation with NGOs. It coordinated working groups on various legislative initiatives affecting CSOs, and provided grant support to NGOs in all areas of work. More recently, the role of the Office will be modified to provide assistance to the Council for Civil Society, a governmental advisory body (see below).

In Slovenia, a National Coordinator for Cooperation with NGOs was appointed under the Government Office for European Affairs. This appointment was made as part of an

¹ *Civic Activities: Towards a Civil Society with a Future*, Summary of the Bundestag Study Commission's Report, June 2002, available at http://www.bundestag.de/gremien/enga/02Zsf_en.pdf

effort similar to what Latvia is currently considering, i.e. to develop a more coordinated, systematic governmental approach to working with NGOs.

We should also note that the tendency to centralize the coordination and policy development of cooperation with NGOs is strongly linked to the EU accession. In both Hungary and Slovenia, the reason for such specific departments was to manage the requirements regarding involvement of NGOs in the National Development Plan, and to help ensure the ministry level implementation of the principle of consultation. (See Section IV)

I.3. Ministries

The most common form of institutional cooperation with NGOs in both Western and Central Eastern Europe is through the line ministries. Naturally, those NGOs whose mission area corresponds to the given ministry want to ensure that the policies and legislation in the given area represent their views and their constituents' views. They would also like to receive and lobby for funding from the ministries. The ministries often find cooperation useful as well --for example when NGOs help them implement national policies. Thus, inevitably, a whole range of concrete forms of cooperation has evolved between the ministries and the NGOs working in the same area.

At the ministry level, forms of cooperation **reflect the multiple functions** of financing NGOs, ensuring their participation in policy development, and possibly, providing other type of support or service to NGOs (e.g. the Hungarian Ministry of Children, Youth and Sports provides an opportunity for NGOs to introduce themselves and communicate on its website and thus encourages cooperation among NGOs working in the same areas).

Therefore, in many instances, various departments of one ministry will each have a person dealing with NGOs, with no coordination among the departments. Therefore, the need for intra-ministerial coordination will emerge and it may be necessary for certain responsibilities, such as maintaining a database of NGOs whose work is relevant to the ministry, to be addressed at a higher level.

Furthermore, sometimes **one of the ministries is actually responsible for implementing a task or program that affects the whole NGO sector**. This is the case, for example in Slovakia, where all NGOs are registered at the Ministry of Interior, or in Poland, where the Ministry of Labor and Social Affairs is responsible for implementing the new Law on Public Benefit Organizations and Volunteerism (adopted in June 2003).

I.4. Councils, joint committees

To establish a formal advisory body that comprises both governmental and NGO representatives is also a typical form of cooperation. Usually such councils or joint committees will be formed at the ministry level, but there are examples of a **governmental council** as well. Such examples include the Czech Republic and Slovakia, as well as Croatia, from among CEE countries.

A Council has existed in Slovakia since 1999, called the Council of the Government of the Slovak Republic for Non-Governmental Non-Profit Organizations. This Council is an advisory and initiating body of the Government of the Slovak Republic to support the

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

activities of non-governmental non-profit organizations. It may initiate and advise on policy and legislation affecting NGOs; it cooperates with the bodies of public administration at all levels in devising their methods of financing of and cooperation with NGOs; and it works specifically to maintain a public official database of Slovak NGOs.

In Croatia, a Council for the Development of Civil Society was established as a governmental advisory body in 2002. The Council is composed of 10 representatives from Ministries and 14 representatives of civil society (elected by the CSOs themselves). The Council focuses its activities on: implementation of the Program of Cooperation (see Section IV, creation of the Strategy for the Development of Civil Society and harmonization of financial support from the State budget for financing CSO programs and projects.

More common are **councils working with a line ministry** and providing strategic advice on a specific policy field (such as health or employment). A typical example is the Danish Committee on Volunteer Effort, set up by the Minister for Social Affairs in 1983. This is a political committee made up of representatives from public authorities and voluntary organizations. The aim of the Committee is to bolster the opportunity for individuals, groups of citizens and private associations and organizations to participate in the solution of tasks in the social field. In pursuit of this aim, one of the Committee's duties is to compile information about the field and to submit proposals to both the public sector and voluntary social organizations. The Committee's principal function, though, is to advise the Minister for Social Affairs.

Contrary to Western European examples of long-standing councils, the relevance and effectiveness of such committees in CEE often depend on the actual political weight of the issue they represent. For example, in Hungary, the Prime Minister became the honorary chair of the Council of Elderly Issues in the UN Year of the Elderly, when this Council was able to successfully push for a change in legislation. However, after the issue of the elderly was taken off the political agenda, the council lost its critical influence.

An interesting example is the Polish Council on Public Benefit Activities, established by the PBA law adopted last year. This Council, to be operational in 2004, will provide opinion and advice to the Minister of Economy, Labor and Social Care, responsible for the implementation of the PBA law. The Council will be comprised of twenty members. Half of them will be representatives of the government and local government administration, while the other half will be representatives of non-governmental organizations and church charity institutions. In general, the task of the Council is to monitor the implementation of the law on public benefit activity and volunteerism, by, for example, commenting on issues that emerge in its application, commenting on legislative projects that are relevant for public benefit activity and volunteerism, as well as collecting and analyzing information about the inspections of public benefit organizations. Moreover, the Council will mediate between organizations and public administration bodies in the case of conflicts connected with the implementation of public benefit activities.

I.5. Agencies and authorities

Agencies or authorities working under the aegis of one of the ministries are often important players in inter-sectoral cooperation. In the UK, the assessment of community participation in health care following reform in the National Health Service showed that

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

where suggested reforms regarding community involvement were implemented, the quality of service and user satisfaction increased. The researchers point out: “It appears essential to recognize that community, voluntary and patient organizations are stakeholders in the formulation of community participation strategies, rather than just passive beneficiaries of statutory sector ‘inclusiveness’.”² To realize community and user involvement in welfare services, it is indispensable for state agencies to actively cooperate with NGOs at the local level.

Among the few CEE examples in this field, we can mention the Hungarian Employment Centers that sometimes (depending on the region) cooperate with NGOs in providing training to those seeking employment, or in catering to job-seekers with special needs (e.g. disabled people).

Agencies may of course, also be financing nonprofit organizations through grant programs. For example in Germany, the Federal Bureau of Environment is providing support to environmental organizations, while the Federal Centre for Political Education finances youth education programs by NGOs.

I.6. Quangos

Quasi NGO or quango is a term often used to describe nonprofit organizations set up or funded by the government. A distinct feature of these organizations is that despite the government ‘ownership’, they are autonomously governed and, at least in principle, professionally independent from the political establishment. The forms and roles they take vary widely, from fundraising and grant making foundations (e.g. public foundations in Hungary or France), to advocacy and service providing organizations (e.g. associations of municipalities), to project implementing nonprofit companies (e.g. public benefit companies in Hungary).

Quangos represent the overlapping functions and institutional forms between the state and organized civil society. A key determinant of their ability to promote social development and to further the cooperation between the two sectors is the extent to which they are really independent from political influence.

An example of a quango in Denmark is the Volunteer Centre, established in 1992. The Centre was established as a self-governing, independent unit with its own supervisory board under the Ministry of Social Affairs. The Volunteer Centre provides services to voluntary social organisations and associations in the form of, for example, advisory and counselling services, courses, consultancy and method development.. Besides rendering services to organisations, the Centre is under an obligation to disseminate knowledge and experience to the Ministry of Social Affairs and to other public authorities and co-operation partners. Finally, the Centre serves as secretariat to the Committee on Volunteer Effort (see above).

Examples from CEE include the so-called public foundations, which are usually foundations set up by law or government order. In Hungary, it is prescribed in the Civil Code that Parliament or a state authority may only set up a public foundation, and may

² *Partnerships and Public Accountability in British Health Care*, Timothy Milewa, Stephen Harrison and George Dowswell, available at http://www.cipfa.org.uk/panels/health/download/milewa_article.pdf

not be the founder of a private foundation. This may sound obvious but during the period of 1989-1993 many state agencies set up a foundation (the conditions of which were very liberal at that time) and “donated” the property of a former so-called “social organization” to it. In this way, public properties that belonged to the state but were in the possession of party-governed social organizations (e.g. the National Women’s Council, the Pioneers, the National Federation of Pensioners) became the private property of a smart founder.

Public foundations were introduced in 1993 in part to end this abusive practice, and in part to encourage additional inflow of capital into the public sector. The idea was that companies and individuals would donate to those public foundations fulfilling important social roles (e.g. supporting disabled children, disadvantaged women, unemployed or homeless people through NGOs). A series of recent studies by the State Audit Office, however, revealed that this objective has not been achieved and that the public foundations continue to lack transparency and accountability despite the stricter regulations imposed on them compared to private foundations.³

A hopefully more positive example may be the Croatian National Foundation for the Development of Civil Society. The Foundation, established in 2003, is a public, not-for-profit entity whose mission is to serve and strengthen civil society in Croatia. It will support innovative programs developed by NGOs and informal, community-based initiatives. Funding for the Foundation will come from the proceeds of lottery games in Croatia; 50% of the moneys collected through gambling are allocated for this purpose.

The establishment of the National Foundation is seen as a critical step towards improving the system of public financing for NGOs in Croatia - it marks a shift from a highly centralised system, in which the Office for NGOs played the critical role, into a more decentralised system. Through regional offices, it will work to promote the sustainability of the sector, cross-sectoral cooperation, civic initiatives, philanthropy, and voluntarism. Core activities will include: (1) education and publications, (2) grantgiving, (3) public awareness campaigns, (4) evaluation services, (5) research and (6) regional development. The Foundation will be governed by a Management Board composed of 3 representatives from the Government, 1 from local governments and 5 from CSOs.

I.7. Specific bodies

In addition to institutional forms of cooperation that may fit into a particular category, there are institutional forms that are distinct in their functions and do not lend themselves to easy categorization. Such a specific type of body is, for example, the **Charity Commission** in the UK. The Charity Commission is established by law as the regulator and registrar for charities in England and Wales.

Charities are an essential part of societal life in the UK but need to be regulated in order to ensure that they meet the legal requirements for being a charity, and are equipped to operate properly and within the law; to ensure that charities are run for public benefit, and not for private advantage; to ensure that charities are independent and that their

³ Állami Számvevőszék: Jelentés a társadalmi szervezeteknek és köztestületeknek juttatott költségvetési támogatások ellenőrzéséről (State Audit Bureau, *Report on the Control of Budget Support to Social Organizations and Public Societies*), September 2002.

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

trustees make their decisions free of control or undue influence from outside; and to detect and remedy serious mismanagement or deliberate abuse by or within charities.

The Commission performs this function by securing compliance with charity law, by enabling charities to work better within an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law, and by promoting sound governance and accountability. The Commission provides information and advice on law and good practice and dealing with abuse and poor practice, assists charities in registration, investigates evidence for non-compliance with the law, cooperates with other regulators (prosecution, police), and may intervene to protect charities' assets. The CC is accountable and reports annually to parliament and the Home Secretary and publishes annual reports. However, it remains an independent body acting in the public interest.

Another "hybrid" category is a newly established Fund in Hungary called the **National Civil Fund Program**. It is not really a quango, as it is not registered as a public foundation. Nevertheless, the law assigns to the Fund an autonomous governing body that consists of 17 members, the majority of whom (12) are delegated by nonprofit organizations.

To finance the Fund, the Hungarian government will provide matching funds based on the amount of actual taxpayer designations under the 1% tax designation law each year. The 1% Law permits every Hungarian taxpayer to designate 1% of his or her tax liability to a qualified NGO of their choice each year. Under the Civil Fund Law, the government will match the amount of actual tax designations each year, and will in no case contribute less than the 0.5% of personal income taxes collected. Thus, the more money that taxpayers designate, the more money will be contributed by the government to the Fund.

At least sixty (60) percent of the Fund's resources each year will have to be dedicated to providing institutional support (core costs) to NGOs in Hungary. This is an important development as most of the available government funds for NGOs have been dedicated to project financing only. Besides covering the costs of the Fund's administration, the remaining funds may be directed towards the support of various programs related to the development of the NGO sector, including e.g. sector-wide events, festivals, international representation, research, education or publications.

I.8. Local forms of cooperation

"The Study Commission recommends that public authorities be made more citizen-oriented and that citizens no longer be looked upon merely as customers. They are also co-designers and co-producers of services. At local level, it favors the idea of what is called the citizen oriented local community, i.e. a community to which local citizens make committed and active contributions. To this end, it suggests that staff be trained to deal with citizens, that incentives for user-friendly behavior be created, and that service points be set up in public authorities to inform and advise citizens. The Study Commission further recommends that the organizations of civil society be offered more opportunities to participate, that decision-making powers be decentralized, and that mediation and

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

monitoring as new forms of the bargaining process be integrated more closely into citizen-oriented administrative action.”⁴

The above quote could have come from any CEE country but is actually a finding and recommendation of the special committee of the German Federal Parliament (Bundestag), issued only a year-and-a-half ago. This report underscores the importance of active cooperation between the public and nongovernmental sectors at all levels, but - stemming from the general significance of the subsidiarity principle – especially at the local level.

Local forms of cooperation generally reflect the forms and practices of cooperation at the national level. There may be a committee or a subcommittee in the Local Council dealing with NGO issues locally; there may be a special department in the mayors office or a single person at the PR department who has the responsibility, among others, of communicating with NGOs.

For example, the municipality of Szczecin in Poland created in July 1997 an Office for NGOs, which originally employed only one person (until 1998). Nevertheless, it became a place providing information about the NGOs, and functioned as an ombudsman for NGO's against the City Authorities. Due to the formation of the Office, NGOs, which did not have any department to turn to in the City Council finally found a partner to refer to with matters related to their activity. One of the real successes of this institution was the launch in 1997 of Small Subsidies, a program supporting NGOs short-term initiatives. Currently, in addition to supporting cooperation with NGOs, the Office handles various other tasks, like creating a database of NGOs operating in Szczecin; collecting publications and other information (about grants and funds) related to NGOs; representing the City at NGOs meeting; providing opinions on applications submitted by the organizations, and financial assistance under the Small Subsidy fund, and assisting the process of registration of NGOs with the District Court.⁵

1.8.1. Innovative examples of local cooperation

The **Citizen Advice Bureaus** are an interesting model of creative and mutually beneficial cooperation between local government and NGOs in informing and helping citizens in their everyday lives in communities in several European countries.

The Citizens Advice Bureau Service provides free, confidential, impartial and independent advice to citizens through NGOs, on any matter concerning their lives. It originated in the UK in 1939 and has evolved from an emergency service during World War II into a professional national agency. There are currently over 2,800 locations where CAB advice is regularly available in England, Wales and Northern Ireland.

Each Citizens Advice Bureau is an independent charity (NGO), relying on funding from statutory grants, the local government and from local business, as well as charitable trusts and individual donations. The Bureaus are working mostly with volunteers. Citizens Advice Bureaus help solve nearly six million new problems every year that are central to

⁴ *Supra* Note 26, page 9.

⁵ Material based on *Szczecin Local Initiative Program*, report prepared by John Driscoll, Unit for Housing and Urbanization Harvard University Graduate School of Design, Pawel Szczyrski, Unit of Cooperation with Non Governmental Organizations City of Szczecin and Janusz Szewczuk, 2001

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

people's lives, including debt and consumer issues, benefits, housing, legal matters, employment, and immigration. Advisers can help fill out forms, write letters, negotiate with creditors and represent clients at court or tribunal.

Each bureau belongs to Citizens Advice, which sets standards for advice, training, equal opportunities and accessibility. Citizens Advice also co-ordinates national social policy, media, publicity and parliamentary work. Citizens Advice runs a national Advice Week campaign each September to promote the work of the Citizens Advice service. As well as giving advice, the Citizens Advice service uses its databank of client evidence to find out where local and national services and policies should change. It has built a strong reputation for independent analysis.

The model has proven to be **adaptable to the Central and Eastern European countries**. Citizen Advice Bureaus are operating in the Czech Republic, Poland and Lithuania, based on the UK model.

The Czech Association of Citizen Advice Bureaus is a non-profit organization with experts who help people learn more about their rights and duties and advise them how to defend their interests. Like the British example, the system relies primarily on volunteer efforts. The Association has been active for almost seven years and unites more than 20 bureaus.⁶

Citizens Advice Bureaus have also been established in Lithuania. The Lithuanian CAB Union was formed and established a network of general advice offices - Citizen Advice Bureaus - in Lithuania by offering training and counselling services, providing information on legal, social and other relevant issues, and developing social policy feedback. The Lithuanian Government recognized that in the changing and challenging economic, social and technological environment, citizens increasingly require quality services and information, but the state and local authorities are not able to provide all the necessary services and cope with emerging problems. Therefore the government also provided support to this initiative.

The **telecottage** is an “infoteque” that aims to link isolated rural communities with the rest of the world. It brings IT equipment and skills to small communities and thereby provides a range of engagement and development opportunities to people who are otherwise isolated in their everyday lives.

The first telecottage opened in 1985 in Sweden at Vemdalen, a village in the north of the country not far from the Norwegian border, by Henning Albrechtsen. The aim of setting up this first telecottage was to make jobs, vocational training and service facilities available to people in this remote part of Sweden, by providing access to a variety of computers and modern telecommunications equipment - for anyone willing to invest time and energy by learning how to use them⁷. Less than four years later, about 40 telecottages were being set up in Scandinavia, with approximately half already in operation. The Association of Nordic Telecottages (FILIN) has been formed to foster cooperation. Moreover, as many as 75 countries have already joined a world-wide organization, the International Union of Telecottages (TCI).

⁶ Alena Skodova, *Association of Citizen Advice Bureaus celebrates five years of existence*, report, 30/05.2001, <http://www.radio.cz/en/article/28493>

⁷ *Rural Telecottages in Sweden*, <http://www.globalideasbank.org/BOV/BV-467.HTML>

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

In Sweden and other Nordic and West European countries, the telecottage combines the functions of a training center, library, post office, telecom shop and communications center, with courses in the use of computers and telecommunications equipment. As a service unit, the telecottage is able to assist local firms with letter writing, bookkeeping, translations, etc, whilst functioning as an office for small businesses, and providing advice on the purchase of computers and software.

The model was also **successfully introduced in a number of CEE countries**, such as Estonia and Hungary. The first telecottage in Estonia was founded in 1993 by Rapla County village movement⁸. In 1995, the Estonian Association of Rural Telecottages was formed by the all-Estonian village movement KOKUDANT. The association was established as a non-profit, non-governmental organization for co-operation between organizers and supporters of rural telecottages. Its mission is to promote economic development, education and scientific research in rural areas by extending the use of modern communication and computer technology, and to establish a network of rural telecottages. The primary role of the association is to develop and support the movement of telecottages in Estonian villages by offering consultancy, research and exchange of know-how and information. By the end of 1997, the Estonian Association of Rural Telecottages had more than 30 members.

The primary successes of telecottages in Estonia have been the following:⁹

- Changes in society toward democracy and participation. Telecottages have been an important support factor in widening the village movement
- Deeper involvement of local inhabitants
- Improved access to services
- Improved working and living conditions
- Meeting local development needs
- Disseminating information that helps build the community

The Hungarian telecottage movement grew out of a community development program in 1993 in Csákberény, a small mountain community in mid-western Hungary. Between 1997 and 1998, 31 new telecottages were established in Hungary. The country now has more than 150 telecottages and there are plans for about another 50 and up to 600 satellite offices.¹⁰

Although each telecottage is an independent entity, its assets are normally owned by a local non-governmental organization (NGO) and its office space, personnel and financial resources are contributed by the local government (largely through contracting out public services). In some cases, the telecottage is based in a local library, school or community center. The telecottage operator can be the NGO, a private company or an individual taking out a contract with the owner.

⁸ *Telecottages in Estonia*, Center for Tele-information, Technical University of Denmark, 2001, http://www.itu.int/ITU-D/univ_access/casestudies/estonia.html

⁹ *Id.*

¹⁰ The Hungarian Telecottage Movement, Bill Murray, Small World Connections, UK, *available at* <http://www.col.org/Telecentres/chapter%2005.pdf>

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

The Hungarian telecottages movement has been funded by the central government, state and private domestic and foreign companies, embassies, international organizations, and foundations. The telecottages cover a portion of their operating expenses by contracting with government agencies and serving as micro-regional program management centers, initiating development proposals and collecting regional development information. Many centers also provide support to their local communities by applying for international, national, regional, county and local grant funding.

Several factors have been critical to the development of Hungarian telecottages. One has been the special relationship between telecottages and the NGOs forming a core partnership. Another has been that this was a grass roots movement based on local community needs and initiative. At the same time, it has become clear that without active community outreach and strong skills in community development of the local staff, the telecottages will remain unused and resources will be wasted.

National governments have played an important supporting role in both the Nordic and the CEE model. While the Swedish telecottages generally are able to cover their running costs from service fees, the initial finance for the first ones came from the government, Swedish Telecom and the local council. In Hungary, the government has been providing on-going support to the HTA. Telecottages have become an integral part of the Hungarian government's approach to providing rural communities with access to government information and services, and with an opportunity to achieve local economic revitalization.

I.9. The question of NGO representation

When reading in some of the above institutional mechanisms and forms of cooperation that NGOs elect their representatives to a certain body, the reader might have asked, how is it possible? The requirement of establishing bodies with "representatives of the NGO sector elected by the NGOs themselves" is actually incorporated in laws and legal or policy documents in at least 4 CEE countries (Hungary, Poland, Slovakia, Croatia), and is also in draft legislation (for example, in Latvia). However, the actual process of implementing this requirement has not been legislated, except in the case of Hungary. The Hungarian National Civil Fund is the first attempt at implementing a legally prescribed electoral mechanism among NGOs in CEE.

A **theoretical problem** with NGO representation is that often it is confused with the representation of the interests of the people. NGOs sometimes claim that due to their wide membership base (or even due to the fact that they know the problems of disadvantaged people), they are "representing the people", and therefore, their voice should be heard. However, in reality, NGOs always represent a particular interest in society (even if that interest is otherwise very important), and many times these interests are competing. For example, the interest of youth may mean for one NGO that drug use should be prohibited, and for another, that it should be legalized.

NGOs are not elected bodies and their legitimacy does not stem from the fact that they represent anybody's interest. Their legitimacy rather stems from their mission, i.e. from the fact that there is a real need in the community or society that they are aiming to

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

fulfill.¹¹ Therefore, as long as an NGO is really making a difference, achieving real change in the community, it will be considered (morally) legitimate. Their capacity to effect social change enables them to be the main vehicles of participatory, not representative democracy.¹²

Unfortunately though, in some cases, those who are dissatisfied with how the political establishment works view the realization of the principle of participation as a replacement of representative democracy. In Hungary, it has been suggested, that there should be a mechanism that ensures NGO representation in the Parliament (e.g. a second chamber); while in Macedonia, NGOs are setting up an NGO Parliament and even a shadow government in an expectation to improve social conditions in the country.

There are also **practical problems** that need to be overcome when organizing some form of NGO representation. Firstly, who should be the subjects of such an election? All registered NGOs or public benefit organizations only, or also informal networks, non-registered associations? What about autonomous branches of a national organization?

In the Slovak Council for Non-Governmental Organizations (see above, section I.4.), there are 22 members that are representatives of „platforms“ of NGOs. Such „platforms“ of NGOs are formal or informal groupings of NGOs representing certain areas of NGO activities. However, in official documents there is no mention of who decides on whether a grouping constitutes a platform or not, and how will they be selected from among each other. In practice, platforms are the ones that are considered as such by the government and the existing group, and they were self-elected once at the launch of the Council – which shows how difficult it is to be consistent in applying the democratic procedures of a representative system to the sphere of NGO participation.

Another practical problem is that an electoral process is all about procedures, not substance, which may hinder the effectiveness of the elected bodies. For example, the Hungarian National Civil Fund Law requires that the majority membership of regional grant-making bodies of the fund (the so-called colleges) be elected by the NGOs locally. As it happened in the very recent elections, only a handful of the more than 50 elected college members have any grant-making experience, while their main responsibility will be to distribute over 6 billion Hungarian forints in the coming year.

Despite all these problems, NGO representation is a European tendency. Most governments expect some kind of a representative grouping of NGOs as the “partner” to talk to. Even though a unified or centralized representation is considered by many to be against the principle of diversity, inherent to the nature of civil society, NGOs often find it useful to create networks, coalitions or federations to assert stronger influence on decisions that affect them and their constituencies. Mostly, these federations or umbrella

¹¹ See Miklos Marschall: *Legitimacy and Effectiveness: NGOs in Comparative Perspective*, in: SEAL, Spring 2001

¹² “Civil society is about participation, while parliamentary democracy is about representation. The civic politics of citizen participation and the parliamentary “party politics” of representation have a healthy dynamic of both complementarity and tension. It is important to understand that civil society is complementary, not a rival, to representative democracy, and participatory democracy goes hand in hand with representative democracy.” *Id.*

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

groups are organized by the sector area where they work and where they would like to affect policy change (e.g. women's issues, environment., human rights etc.).

In case of the **European Commission**, it is indeed a requirement to be of a representative character for consultation on policy documents, and often for funding. The Commission itself has acknowledged the problems with determining which NGOs will be entitled to funding or policy negotiations at the European level, but opted to regard representation as a decisive factor. "Difficulties begin with the selection of participants. Given the large number and diversity of European NGOs in the EU alone, criteria for selection such as legitimacy or representative character are of vital importance."¹³

In a background paper, the Commission considers a three-prong approach in determining the level of legitimacy of an NGO partner:

- they encourage NGOs to organize themselves, therefore, umbrella groups with more members from several countries, with more democratic structures and mechanisms, will be favored;
- they acknowledge the importance of "'verifiable criteria" regarding management, especially resource management of the NGO; these criteria are usually outlined in concrete documents, such as co-financing guidelines;
- and finally, they recognized that even the above criteria will not be satisfactory and that they could be complemented by "pursuing a pragmatic approach based on the EU's existing relationships with, and knowledge of, ENGOS."¹⁴

II. Analysis of government level funding policies and mechanisms for NGOs and public initiatives

Government funding provided under various forms and through different mechanisms represents a considerable portion of NGO revenue in almost all countries in Europe. Recent data (2003) shows that the percentage of public funds available to NGOs in WE varies between lower figures in Sweden and Norway (about 20%), on the one hand, and higher amounts in the Netherlands, Belgium and Ireland (almost 70%), while in the countries of CEE, the amount of government funding as a percentage of NGO revenue ranges between 20 and 30% on average.¹⁵ For the period 1990-1995 this share remained more or less unchanged in almost all countries.¹⁶

Furthermore, at present it is estimated that over Euro 1.000 million a year is allocated to NGO projects directly by the Commission, the major portion of this funding devoted to the field of external relations for development co-operation, human rights, democracy

¹³ Background paper, EU Development Ministers Seminar, 1999

<http://www.dse.de/ef/eu/bac110e.htm>

¹⁴ *Id.*

¹⁵ The difference is even more impressive when expressed in absolute figures. See data from the *Comparative Nonprofit Sector Project* the Center for Civil Society at the John Hopkins University,

<http://www.jhu.edu/~cnp/pdf/comptable4.pdf>

¹⁶ *Idem*, <http://www.jhu.edu/~cnp/pdf/ct11.pdf>

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

programmes, and, in particular, humanitarian aid (on average Euro 400 million). Other important allocations target the social (approximately Euro 70 million), educational (approximately Euro 50 million), and environmental sectors within the EU. Several hundred NGOs in Europe and world-wide are receiving funds from the EU. The Commission has therefore contributed substantially to matching the support of the members of the European public given to NGOs and thus highlighting the continued importance of high levels of public support for the role of NGOs.¹⁷

Government policies and attitudes toward financial relationships with NGOs are mainly determined by the role in the development of society and the implementation of government objectives that is attributed to the third sector. Financial support to NGOs may be a **part of governmental policy** reflecting the government's position that NGOs are partners in achieving important political and social tasks. Normally, this policy is accompanied by a well-developed system for providing public support to the third sector determined either at a central political level by legislation, by a government policy document or a compact-type bilateral document (UK), or by acts of other public authorities (government (Croatia), ministry (Germany) or other institution) .

Public funding support may be in the form of payment for goods and services that fall within the competence of the public sector or in the form of programmatic support for NGOs' activities. It may also be delegated to local authorities (Hungary). The financial relationships with NGOs may be controlled directly by the government (Germany) or its agencies (like the Swedish International Cooperation Agency which administers bilateral development assistance programs and the country's support to NGOs¹⁸) or through a specific institution (the newly established Croatian Foundation for Civil Society Development) established to coordinate the various aspects of the relations between organized civil society and the state.

II.1. General policy considerations in support to NGOs

There are two main types of government funding for NGOs:

Direct funding – Financial support assigned from the public budget at the central or local level to an NGO directly, i.e. it will represent a budget expense in the given financial year. This does not mean that the funding will go directly from the State Treasury bank account to the NGO's bank account; usually the funds go through various governmental agencies (ministries, public foundations, funds etc.).

Indirect support – Indirect financial support does not include the direct transfer of money or property; rather, it represents a benefit granted to NGOs which allows them to use assets to accomplish statutory goals rather than cover other financial obligations. Such support will not appear in the public budget as a direct expense; rather it represents revenue foregone (e.g. in the case of providing tax benefits, the tax revenue that is not going to be collected is considered indirect support).

¹⁷ *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, Commission Discussion Paper, presented by President Prodi and Vice-President Kinnoek, Brussels, 18.1.2000, http://europa.eu.int/eur-lex/en/com/wdc/2000/com2000_0011en01.pdf

¹⁸ See more on the website of the Swedish International Development Cooperation Agency <http://www.sida.se/Sida/jsp/polopoly.jsp?d=107>

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

The key criterion that governments use in order to determine whether and to what extent any NGO is qualified to receive public support is the “public good” served by the activity of these organizations (rather than the type of activity they conduct, e.g. service or advocacy activities). The degree to which NGOs support the public good, as reflected in **“public benefit” legislation** (or its functional equivalent in, for example, tax law), may entitle both service and advocacy organizations to direct and indirect public financing. Both service and advocacy NGOs can engage in public benefit activities that deserve government support, but in general, service-delivery is more likely to qualify as “public benefit activity” and to make the provider-NGO eligible for financial support.

According to the public benefit criteria, there are generally two main types of NGOs:

- Public benefit organizations (PBOs), and
- Mutual benefit organizations (MBOs).

The PBO/MBO distinction is generally the basis for determining the appropriate level of indirect support (e.g. tax benefits). In the case of direct support, the primary question is whether there is a **legal basis prescribing** what type of NGOs should receive what type of direct support. Lacking legal prescription, the state may decide on its own and will often determine direct support based not on the NGO’s function (e.g. service, advocacy or self-help), but rather based on whether the NGO activities are **helping to implement a state policy**. With a view to such policy, the state may decide that an NGO is providing some activity that is considered worthy of support – for example, even self-help organizations, such as Alcoholics Anonymous receive public funding in Hungary because through its self-help activities, the organization is accomplishing results that contribute to a more healthy society.

II.2. Policy considerations in providing direct support to NGOs

II.2.1. Service provision

From the funding policy point of view, there is a principle difference between public service functions for which the **state has a legal obligation to ensure**, and those for which the state has no such legal obligation. For example, in every European country, the state has to ensure the primary education of children; in other words, the state has the responsibility to provide the opportunity for every child to learn so they can fulfill their right to education. At the same time, the state will generally not have an obligation to ensure that every child with a spine disease has access to horse therapy, one of the most effective ways to treat spine diseases.

In many countries, however, the difference is not so clear. For example, home-care for the elderly may be a legal obligation for local governments in one country, while it may not be included among their tasks in another. The determination of what is and what is not a state obligation evolves over time and in most CEE countries it changes even from year to year, as society develops.

For example, in Hungary, at the change of the system (1989), thousands of people suddenly became homeless, as companies closed their state-run workers’ hostels. As the state was not prepared to deal with so many homeless, hundreds froze to death during the first winter of the new democracy and several NGOs were set up to shelter and help

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

people on the streets. Because the problem was so visible and received media attention, Parliament reacted by making it obligatory for the local governments to provide shelters for the homeless. Since many NGOs, however, already ran such shelters, the local governments simply gave the budget money to the NGOs. Even today, practically all the homeless shelters in Hungary are run by NGOs and financed by the local governments.

Often a certain task becomes a state obligation because NGOs lobby successfully for the inclusion of a certain type of service in the state legislation. For example, the social service NGOs that introduced meals-on-wheels service to the elderly in several districts of Budapest argued successfully that by providing lunch only to the elderly in day-care centers, the local government was discriminating against those elderly who cannot go to day-care centers. As a result, local legislation included the meals-on-wheels among the services that are entitled to state support.

Other services, such as the hospice (care for the terminally ill, especially last-stage cancer patients) are still not part of the state-financed services in Hungary despite repeated efforts by NGOs to prove that this service helps fulfill the constitutional right of the ill person to human dignity. Therefore, if a hospital maintains a hospice department, it is usually run by a foundation that raises funds from elsewhere (e.g. from church or private donations).

The importance of the distinction between legally prescribed government tasks and those for which the government has no obligation is reflected in the direct financing policies for NGOs.

The fact that an NGO provides a state service in itself does not entitle it to receive state support for this service. However, most European states have accepted legislative policies that assume the obligation of the state to finance this service whether it is provided by a government institution or a private provider. It is also becoming more common for governments in CEE to provide funding to private providers for those services that are considered obligatory and for which governments would have to pay anyway. There are various mechanisms for providing direct financing, described below.

On the other hand, financing for the kinds of services that are **not included among the legal obligations** depend entirely on the policies of the central or local government. In most European countries, there are certain policies related to social and economic development that are determined as a priority for each ministry for a given year (e.g. for a ministry of labor these may include the reduction of unemployed Roma in a certain region; the increase of companies employing disabled persons; or the increase in part-time employment of women). Among other measures, like legislation and supported employment, the ministry may decide to have a grant program for those NGOs that run programs addressing these state policies.

It is generally difficult in a European system to find funding for services that are not considered a priority by the government on a central or local level. For example, until the late 1990s, if an NGO operating in a small town in Hungary identified a pressing need to address domestic violence issues, the NGO would not have been able to obtain government funding for such a program. Domestic violence was simply not a priority at the national or local level. But the world is changing. Due in part to the advocacy efforts of women's organizations and – mainly – to the pressures of European Union policies on gender equality, as of 2004, the Hungarian Ministry of Interior is headed by a woman and

has launched a nation-wide domestic violence training program for police forces. Today the same NGO in the same small town will have a range of government grant opportunities to finance its outreach to abused women. But NGOs providing shelters for stray dogs that lacked grant opportunities in 1996, continue to struggle for financing.

In summary, the legal obligation for the state to ensure the provision of certain services is the main criterion for receiving direct state support in service provision. Beyond legally required services, government policies on the national and local levels determine grant-making priorities. The ability of NGOs to lobby for the inclusion of their service in the relevant laws and the government budget, or to prioritize an issues on the government's agenda, will likely have direct influence on the level of state funding available for them.

II.2.2. Principles and mechanisms for direct financing of services that the state should ensure

Governments have a range of principles and mechanisms available to determine how exactly NGOs should be financed for providing state services.

- An important question to address is whether the government would like to provide a **preference to service-providing NGOs** that compete with other entities. NGOs have access to tenders for the delivery of social and/or other services assigned to governments; however, in most European countries they do not enjoy exclusivity of such access. They are eligible for funding on equal terms and conditions as the rest of the bidders. The government's position in these cases does not express a preference for the third sector in the service-providing area. (See UK, Poland and Hungary examples below).
- **Subsidiarity principle** (typical of Germany): According to the subsidiarity principle, a need that emerges in a community has to be catered for by those closest to the need.¹⁹ As a basis for the German social policy, this principle has determined the system of financing social welfare services in Germany for the last century.²⁰ According to this system, the need should be firstly addressed by the (informal) community of those affected (e.g. family, neighbors); if that is not possible, then by the formal organizations of the same community (NGOs). The local government may only set up a service for a need if there is no organized community effort addressing it already. Finally for those needs that are not catered to at the local level, a regional and, ultimately, a federal system has to be established. In this case, the government usually chooses to finance all of the service and budgets are negotiated on an annual basis.
- **Normative system** (introduced in Hungary): anyone providing a service that would be the government's task (including education, health, social and other welfare services) and who meets certain criteria (standards determined by the

¹⁹ The subsidiarity principle is also a generally adopted principle of the European Union, intended to ensure that decisions are taken as closely as possible to the citizen. It means that the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. <http://europa.eu.int/scadplus/leg/en/cig/g4000s.htm>

²⁰ The principle, as understood in the social policy context, originates in the Encyclicas of Pope Leo XIII (1891) and Pope Pius XI (1931), who first explained and elaborated upon the division of tasks between state and church, as well as communities, in improving social conditions. socialpolicy.ucc.ie/Government%20Say.htm - 19k

government) will receive government support based on the number of clients it serves. Because this government support is provided on a per capita basis it is called “normative support”. The service provider will receive the support regardless of whether it is a local government institution, an NGO or a private company. (Private companies will not make profit based on this support as it covers only a portion of the service-related expenses and any fees received from clients need to be reinvested in the service.) Local governments usually cover only operational costs, meaning that NGOs must fundraise in order to remain competitive. This system may accompany the subsidiarity principle as well.

- **Competitive system** (typical of UK, introduced also in Poland): under this system, there is a list of public benefit activities and any time the government authority or local government wants to provide a service within a specified area of public benefit activity, it needs to issue a tender. NGOs and local government institutions (as well as private companies in case of the UK) compete to win the tender by offering the best value service. In this case, the types of costs the government covers may vary – more often than not, there is a requirement to raise additional funds to win the bid.

In CEE a general problem is that traditionally the government provides all public services. Existing government institutions want to ensure a stable income for their employees and it is threatening for them to think of NGOs “coming from nowhere” and suddenly taking over “government” roles. Therefore local governments often view NGOs more as competitors than partners in achieving their own goals (i.e. improving quality of life in the community).

II.2.3. Advocacy organizations

In the case of advocacy organizations, the central question from the point of view of their effectiveness is whether they can remain independent from state influence if they receive state funding. We may make two basic assumptions:

- In contrast to service provision, the state usually has no legal obligation to finance advocacy organizations because of what they do²¹;
- there is nothing to prohibit the state from providing financing to advocacy organizations and it is ultimately up to the organization itself to decide if it wants to accept state funding and be associated with the government.

The core of the mission of advocacy organizations is usually to protect or further the interests of a certain societal group. In order to achieve that, advocacy organizations often challenge state policies, oppose planned legislation or mobilize against a government action. What could then be the reasons for the government to support “its own enemies”, or in a more positive light, “its own challengers”?

The most important reason is the “enlightened self-interest” of the state to ensure that the electorate will be satisfied with the policies that affect them. By ensuring means for participation and an opportunity to influence the decision-making process, the state can

²¹ With the exception that such organizations are sometimes included in the state budget on an annual basis, see Subsidies, Section II.3.1.

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

preempt potential dissatisfaction and unrest in society. In the case of the EU, “consultation with the interest groups” is considered an integral part of good governance, and legislative efforts by member states to implement the *acquis communautaire* have to be based on “social dialogue”.

Furthermore, governments gain access to inexpensive but high quality policy expertise by ensuring avenues for participation. Often advocacy NGOs who consider it their mission to achieve progressive change in legislation and state policy have extensive experience in the field and are sometimes more knowledgeable than public sector or for-profit experts. (For example, NGOs often have access to cutting edge expertise through their international networks.) By supporting them, governments can ensure that the professional quality of a policy action remains high and compatible with international standards or best practices.

A constructive relationship between government and advocacy NGOs presupposes mutual respect and some degree of trust from both parties, which is often still lacking in CEE countries. Unfortunately, there have been cases where a government has supported advocacy NGOs in order to gain control over a policy area or to create its own clientele. In such cases, political considerations override professional ones.

In the case of advocacy organizations, a helpful criterion that is used by governments to determine their entitlement to public support is whether they pursue **public benefit or mutual benefit interests**. This may relate to the kind of activity they are engaged in (e.g. sports or environmental protection), or the target group they are serving. For example,

- professional interest groups – the primary purpose of which is lobbying – may not be entitled to government support (and usually rely on membership fees); while
- federations of disabled people – which pursue, in essence, the same goal may still be receiving government support as their efforts contribute to the public good.

Once the government decides to support such organizations, it may be considered good practice to make the **decision-making mechanism independent** from the political establishment. How to achieve this? One solution is to create a semi-autonomous decision-making body. This body may be set up within the central administration system (e.g., a ministry establishes a grant-making advisory body), or in the form of a quango. Such bodies will usually consist of independent experts and representatives of all the parliamentary parties. (These kind of independent, multi-party bodies are also common in ministries giving grants to service-providing NGOs.)

As in the case of service provision, government policy development and implementation are a sound basis for supporting advocacy organizations, which can usually benefit from (programmatic) public support of their activities mainly through subsidies and grants mechanisms (see below). However, certain limitations are possible – activities which are considered to be obstructing governmental policies may not be considered as contributing to the public good and therefore, eligible for state financing.

II.3. Forms of direct government support

II.3.1. Subsidies

Subsidies are government funding providing general support to NGOs' activities and not linked to a specific project²². They can be used to cover general operating expenses as well as specific project implementation and therefore serve as a general support for the activities of NGOs whose contribution to governmental policy implementation is considerable. It may also serve as a general indicator of the public sector's recognition of civil society and its merits.

This form of financial support is most typical in the CEE countries and its use is currently declining. Direct budget subsidies are considered a remainder of the communist period, i.e. those organizations that lobbied successfully during the change of the system received a special position in the budget and became entitled to subsidies, such as the Red Cross (in almost every country), the National Federation of Pensioners, the Pioneers, the Blind etc. In Hungary, the Annual Budget Act allocates central subsidies to about 25 organizations listed in the annex to the Act but only a few of them are involved in actual service-providing or other form of activities to the benefit of the public.

However, it can still be a good solution for organizations that have not yet achieved financial sustainability, especially as foreign aid support is declining. Funding through subsidies is not open to all NGOs; usually potential beneficiaries include interest representation groups (see the examples above), service-providing organizations, and very few, if any, advocacy organizations. Subsidies distributed through ministries or other governmental institutions normally go to NGOs working in the area of activity of the line ministry (e.g. the Ministry of Youth and Sports in Romania is authorized to allocate funds to organizations engaged in the area of sports and youth), which could include advocacy organizations as well.

Subsidies are a form of budgetary support and can be provided from the central and local budgets, usually on the basis of a law. They can also be set by an administrative decision of a public authority. For example, in Hungary, the Parliament used to determine, upon the recommendations of the Parliamentary Commission on Civic Organizations, which NGO-applicants would receive a subsidy. The Slovak Parliament has adopted a special law setting guidelines for subsidizing NGOs²³; the allocation of funds is executed through the separate ministries. Subsidies may also be directly distributed by parliament in the Annual Budget Act (Bulgaria, Hungary).

Funds distributed as subsidies may also originate from other sources than the budget, such as privatization funds (Czech Republic - but this is a source of limited duration), or lottery proceeds (Croatia).

Subsidies are usually determined through a centralized process but can be allocated and distributed by the separate ministries (Romania, Bulgaria, Croatia, Hungary). The subsidies-distributing body is usually the supervisory body as well.

²² *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, ICNL, 2001, p.1, also available at www.icnl.org/journal/vol3iss4/prelimstudy3.htm

²³ *Id.*, p.9

II.3.2.Grants

According to the USAID Glossary of ADS Terms, grants are legal instruments used where the principle purpose is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by statute and where substantial involvement by the state is not anticipated.²⁴

Grants are generally not used to cover operating expenses, but they are designed to pay for the implementation of a given project which falls within the government's programmatic objectives and is therefore considered to be of public value. However, core costs may also be supported via grants - as in the case of Hungary, where the new National Civil Fund gives grants for operational costs, with the explicit aim of strengthening the NGO sector.

In Denmark, volunteer organizations may receive so-called "basic grants" which are not destined to fund a specific project but are distributed on the basis of objective criteria such as purpose, turnover and self-generated funds. The intention is to stimulate the voluntary organisation's autonomy and freedom to determine its own activities and to be capable of promoting the interests of others.²⁵ The other type of grants available to Danish NGOs active in the social field – the "project grant" - is awarded directly to specific projects or activities.

Grants, unlike subsidies, are awarded through an open tender-type grant application process and not by an individual administrative decision of a central or local government officer or by Parliament. They may provide funding for the delivery of social services (Germany, Croatia, UK) or the implementation of programs from the country's international development aid obligations (Sweden, Denmark, Germany). Funding to NGOs provided in the form of grants is also evidence of the government's recognition of the third sector's public role; often it is essentially compensation for their performance of tasks or enhancement of objectives that would otherwise have to be addressed by public authorities.

Grants may originate from the budget (central or local) but also from special funds formed by income from alternative revenue sources: lottery proceeds, taxes, etc. For example, the "basic grants" in Denmark is also formed from the so-called "Danish Football Pools and Lotto" funds in addition to the budget sources. The "project grants" are distributed from the Grant Programme for Development of Voluntary Social Work, which is a central government budget source.

In Hungary, there are a range of central funds supporting NGOs financed by some sort of tax mechanism, e.g. the Cultural Fund from the tax on *kitsch* and pornography; the Employment Fund from contributions paid by employers and employees; the Environmental Fund from tax on gas, fines paid by polluters, and the Civil Fund (newest), which is based on the amount of 1% contributions (see section II.5.4.). (These funds usually provide grants and loans not only to NGOs, but also to local governments as well as entrepreneurs in the given field.)

²⁴ *Glossary of ADS Terms*, United States Agency for International Development, Washington, DC: USAID, 2001, p.81, also available at <http://www.usaid.gov>

²⁵ *The Voluntary Social Sector in Denmark*, Ministry of Social Affairs, Denmark, 2001, http://www.sm.dk/eng/dansk_socialpolitik/index.html

Grants are often distributed either directly by the government or by a governmental agency. In the UK this function is assigned to the local offices of various government authorities (e.g. for health, employment, education). This role can also be assigned to a special entity, like the public foundations in Hungary, or the single public foundation created for that purpose in Croatia. In Germany, the government provides support to the national umbrella organizations of NGOs who will in turn distribute the funds to their membership. In Poland, the local government is envisioned as the main body responsible for the tendering and contracting out of the local services. The Danish Ministry of Social Affairs is responsible for distributing the “basic grants” to voluntary organizations working in the social field²⁶. Grant-making in the EU can also be channelled through the national or local authorities of the individual Member States or be provided by the Commission or by special funds. The projects funded through this form should always be directed at the achievement of a precise objective and in pursuit of a common EU policy.

Certain limitations on the eligibility of NGOs for access to grant competition procedures are possible – for example, only NGOs with public benefit status may be admitted to apply for funding. The organization’s area of activity may also impose a limitation on its access to tenders: for example, only NGOs operating in the area of health--services may be admitted to bid for a grant for the delivery of such services. NGOs are mostly eligible for grants for social (human) services provision (health, social care, education, culture etc.) or development aid. However, grant-making is in principle possible in all areas of government operation – e.g. the Ministry of Interior in Hungary provides grants to volunteer civic police forces, and the Ministry of Justice provides grants to NGOs educating judges on domestic violence issues.

Grants are usually distributed on a competitive basis and after a selection process. Among the selection criteria are typically included: past activity of the organization, history of partnership, references, political and other activity unrelated to the competition but troubling the funder, technical quality of the proposal, professionalism of the staff, “package projects” (related projects some of which have already been won by an applicant), reliability, managerial and financial competence, possibility of receiving cost-share funding, possibilities for establishing a mutually beneficial future partnership, time limits for implementation if they are not strictly determined in the announcement, etc.

The selection process involves – or should involve -- several crucial safeguards to ensure that appropriate levels of transparency and openness. Thus, there should be appropriate procedures to announce and advertize the available grants and specific criteria for awarding them. For example, all EU grants are posted on the Internet and categorized according to the area of activity and eligible recipients. The requirements for a fair and open selection process also include publicizing the award, the possibility for review of the decision, and the remedies available after a challenge of the award decision.

Funding through grants may be occasional, short-term, or long-term. Preference is usually placed on occasional or short-term funding, in part because the state administration may not commit itself to multi-year funding without knowing budget objectives for subsequent years, and also to prevent NGOs from becoming dependent

²⁶ *Id.*

on the grants. However, this short-term view often limits a developmental approach in public grantmaking.

Funding through grants is effectuated by signing a contract between the grant-making authority and the NGO-recipient. Part of the content of the contract may be mandatory as provided for by legislation or by the competition announcement. The legal nature, content and consequences of this contract should not be confused with the procurement contract on the basis of which the funded NGO provides works or services falling within the domain of the public authorities. The former provides for the terms and conditions for the use of the public funds, reporting and supervision, while the latter also regulates specific terms and conditions regarding the process of service-delivery.

II.3.3. Procurement

Procurement is the purchase of goods and services delivered by NGOs by the public authorities. Usually the legislative mechanism for procurement is established for all potential participants including business entities and NGOs. The latter are most likely to be funded by the government for the delivery of social services. In Germany, NGOs are the default providers of social services. In the UK, the second stage of the process of restructuring the welfare state (1980s-1990s) has resulted in the break-up of the previous public administration system, the introduction of management of social welfare, and “quasi-markets”. Under the new system, public services have to act like economic markets and therefore NGOs, as possible providers, have to compete on equal footing with for-profit institutions and public sector institutions²⁷. In Croatia, local authorities are specifically empowered to assign “public utility” services to natural and legal persons based on a written agreement.²⁸ In Poland, NGOs have been given a chance to compete with the public providers in the newly adopted Law on Public Benefit Activities.

In Sweden, volunteer organizations have access to competitive tendering for the delivery of social services (childcare, education, home-help). The municipality of Täby has introduced innovative flexible models of contracting out services by taking into account various aspects of this “privatization” of public services. For example, they provide an employment guarantee when it comes to a competitive tender. When a private provider is awarded the contract, the employee has the right to choose if he or she wants to remain employed by the municipality or join the entrepreneur. But he or she also has a one-year option to return to the municipality.²⁹

The main problems that NGOs encounter in accessing this form of government funding is that the majority of the projects open to procurement are high-value projects and it is often very difficult for NGOs to comply with the requirements placed on bidders. In addition, procurement is often considered inconsistent with the not-for-profit nature of NGOs. Indeed, very few procurement procedures allow for access and successful bids by non-profits (essentially only smaller projects in the area of social services or local public

²⁷ Social Policy in the UK, <http://www2.rgu.ac.uk/publicpolicy/introduction/uk.htm>

²⁸ *Supra* Note 47.

²⁹ Arne Svensson, *Redefining Public Services Through Market-oriented Mechanisms: Scandinavian Experiences & Best Practice*, Professional Management AB Presentation at the International Workshop on Guarantor Government in Täby, Sweden, 31 May-1 June 2001, arranged by Bertelsmann Foundation/ Cities of Tomorrow, available on <http://www.cities-of-tomorrow.net/Svensson.doc>

benefit services). The Slovak Public Procurement Act of 1999 expressly excludes NGOs from the tenders for public services.

A potential solution is the Hungarian example, that is, a special form of contract called “**public benefit contract**”. This may be executed with “outstandingly public benefit organizations” for the provision of state services. In Hungary, there are two categories, or two levels, of public benefit status: the “normal” public benefit organization and the outstandingly public benefit organization. This second category describes organizations that have a special contract with a state agency commissioning them to provide public services. Such a contract entitles them to the special public benefit status and the additional tax and other benefits that accompany it. While only 6% of NGOs have such status, it represents an important element in the development of the state/civil society relationship, because it provides a transparent legal form for NGOs to provide state services (when otherwise NGOs would have difficulties obtaining contracts under the procurement laws).

II.3.4. Normative support

The normative financial support to NGOs has certain similarities to the system of procurement of social services. It is a reimbursement to NGOs that deliver services in areas such as healthcare or education and the funding is determined on the basis of the services actually provided. Under this system, physical persons have the right to choose their service-provider, possibly an NGO, which then seeks reimbursement from the government.

Normally, the normative funding is preceded by a contract with and/or a permission to operate issued by a public authority which thus authorizes an NGO’s access to the funding mechanism. Such a system is established in Hungary whereby an NGO may set up a social service institution on the basis of a contract with the respective ministry. The funding to which such an NGO may be entitled for the services it has provided is limited to the amount of support granted to a state-run institution operating in the same area of activity and is determined in the Annual State Budget Act. A similar system functions in Croatia.³⁰

II.3.5. Vouchers

The use of vouchers reflects the tendency towards modernization and market-oriented mechanisms in public services delivery and has been particularly successful in the Scandinavian countries. Under this system, municipalities provide vouchers for the services that fall within their obligation to deliver, to all citizens, who then choose their provider. The use of vouchers provided by municipalities eliminates the theoretical dispute of who is the best service-provider by strengthening the role of citizens and by giving them the responsibility to select the service-provider.

Therefore, the process has a twofold purpose: expanding the freedom of choice of the service-user and raising the quality of the service by maintaining competition. Vouchers are an instrument to develop a demand-driven service provision, whereby the market rather than the state is expected to develop and to offer services. The individual citizen,

³⁰ *Supra* Note 47.

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

given the entitlement by the state or the municipality to a subsidized service, is able to make use of this subsidy by means of a service voucher, which is valid as mean of payment. Recipients of service vouchers can be an individual, or a group of individuals with particular needs.

In some municipalities the predominant service-providers are private contractors, and in other – voluntary organizations. Remuneration to the provider can be regulated by agreement between the provider and the public authority responsible for the operation, or directly between the customer and the provider. The system needs a certain degree of control by fixing or limiting the fees for the provided services.

Voucher systems are relevant - and have been introduced - in education, social welfare and other individual services in Sweden. An example of good practice is found in the municipality of Täby in the Stockholm area, where a successful combination of competitive tendering and a voucher system under the motto “The best service is the one, one gets to choose by oneself” seems to be producing excellent results. Vouchers are introduced in childcare, education, and home services for the elderly. This means, for example, that a day-care center or a school receives a fixed sum for every child that is enrolled (similar to the normative system).

Service-providers that have succeeded in attracting customers are thus primarily funded by revenues through the voucher system. The municipality exercises control on the providers by, among other means, setting up quality standards for the service delivery, requiring various proofs for the quality of the service, admission rules, taxes charged, and other forms of control.

For example, a person that needs nursing and service in his own home first applies to the social board, which decides how much help the person should have. A home-help service secretary helps assess this judgment. It can be a matter of, for example, personal nursing, purchasing, cleaning and care of clothing. The person in need receives a voucher, which is equivalent to a month’s worth of nursing. The voucher describes which services are supposed to be included in the service and the nursing. Along with the voucher the customer receives a list of different nursing companies to choose from. Thereafter the customer decides who shall perform the service - the municipality’s home help services or a private nursing company.³¹

II.4. Policy considerations in indirect support

II.4.1. Public benefit activities

The conceptual difference between the “public benefit” versus “mutual benefit” nature of NGOs exists across Europe. The legal and financial consequences of engaging in public benefit activities and eventually being granted a **public benefit status** have proved to be considerable and justified the recent enactment of the so-called public benefit laws in a number of CEE countries (Hungary, Bulgaria - as part of the NGO law -, and Poland, among others). These are laws that prescribe and determine when an NGO can be recognized as public benefit and thereby gain access to a wider range of tax benefits than nonprofits in general.

³¹ *Supra* Note 54.

Public benefit recognition usually indicates (1) that an NGO provides services and activities that benefit the public at large or a special group in need; and (2) that the state provides special recognition for these activities through direct or indirect support.³²

What activities qualify as public benefit is defined differently in every country where such legislation exists; usually there is a list of activities (e.g. in Hungary, a list of 22 types of activities including, among others, education, social services provision, preservation of cultural heritage or protection of the environment). The type of government support available to NGOs with public benefit status also varies. In Hungary, for example only PBOs may receive tax deductible donations; Poland is contemplating limiting the corporate income tax exemption to PBOs only. The entitlement to the 1% support (see below under *Indirect funding*) is another benefit that can be made available to PBOs only or to a wider circle of NGOs, depending on the government policy.

NGOs that aspire to obtain public benefit status and the resulting tax advantages must satisfy additional criteria. Most significantly, they have to comply with higher levels of transparency and accountability so as to ensure proper spending of public money. For example, they may have to prepare a yearly report or establish a supervisory board.

II.4.2. Tax benefits

Governments can provide indirect financial support to civic organizations in the form of tax benefits or exemptions thus encouraging and supporting their general activities.

Most legal systems acknowledge the contribution of nonprofit organizations to the public good and recognize this contribution by providing a range of tax benefits related to their activities.³³ The main examples of such benefits include:

- Tax exemption or benefit for the income of the organization (related to income from its statutory or economic activity); for example, when an NGO does not have to pay property or corporate income tax on all or a portion of its income.
- Tax benefit provided for the donor on donations made to the recognized organizations; for example, if an individual gives money to an NGO, s/he may deduct all or part of this money from his/her tax base.
- Tax exemption or benefit of the income provided by the nonprofit organization to others; for example, if an NGO provides a scholarship to a person, the person will not have to pay an income tax on the scholarship.

Traditionally, because of the loss of tax revenue that could be collected, these forms of tax benefits are viewed as indirect government subsidies to the organizations and their donors.³⁴ Tax revenue foregone constitutes an indirect means of support from the state,

³² See more on this in the *Handbook on Good Practices for Laws Relating to Non-governmental Organizations*, prepared for the World Bank by the International Center for Not-for-Profit Law (ICNL), Discussion Draft, 2000; pages 24-25.

³³ Tax benefits, or tax incentives are means provided by the state to ease the tax burden on the taxpayer and/or possibly to create an incentive to achieve a state goal by encouraging the taxpayer to use the funds in a certain way.

³⁴ Fishman and Schwarz: *Nonprofit Organizations: Cases and Materials*, Second Edition 2000. page 332

and can be contrasted with direct government support to NGOs involving transfer of funds from the state to an NGO.

The level of indirect support through tax benefits might vary depending on the public benefit status of the organization or whether its activities are considered beneficial to the public. Public benefit NGOs naturally enjoy a wider range of exemptions and tax benefits. They are granted

- exemption from profit tax (Estonia, Slovenia, Hungary, Slovakia);
- exemptions or benefits on VAT (Czech Republic for certain public benefit activities, Estonia for some activities and reduced rate for other, Hungary for some activities and zero-rate for others, Slovakia);
- tax benefits regarding the income from business activities (Slovakia up to a certain amount, Poland if such income is used for public benefit activities, Hungary as long as the activity is in pursuit of the organization's statutory purpose);
- exemptions from taxes on grants and membership dues, on investments, real estate, customs, court fees and others.

NGOs that engage in public benefit activities may also be granted additional exemptions, including, for example, tax exemptions on the support provided by NGOs to individuals (e.g. scholarships) and benefits on the donations made to such organizations, which encourages private and corporate donorship to public benefit organizations. Such benefits are provided for in Estonia, Hungary (at a higher level for “prominent” public benefit NGOs), Poland, and Slovakia.

For mutual benefit organizations, usually limited tax benefits are available. As a general encouragement to the development of democracy, governments may provide some minimum level of support to mutual benefit organizations (MBOs) as well.

II.5. Forms of indirect support

II.5.1. Use of public property at no cost or at reduced rates

Use of public property as a form of indirect support is widely used in CEE countries. Governments allow NGOs to use state or, more often, municipal property, for their statutory activities, including, for example, as office space, meeting halls, or sports facilities. Usually this is done on the basis of a law and upon certain conditions.

For example, the Hungarian Act CXLII of 1997 authorizes the free use of state-owned property by civil society organizations, which may also acquire the right to own this property, with some restrictions, after a period of fifteen years. To receive this form of support, an NGO cannot have outstanding public debts and cannot sell the property or establish a mortgage on it during the 15-year period. The law or the contract may impose certain limitations on the activities that can be conducted in the leased property, e.g., the organization can only engage in its statutory activities, or cannot use the property for political activities. In Croatia, the Social Care Act provides for the free use of state or municipal property only if the organization will use it to provide social welfare services. The lease on the public property is concluded either by the public institution that exercises the ownership rights (e.g., the municipality), or by a special body, like the State Property Administrator in Slovakia.

II.5.2. Tax exemptions on income

In considering the tax treatment of NGOs in the CEE region, we find two approaches taken in most tax legislation: determining taxation and exemption based on (1) types of organizations and (2) categories of income. We consider each below.

Types of Organizations. Some countries permit tax exemptions to be claimed by virtually all legal forms of organizations (i.e., foundations, associations, and other types of not-for-profit legal entities), provided that they are duly registered and that they adhere to the non-distribution constraint. Other countries limit the availability of exemptions to organizations that serve the public benefit. Several do not make exemptions available to any type of NGO, and allow only very limited exemptions to legal entities pursuing activities on behalf of the disabled.

Tax exemption on income is granted to NGOs in general and not exclusively to public benefit organizations in a number of countries, for example, Czech Republic, Hungary, Latvia, Lithuania, Slovakia. In some of them, like in Slovakia, this approach reflects the concept that NGOs are not public business entities, and therefore are not proper subjects of taxation, at least with respect to certain types of income. More frequently, the laws treat NGOs as taxable legal entities, but permit them to claim exemption from the corporate income or profits tax (Czech Republic).³⁵

Elsewhere, like in Bulgaria and Slovenia, only public benefit organizations are exempt, and the laws list the activities that benefit the public and entitle the organization to claim the exemption.

Sources of tax exempt income. Most countries treat income from grants, donations, fees and dues as tax exempt. The income from economic activities (sales of goods or services) is treated differently. Economic activities are defined as “regularly pursued trade or business involving the sale of goods or services and not involving activities excluded under some distinct tradition.”³⁶ Generally, this definition is understood to exclude the receipt of gifts and donations, certain passive investment income, occasional activities such as fundraising events, activities carried out using volunteer labor, and fees that are “intrinsically connected to the public benefit purposes of the organization” (i.e., tuition for an educational organization.)

Provided that NGOs are permitted to engage in economic activities (which is not always the case, e.g., for certain types of NGOs in Lithuania), the following approaches are possible:

- all income is taxed (Slovenia);
- only income from activities related to the organization’s public benefit purpose are exempt (Estonia, Latvia);
- only income that serves to further the organization’s public benefit purpose is exempt (Germany, Poland);
- income above a certain threshold is taxed;

³⁵ *Survey on Tax Laws Affecting NGOs in Central and Eastern Europe*, Second edition, ICNL, 2003, p.12, available on <http://www.icnl.org/programs/cee/pubs/taxsurvey/TaxSurvey2nded-1.pdf>

³⁶ *Economic Activities of Not-for-Profit Organizations*, in *Regulating Civil Society*, conference report, ICNL, (Budapest: May 1996), pp. 6-7 [reprinted at www.icnl.org]

- exemptions granted under a mixed (hybrid) tax system (Czech Republic, Hungary)³⁷.

Lithuania exempts all non-profit entities from profit tax; however, not all such entities may engage in economic activities.

Income from investment provides an essential source of revenue for NGOs. Many countries impose additional requirements and limitations on the distribution of income and the accumulation of capital by NGOs to ensure that such income is spent in pursuance of their public benefit objectives. The tax treatment of passive investment income varies according to the type of income and the type of NGO. Slovakia and Slovenia treat almost all investment income as taxable although there are special reduced rates for taxes on certain investments.³⁸ Hungary generally taxes all income but provides exemptions for public benefit organizations as long as they do not engage in business activities. In Poland, all investment income used for public benefit purposes is tax exempt.

II.5.3. Tax incentives for philanthropy

Indirect support provided through tax advantages to donors is frequently seen as an incentive to encourage NGO activity and private philanthropy. Traditionally, two main forms of tax benefits are seen as incentives for philanthropic behavior:

- tax deductions; and
- tax credits.

Tax deductions on charitable donations mean that the donor can deduct all or part of the money s/he contributed to an NGO from her or his taxable income, thus diminishing the tax base upon which tax will be calculated. Tax credits for charitable donations, on the other hand, mean that the donor will be able to deduct part of the donated amount from his/her tax liability (i.e. the tax to be paid). In other words, a tax credit reduces the amount of tax owed, whereas a deduction reduces the amount of income that is subject to tax.³⁹

Tax deductions may be claimed by business and individual donors (in some countries, the maximum deductible amount differs for the two categories of donors (e.g., in Estonia it is 5% for individual donors and 3% for business donors). The limitation is usually a percentage of the taxable income. Hungary grants a tax credit and not a tax deduction on individual donations.⁴⁰

However, the recipients of tax-benefited contributions are usually limited to organizations engaged in public benefit activities. For example, in Hungary, as well as in Estonia, charitable contributions entitle the donor to a tax deduction (up to a certain limit) only if it is made to a public benefit NGO on the list published by the government.⁴¹

³⁷ *Supra* Note 60, pp.18-22

³⁸ *Id.*, p.23

³⁹ Section 9.2: Income tax deductions or credits for donations, In: *OSI Guidelines for Laws Affecting Civic Organizations*, ICNL 1997. Pages 78-79.

⁴⁰ *Supra* Note 60, p.36

⁴¹ *Supra* Note 60, p.35

II.5.4. The so-called “1%” tax designation mechanism

The central idea of percentage mechanism is that taxpayers may decide to designate a certain percentage of their income tax paid to a specific nonprofit, non-governmental organization (NGO), and in some cases, other organizations, mainly churches.

The “percentage mechanism” was introduced in Central Europe, primarily with the purpose of supporting civil society, i.e., nonprofit organizations.⁴² The first law that established such mechanism was adopted in Hungary in 1996 and allowed taxpayers to designate 1% of their due tax to a civil society organization of their choice. Slovakia (2001), Lithuania (2002) and most recently, Poland and Romania (2003) followed the Hungarian example and adopted similar legislation. “Taxpayers” includes natural persons in all four countries and also corporate taxpayers in Slovakia. Possible beneficiaries are nonprofit organizations that engage in public benefit activities but also trade unions (Lithuania), public institutions (Hungary and Lithuania), and churches (Hungary – designations for churches form another 1% of the tax). Certain additional conditions, including, for example, the existence of the organization for a given period of time (Hungary), may also be imposed, as well as reporting requirements.

The percentage legislation is based on the concept of “*advancement of civil society through support of its organizations*” as a part of the governments’ policy.⁴³ Other rationales that justified and led to this policy include the strengthening of civil society through financial support and capacity-building, awareness-raising, development of philanthropic culture, and the provision of decentralized and depoliticized government support to civil society.⁴⁴

Despite the existing disputes over the precise legal nature of the “percentage philanthropy”, its real impact has been indisputable. Apart from its contribution to the increased citizen participation and taxpayer control over public funds, it has significantly augmented the financial resources made available to NGOs. In 2003, the Hungarian “1% law” resulted in 6.1 billion HUF (approximately 23.5 million EUR) worth of 1% designations by 1.4 million taxpayers.⁴⁵ By comparison, in 1999 the amount was 3 billion HUF. Unfortunately, there has been a negative impact of the “percentage legislation” as well. Governments have wrongly perceived that percentage laws satisfy the needs for both public and private support of the third sector and have undertaken to eliminate other tax benefits for NGOs. Thus, tax-deductible donations have been abolished in Lithuania and in Slovakia, and similar measures are under consideration in Poland.⁴⁶ Such tax reform have proved (and will prove) to be quite detrimental to NGOs and are highly undesirable from a financial and moral point of view.

II.6. Summary recommendations on an “NGO funding guide”: What shall we consider in setting up a system for government financing of NGOs?

⁴² Nilda Bullain, *Percentage philanthropy and law*, NIOK and ECNL, 2004, p.3-4, available on http://www.onepercent.hu/Dokumentumok/Chapter_2_ECNL.doc

⁴³ *Id.*, p.6

⁴⁴ *Id.*, p.14.

⁴⁵ <http://www.onepercent.hu/news.htm#10bill>

⁴⁶ *Supra* Note 67.

**A Comparative Analysis of European Policies and Practices of
NGO – Government Cooperation**

When thinking of a system for NGO financing, it is necessary to think through what are the underlying rationale and principles, or assumptions on the part of the government. What is the role of NGOs in society? How is this role envisaged from the point of view of government? What roles and functions should government support and why?

Below is a chart reflecting one potential classification, based on the principles and approaches generally described in Section II. It needs to be understood that:

- this is a generalized model and should be applied to fit the specifics of the country;
- this is an idealized model and roles of NGOs and types of support can in reality never be so clear.

Nonetheless, developing such a chart is a helpful tool to think through the foundations and the framework of the financing system.

TYPE OF ORGANIZATION	TYPE OF SUPPORT
A. SERVICE PROVIDING ORG'S	
<ul style="list-style-type: none"> ▪ NGOs undertaking governmental tasks (e.g. those that are explicitly assigned to central or local government in laws) 	<ul style="list-style-type: none"> ▪ Government should provide direct support to finance the service through the NGO (as well as ensure indirect support generally available for NGOs)
<ul style="list-style-type: none"> ▪ NGOs complementing governmental tasks (e.g. tasks not explicitly assigned to government but considered being of public benefit by law or otherwise answering community needs) 	<ul style="list-style-type: none"> ▪ Government should consider financing the service itself or provide indirect support
B. "SOCIAL CHANGE" ORG'S	
<ul style="list-style-type: none"> ▪ NGO advocating for certain issues and interests (e.g. through influencing policy making and legislation) 	<ul style="list-style-type: none"> ▪ Government may choose to offer direct financing to some activities; should however ensure for independence of such NGOs; government should provide indirect support
<ul style="list-style-type: none"> ▪ NGOs enhancing citizen participation and social responsibility (e.g. any mutual benefit society, club etc. as well as NGOs advocating with businesses, schools and other institutions) 	<ul style="list-style-type: none"> ▪ Government should encourage flourishing of such NGOs through indirect support
C. GRANTMAKING ORG'S	
<ul style="list-style-type: none"> ▪ NGOs raising/generating resources and contributing to the redistribution of private wealth 	<ul style="list-style-type: none"> ▪ Government may consider supporting the creation of independent grantmakers in order to help the sector become more self-sustaining

What principles will the government apply?

Let's take the first box: NGOs undertaking governmental tasks (e.g. those that are explicitly assigned to central or local government in laws). Let's say the government believes that if an NGO undertakes this task, it should be supported from the public budget as it is helping the government to do its job. How will it provide the support?

The government may here choose from a range of principle-based mechanisms described above, such as the subsidiarity principle (preferring NGOs) or the competitive principle (looking for best value), as well as the normative or the voucher system.

The question of *what types of costs and to what extent will be covered* is important because if the government actually pays the whole cost to the NGO, it may not be worth to privatizing the service in the first place. Experience in the UK and Germany shows that NGOs that had been fully subsidized by the government for a longer period (5-10 years) essentially became like government agencies and became too expensive.

Similarly, principles for each box should be well thought-through. For NGOs in the second and third boxes, for example, the general principle may be that they will only have the opportunity to receive direct government funding if their current activities are in line with some specific government objective and therefore supporting them will contribute to achieve a government program.

However, *indirect support* can be envisaged for all categories of NGOs at varying levels. Usually, those which are mutual benefit may enjoy only minimal support in recognition of their contribution to a democratic social model. This minimum could be the exemption on the corporate income tax for their statutory activities; it could, however (as in Hungary) also include exemptions on duties and fees, on property and other taxes.

NGOs that are considered public benefit would then enjoy a wider scale of benefits, such as the ability to receive tax deductible donations, tax benefits regarding the income from economic activities, customs exemptions, ability to provide tax exempt scholarships/aid to individuals etc.

In Hungary, there are even two levels of PBOs with the benefits being higher for the "outstanding" PBOs; but then in Bulgaria, MBOs don't even receive full exemption on the basic income tax (however, they do receive some tax exemptions – on grants and membership dues, for example).

Another issue is the 1% type tax allocation which could be a benefit for all NGOs or just PBOs.

The issue of ***encouraging independent grantmaking*** has also proved to be an important one in CEE countries, because as foreign donors withdraw and the culture of philanthropic giving has not yet developed, NGOs are left in a funding vacuum, where the only major source of support becomes the government. In light of this threat to financial sustainability, the establishment of local grantmakers is one potential solution. In the Czech Republic, the state actually supported the endowing of such grantmakers, but if such direct support is not an option, there are still instruments to help develop this potential. (E.g. through regulating endowments and investments.)

III. Analysis of the framework for cooperation between NGOs and governments in Europe: policy documents on cooperation (PDC)

The past decade has brought about a remarkable change in the officially recognized role of civil society in the establishment of stable models of social democracy. As a formal expression of this recognition, public authorities in several European countries have adopted documents in which the mutual benefits of a more institutionalized relationship between the “first” and the “third” sectors have been elaborated.

III.1. What are policy documents on NGO – Government cooperation?

Policy documents on cooperation (PDC) reflect a certain stage of development in the relationship between governments and civil society organizations. They express the public authority’s (government, parliament, EU institution) position on the role of civil society and set up the grounds for future constructive interaction with third sector organizations. They have two primary objectives as reflected by their content. First, they aim at encouraging public participation in political life and second, they attempt to establish mechanisms for cooperation which will ease the burden of public service delivery on the government’s shoulders.

To achieve this, PDC outline the principles of cooperation between the public sector and organized civil society and set up the basic structure of the future partnership.⁴⁷ The recognition of the contribution of the nonprofit sector to societal development is followed by the general intentions and the more specific steps to be undertaken by the government and by the civic organizations in order to transfer the principles of cooperation into practical partnership mechanisms.

PDC are usually the result of mutual efforts and negotiations between the two sides. They may range from bilateral documents of the “agreement” type (UK Compacts), to de facto agreements actually adopted as official programs by government (Croatian Program for Cooperation⁴⁸) or Parliament (Estonian Civil Society Development Concept⁴⁹), to unilateral statements expressing commitments by one side only (Hungarian Government Strategy towards the Civil Sector⁵⁰).

III.2. Why are PDC important?

The benefits of these agreements or statements of the public authorities are tangible both to the third sector and the public sector itself. On the one hand, they provide for a means for civic organizations to receive increased support for their work and hence, to expand the areas of their activity in the interest of society. On the other hand, including civil society dialogue and partnership among government policies is also a way for the government to ensure a more complete performance of its tasks through the help of partners.

⁴⁷ See Daimar Liiv, *Guidelines for the Preparation of Compacts*,

<http://www.icnl.org/journal/vol3iss4/Guidelinesforcompacts8.htm>

⁴⁸ [http://www.icnl.org/library/cee/docs/croPROGRAMSURADNJE\[ENG\].htm](http://www.icnl.org/library/cee/docs/croPROGRAMSURADNJE[ENG].htm)

⁴⁹ <http://www.ngonet.ee/cfpbaltic/civilsociety/estonia.html>

⁵⁰ <http://www.nonprofit.hu>

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

The key to the success of a cooperation policy is the guarantee of the mutual interest, respect and trust for “the other’s goals and mission”⁵¹. NGOs are the more natural and more likely initiator for the negotiation and adoption of a policy paper on cooperation with government; however, the Croatian and the Hungarian example shows that the public authorities may well have an interest in such a process and can initiate and bring it to a successful conclusion.

It must be noted, however, that it is not sufficient to merely draft a policy paper on cooperation; that alone cannot be considered as a “successful conclusion”. Point 15 of the English Compact calls it “a starting point not a conclusion”. It has also been called “a process not a paper”, emphasizing the fact that mutual benefits will be available for both sides even if the negotiation process does not lead to an agreed text. A good relationship is established through a process of frequent contacts, constructive discussions, active cooperation, and through concessions, compromises and understanding.

Although a document that legally binds the government and that outlines a precise schedule for the future implementation of its commitments might be ideal for the nonprofit sector, the very process of meeting, discussing, negotiating may have more benefit than expected, if the result is an improvement of communication with the public authorities. A centralized procedure for discussing a policy paper may not necessarily result in its adoption (see the Hungarian case below), but the numerous public debates that accompany the process are already an excellent example of public participation in political decision-making.

As practice in the UK shows, the lack of sufficient knowledge and understanding of the Compact among the volunteer sector can be one of the barriers to the implementation process and an obstacle to its effective observance by both sides. The process should involve experts in the preparation of the text and wide public participation in the discussion and consolidation stage.⁵²

III.3. What is the scope of PDC?

The title of such a document usually reflects its character of being unilateral or bilateral and indicates the level of its legally binding force. The Agreement between the government and the voluntary sector in Wales confirms the former’s commitments and therefore is a legally binding document while the English Compact is only a “memorandum” concerning relations between the government and the third sector. The Estonian Concept for the Development of Civil Society was adopted by Parliament and expresses values, principles and procedures designed to increase citizens’ participation in state life. The Croatian Program expressly states that it is not a legally binding document but a framework for future cooperation.

The EU Commission’s White Paper on European Governance, adopted on 25 July 2001, focuses on the reform of “the way in which the Union uses the powers given by its citizens” and promotes the stronger interaction between civil society and central and local governments. The White paper is a policy document which sets forth five underlying principles (openness, participation, accountability, effectiveness, and

⁵¹ *Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector*, <http://friv.wizards.dk/Web/Site/Charter+og+samarbejde/Hvad+er+chartret%3F/Charter+-+engelsk+udgave>

⁵² *Supra* Note 1

coherence) and the future measures based on them, including dialogue and consultations and establishment of partnerships which will reflect the Commission's future commitments. However, the Commission also commits itself to a series of concrete measures to improve and clarify European legislation, publish guidelines, develop standards and criteria, organize public debates, and develop a code of conduct on dialogue and consultations that would contribute to greater openness of organized civil society.

The Danish Charter for interaction between Volunteer Denmark / Associations Denmark and the public sector concluded with the Danish government in 2001 emphasizes the importance of partnership between the two sectors for "the development of Danish democracy and the Danish welfare state".⁵³ The Charter is designed to serve as a "starting point for continuing dialogue on values, parameters and concrete opportunities for interaction" and is based on the recognition of the volunteer sector, its role and functions, and its independence. The document envisages future measures to be taken that would facilitate associations' activity, including the development of the respective legislation, that would ensure the continuing support for NGOs' activity without affecting their autonomy, and would provide resources "for the promotion and implementation of common initiatives". The Charter is a framework agreement providing the basis for future concrete steps and does not have legal force although its positive role for the enhancement of the volunteer sector and citizens' participation in public life in Denmark has been recognized by both government and the third sector.

In most Western European countries similar policy documents are adopted with regards to NGOs' participation in the country's development aid policy. These concern only a very specific part of the nonprofit sector and place the emphasis on the role of NGOs in international development. However, in an indirect way, these documents recognize the importance and role of civil society in the given country as well.

Thus, the Danish Strategy for Support to Civil Society in Developing Countries⁵⁴ adopted by the Ministry of Foreign Affairs, elaborates the various methods of cooperation with Danish NGOs and expressly recognizes their contribution to "the promotion of human rights and democracy." Similar documents have been adopted by the German Government as well, based on the notion that the promotion of civil society forms a vital part of the country's foreign development policy.⁵⁵ In addition to outlining government policy, these documents also influence the funding mechanisms for financing the work of domestic NGOs in the field of international development aid.

III.4. What do PDC cover?

⁵³ *Supra* Note 1

⁵⁴ *Strategy for Danish Support to Civil Society in Developing Countries – including cooperation with Danish NGOs*, http://www.una.dk/ffd/Godk_Nord_Regeringer/Strategy_for_Danish_Support.htm

⁵⁵ The Federal Ministry for Cooperation and Development (BMZ) administers the funding for international development through a programme called *Development Projects in Developing Countries*. (<http://www.globenet.org/preceup/pages/fr/chapitre/etatlieu/acteurs/f/h.htm>). The Ministry's close work with German development NGOs resulted in the early 1990s in a first policy paper "*Fighting poverty by promoting self-help*", which placed special emphasis on the promotion of participation and self-help as basic principles. (<http://www.euforic.org/projects/povcasde.htm>). Four more policy papers on poverty reduction were elaborated and adopted during the 1990s and a "*Conception of development policy of BMZ*" (published in October 1996) confirmed poverty reduction as priority goal.

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

There are two main approaches to formulating the content of a cooperation policy document: first, outlining the general framework for future cooperation and leaving the details to be worked out in the implementation process (as in UK, Denmark), or adopting a text elaborating a wider range of aspects of the future cooperation and the details of its implementation (like the Estonian Civil Society Development Concept).

As experience shows, there is not really a link between the adopted approach and the chances for the effective implementation of the policy. That rather depends on the good will of both sides, the legislative and political mechanisms for application of contractual obligations and political commitments, and the actual state of the relationship between the governmental and the non-governmental sectors. Since the purpose is to lay down the grounds for a successful future partnership, these documents should attempt to cover, in a general or in a detailed manner, all the essential elements of the relationship.

Almost all agreements, statements, charters, and strategies of this kind contain the following sections:

1. A **statement of representation** on the bodies representing the two sectors during the process of adopting and implementing the PDC, the mechanisms for their nomination, their mandate, responsibilities, and duties.
2. A **statement of principles** of the role and functions of the two parties in the development of democratic society, including a recognition of each party's autonomy (see the Danish Charter), basic rights and obligations, legal and logical constraints in the observance of these obligations⁵⁶, definition and acceptance of mutually respected values including for example public participation in decision-making, flexibility in governance tools (EU White Paper on European Governance⁵⁷); diversity of the volunteer sector (UK Compact, p.8.2); accountability, openness, promotion of non-violence and equality of people, coherence, transparency and liability for utilizing public resources (the Croatian Program for Cooperation).
3. A general outline of the **areas of cooperation** (delivery of services, legislation and other decision-making processes, environment, international development aid, access to information, national policy formulation in various areas, decentralization, development of social enterprise, etc.), and specific **instruments of cooperation**, including public disputes, consultations, joint consultative and decision-making bodies, partnership agreements for the joint delivery of services, exchange of information, right to initiative, etc.
4. **Funding related issues**: obligations for the development of codes of good funding practices (UK Compact), description of various funding mechanisms to support the voluntary sector (long-term, short-term financing schemes), commitments for the establishment of a supportive tax system ensuring direct and indirect encouragement third sector activities (Estonian Concept), undertaking for the development of legislation supporting the self-sustainability of the third sector and the financing of organizations of disadvantages persons (Croatian Program for Cooperation and Hungarian Government Strategy).

⁵⁶ *Supra* Note 1

⁵⁷ *European Union White Paper on European Governance*,
http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf

As a principle and following from their general and mostly non-binding nature, cooperation policy documents do not establish specific funding obligations; rather, they envisage the development of funding policies, mechanisms, standards, or models that would ensure public support for the voluntary sector. Focus should be placed on clear models of funding policies including various types of funding mechanisms (e.g., not to forget the in-kind support) and on the third sector's obligations to elaborate good standards for accountability for the use of public money.

5. **Implementation:** this section reflects the timeline and the level of genuine government commitment to the principles and values as recognized by the policy document. It includes short-term and long-term objectives⁵⁸ and allocates responsibilities to the public institutions that will be involved in the implementation process. It may also contain a proposed monitoring and evaluation tool, review and revision, and dispute settlement.

The level of specificity of these provisions is crucial to the successful implementation of the policy document. The general nature of the document does not always allow for a specific implementation schedule; however, in order not to leave it a dead letter, this section should attempt to be as concrete as possible and to provide for a constructive relation between timetables, institutional network, responsibilities, and coordination. For example, the Croatian Program provides for an annual analysis and revision at a meeting of the Government and the third sector's representatives and for the publication and a submission to Parliament of a report of the meeting. The UK Compact authorizes a special ministerial group to oversee the implementation of the Compact, to "encourage its adoption by other public agencies (p.2 of the Annex), and to promote good communication between the two parties.

The specific content of a policy document for cooperation varies depending on the legal nature of the document, the existing level of cooperation between the two sectors, the legislative, political and social traditions in the given country, and the public institution that has adopted it. The separate sections may be more or less detailed or even missing from a given document, and the success of such a document is not necessarily linked to its exhaustive content. However, an agreement or declaration of more detailed aspects of cooperation and particularly on the implementation mechanisms increases the chances for a meaningful and efficient policy paper.

III.5. How and by whom are PDC "ratified" (adopted, approved)?

EU White Paper on Good Governance: by the EU Commission⁵⁹. Its adoption was prompted by the upcoming enlargement of the EU, which "put to a test" the current methods of EU governance. The Commission decided that these methods require modernization which will help the EU institutions better use their power, and help EU citizens better monitor these institutions and the way they handle their responsibilities and grant them greater endorsement from the public. The Paper also emphasizes that civil society has its responsibilities.

⁵⁸ *Supra* Note 1

⁵⁹ *Supra* Note 11

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

The preparatory work was organized in 12 working groups covering six working areas. Each group carried out external consultations and came up with recommendations as to the proposals that should be formulated in the Paper. The consultations included public hearings and on-line public debates. The specific consultations with civil society organizations reflected the NGOs' demands for greater participation in the decision-making process before the decision is made (rather than just communicating the decision), better organization of the consultation procedures to make them more effective, better administrative focus of NGOs' input by targeting all sectors and institutions concerned, and better recognition of all relevant players instead of a limited number of organizations, as well as a specific article in the Treaty on civil society organizations involved in the Commission's consultative practices.

UK Compacts⁶⁰: by the government and the NGOs representatives. The UK Compacts were built on the basis of two documents: the Deakin Commission Report "The future of the Voluntary Sector" (July 1996) calling for a formal Government/Voluntary Sector agreement, and the Labour Party document "Building a Future Together – Labour's policies for partnership between Government and the Voluntary Sector" (February 1997). In July 1997, a conference of the biggest NGO umbrella organizations confirmed the need for such an agreement and set up the Compact working group involving outstanding NGO experts and academics. The four Compacts with the governments of England, Wales, Scotland and Northern Ireland were signed in October-November 1998, after several months' consultations, becoming the first documents of this type to be signed. National Compacts were followed by local compacts signed between local voluntary sectors and local councils or other public bodies.

Estonian Concept (EKAK)⁶¹: adopted by parliament on December 22, 2002. The process began with the efforts of the Estonian Center for Non-profit Associations and Foundations through a project financed by UNDP. The meeting between Estonian umbrella organizations and politicians discussed possible strategies for the launch of the Concept. Shortly after this meeting, in December 1999, the "Memorandum of Cooperation Between Estonian Political Parties and Third Sector Umbrella Organizations" was signed setting up the outline for the development of the Concept. The drafting involved not only NGO experts and politicians but also academics. The public discussions that followed the development of the draft were intensive and extensive. More than 3000 organizations were invited to participate in the preparation of the final draft.

Croatian Program for Cooperation: adopted by the government in December 2000, upon the initiative of the Government Office for Cooperation with NGOs and largely due to the efforts and personal belief of the officials in the Office in the potential of the voluntary sector. The Program outlines the principles and models for the cooperation between the Government and the third sector. It was based on the results of one national and four regional seminars on the "Development of Civil Society in Croatia - Models of Cooperation between the State, Local Authorities and NGOs". Over 16000 NGOs were invited to participate in the preparation process. The working group involved NGO representatives, state officials, and representatives of the local government and of international organizations in Croatia.

⁶⁰ <http://www.thecompact.org.uk/>

⁶¹ *Estonian Civil Society Development Concept*, <http://www.emy.ee/alusdokumendid/concept.html>

Hungarian Government Strategy: adopted by the government in June 2003. The elaboration of the strategy started in August 2002, soon after the new government was elected. This government made the cooperation and communication with civil organizations a priority objective. The reasons for this were interpreted as genuine good will by some analysts, and as a mere public relations effort to balance popular support of the opposition party, by others. Either way, the elaboration of the policy document and consequent legislation was put on the fast track and by the end of October, the responsible ministry shared a full-fledged draft of the Government Strategy toward the Civil Sector with NGOs and the public. Comments from the NGOs were considered and mostly integrated in the final document.

Initially, the government actually envisioned the signing of a “real” compact type agreement with the representatives of the NGO sector, but as there was strong resistance among civil society organizations towards the notion of a single representative body of the NGOs in Hungary, the government had to abandon this idea. However, the adopted strategy still envisions the possible signature of a bilateral agreement.

The German Policy Papers on poverty reduction⁶² were adopted by the Federal Ministry for Cooperation and Development after discussions with and upon the initiative of German NGOs working in the field of international aid.

The Danish Charter for Interaction was elaborated upon the minister of social affairs and the minister of culture. It was drafted by a joint working group involving representatives of the government (five ministers and local authority officers) and the voluntary sector, and was adopted by the government. after a public debate.

III.6. What are learning points from the implementation of PDC?

Generally, the process of implementation proved that there is a need to involve all players in the implementation of such policy papers – all state agencies concerned, a wide range of civil society organizations, and the public in general; to include experts in the drafting and discussion points; to focus on review, monitoring and reporting on the implementation process and results; to set up in the policy document a plan or outline for future activities with allocated responsibilities; not to miss the momentum for implementation; to disseminate information and increase awareness of the policy paper and its implementation (and its benefits to all parties concerned) among state agencies, NGOs and the public.

The initial publication of the EC White Paper was followed by vast public consultations and the conclusions were summarized in a specific report.⁶³ The process of preparation, adoption and implementation of the document proved the necessity for meaningful

⁶² *Promotion of Civil Society in Developing Countries: the Example of European Development Cooperation*, German Development Institute, Briefing Paper 6/1999, available at [http://www.die-gdi.de/DIE_Homepage.nsf/0/79299BBD20A0B94AC12569F60065C013/\\$File/analy6e_99.pdf?OpenElement](http://www.die-gdi.de/DIE_Homepage.nsf/0/79299BBD20A0B94AC12569F60065C013/$File/analy6e_99.pdf?OpenElement); Eva Weidnitzer, *German Aid for Poverty Reduction*, Berlin: Deutsches Institut für Entwicklungspolitik, available at <http://www.euforic.org/projects/povcasde.htm>; http://www.bundestag.de/gremien/enga/02Zsf_en.pdf

⁶³ *Report from the Commission on European Governance*, Luxembourg: Office for Official Publications of the European Communities, 2003, available at http://europa.eu.int/comm/governance/docs/comm_rapport_en.pdf

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

participation of civil society in each stage of the decision-making process. The fact that consultations took place before, during, and after the adoption of the Paper, helped better formulate the weak points in EU governance, particularly with regards to civil society involvement, and contributed to a more effective pursuit of the proposed measures. The Commission already had a consultation process in place; however, the public response to the issues raised by the White Paper revealed the deficiencies of this process and helped improve it. As a result, the Commission developed new general principles and standards for consultation of interested parties by the Commission.⁶⁴

In the English Compact, implementation is dealt with in specific articles providing for the preparation of codes of good practice on consultation, annual review of Compact implementation, the rights and status of minority groups, etc. The Codes of Practice were drafted by the Compact working group after consultations with the voluntary sector and were published by the Government. The first Codes (on Funding and Consultations) were published in May 2000 after a meeting between the NGOs and the ministers. Such annual meetings are usually held in April. They review the process of Compact implementation, examine the level of Compact awareness in Government and set up the outline for next year's progress.

The institution within Government that is responsible for coordination with the voluntary sector and for Compact implementation is the Active Community Unit (ACU) (within the Home Office), working with the Voluntary Sector Liaison Officers in each department. David Carrington (ACU)⁶⁵ points out that one of the measures of successful implementation of the Compact is the number of local compacts that have been signed. Among the key factors affecting implementation, D. Carrington mentions:

- “the gap between Compact’s enthusiasts and skeptics” resulting from the insufficient dissemination about positive results, success stories, and lessons learnt;
- missing the momentum when the principles and values in questions are “hottest”;
- the negative effect of the Government’s acts – for example, a termination or decrease in funding, refusal to cooperate, or clear breaches of Compact principles -- which undermine its credibility;
- the competence and commitment of the leadership from both sides;
- the time and resources allocated by the Government for the implementation;
- inactivity by the voluntary sector itself;
- lack of collaboration based on old antagonisms.

Carrington advises the creation of a joint implementation strategy that would take advantage of the strengths of both sides and would lead to the successful implementation of the Compact.

As for Central and Eastern Europe, the implementation of the Estonian Concept has some learning points already.⁶⁶ It has become clear that the implementation process is slow and difficult to develop. The positive impact is that politicians, ministries and local

⁶⁴ *Communication from the Commission of the European Communities*, Brussels, 11.12.2002, available at http://europa.eu.int/comm/governance/docs/comm_standards_en.pdf, p.5

⁶⁵ David Carrington, *The Compact – the Challenge of Implementation*, April 2002, available at <http://www.thecomcompact.org.uk/PDFs/Carrington%20Report.pdf>

⁶⁶ Based on input from Kristina Mand, Director, Network of Estonian Nonprofit Organizations

governments refer to EKAK as the guidelines for civil society. Both the government and sector recognize a greater potential role for the non-profit sector than ever before.

Among the most significant lessons is that the creation of a working relationship in the framework for cooperation takes time, effort, and commitment. The diversity of the Third sector means that expectations surrounding the Concept also varied greatly and the practical value of the Concept for each organization is different. In addition, many smaller NGOs were not fully familiar with the content, objectives and importance of the Concept - all of which demands much preparatory, harmonizing and explanatory work.

We may conclude from the first years of implementation experience that the Third sector in Estonia is not yet completely ready for open consultation on public policy matters and more capacity-building activities will be needed to achieve sector-wide competence.

III.7. The importance of local policy documents

In the process of drafting and adopting a PDC with an eye toward the future implementation at the local level, participation of local government officials is essential from the very beginning. Moreover, it can serve as a preparatory stage for the initiation and accomplishment of such a process by local governments and local NGOs.

III.7.1. Adoption of local policy documents on the basis of national PDC

The more “traditional” approach envisages the transfer of the central “compact” to the local level, as it was provided for by the English Compact. In fact, local implementation of a central PDC or “the localization of compacts” can serve as a measure for the success of the national (central) strategy or policy document.⁶⁷ The statements, principles, and objectives of a national PDC are more easily interpreted and applied by the partners at the local level; they know each other better and as a general rule communicate better, problems are more evident and easier to solve when seen locally, and local negotiations and “compacts” have usually a more practical and less political (conceptual) aspect than national ones.

The benefits of having a local compact for the third sector are summarized in England as the following: (1) Community benefit (developing services based on community needs); (2) Realizing organizational objectives (further the cause of the organization); (3) Improving partnership relationships (working closely with local authorities); (4) Using external funding more effectively; (5) Involving local groups in best value and community planning.

This was proved in England where many local compacts followed the national document, and in Estonia where a group of six local councils and local NGOs in the northeast of the country worked on and prepared their common “compact” implementing the principles of the national Concept.⁶⁸ In England, special Local Compact Guide lines were published in July 2001 to assist local partners in their

⁶⁷ *Supra* Note 1.

⁶⁸ *Id.*

negotiations.⁶⁹ As of the end of 2002, progress in developing local compacts in England had been registered in 388 local authority areas.⁷⁰

In Estonia we can observe the seeds of a similar tendency. Local EKAKs have not been created, but in several counties (there are 15 counties in Estonia), non-profits and local governments have formed roundtables to build face-to-face working relationships. This process is feeding well into the European Union accession process as well: namely, for the use of structural funds, the Estonia Enterprise Fund has created local county development centers (on the basis of previous business advisory centers), and these work together with the Network of Estonian Nonprofit Organization (NENO) and its NGO resource and support centers that provide assistance, counselling and information for the joint activities of local governments, local non-profits and local businesses. In other words, there are several initiatives to foster joint activities and common goal-setting.

III.7.2. Adoption of local policy documents as a starting initiative

Another approach toward formalizing local level partnership is demonstrated by the example of the city of Gdynia in Poland where the whole process started locally without the preparatory grounds of a specific national partnership policy. The city authorities initiated the creation of a working group consisting of representatives of the local government and the NGOs operating in the area. The working group focused on the mutual exchange of information about each sector's activity and attempted to answer questions regarding the "hot" issues in the region and the factors affecting the ways to address those problems.

Cooperation between local government and NGOs was considered to be one of the most effective ways to improve the life of the community in Gdynia. As a result of the discussions, the working group drafted a Cooperation Program, which was approved by the City Council. The Program established the institutional structure for cooperation and set up funding forms and mechanisms. Cooperation is financed from the local budget under competitive procedures and in compliance with requirements as outlined by the Program.⁷¹

Local PDC generally include similar content to that covered by national documents. However, local PDC are more likely to be specific and practice-oriented. Therefore, the opening sections included in national documents may be condensed at the local level and the focus placed instead on concrete funding mechanisms, institutional support for NGO-local authorities cooperation, and supervision and reporting mechanisms.

IV. Analysis of Eastern European government policies and practices to assist NGOs in the accession process

Eastern European nonprofits have demonstrated extraordinary achievements during the past 10-15 years. Starting "from scratch" – a legal framework that either prohibited their

⁶⁹ *Local Compact Guidelines: Getting Local Relationships Right Together*, Printed and published by NCVO on behalf of WGGRS and the LGA, July 2000, available at <http://www.thecompact.org.uk/PDFs/LocalCompactGuidelines.pdf>

⁷⁰ [Http://www.thecompact.org.uk/PDFs/Local%20Compact%20progress%20LATEST%20260104.pdf](http://www.thecompact.org.uk/PDFs/Local%20Compact%20progress%20LATEST%20260104.pdf)

⁷¹ Miuchal Gué, "Egyedül nem megy" (It is not possible alone), 1999, CSDF Hungary. Summary in English prepared for ICNL by Istvan Csoka.

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

existence or turned them into government satellites – they have played a remarkable role in the democratic processes that followed the fall of communism in this part of the world. Moreover, their participation in civil society development was a major contribution to the achievements in the economic, political, social and cultural changes that brought about the accession of the new Eastern-European members to the European Union.

This, on the one hand, justified a “reward” on behalf of governments. It called for governmental support to NGOs in each country for a better participation in the Union civil societal life, in political decision-making, and in the access to new financial sources. NGO expectations were naturally directed towards their more active role in the formulation of national positions on EU matters. For that, NGOs needed to develop additional capacity and to acquire new skills demanded by the new political circumstances, new funding requirements, and new partnership opportunities.

On the other hand, a continued and intensified involvement of the Third sector in the various aspects of the accession process seemed only logical, since governments could benefit even further from civil society participation input. In addition to governments’ interest in such involvement, such an approach would be fully in line with the most recent European tendencies for expanding the mechanisms for social dialogue and public participation in EU decision-making.

NGOs had much to offer during the accession process; however, they had much to ask for as well, and their cooperation with national governments was challenged in new ways. These challenges did not always lead to improved cooperation. Certain positive actions were taken -- for example, NGO representatives were invited to participate in consultative meetings with EU institutions (Estonia), or received training on EU funding access (Czech Republic). But not all available means were used in order to prepare national NGOs for EU public life and to support them in the new aspects of their struggle for a more active role or, in some cases, for existence and sustainability.

This section outlines the various possible aspects of Accession countries’ governmental positions regarding NGO participation in the accession process. It examines government policies and practices to support NGOs during the accession process in three ways: involving NGOs in EU decision-making, assisting NGOs in accessing EU funds (and co-financing), and providing direct (financial and institutional) help to NGOs to increase their viability and wider participation in EU life.

IV.1. Was NGO empowerment part of policy development during the accession?

The general attitude taken by the government towards the importance of NGOs in the accession process varies greatly from country to country.

Estonia offers a good example of a government’s awareness of the need to enhance civil society development. The Estonian Joint Consultative Committee⁷² was established in

⁷² *Estonia on the road to accession: challenges and opportunities for civil society*, speech by Liina Carr, EU Coordinator, at the seminar on Organized Civil Society in the Candidate Countries and the Future of Europe, Brussels, 30-31 January, 2003, available at

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

April 2002 to assist the accession process. It included representatives of trade and industry, employers, trade unions, farmers, and the NGO sector. The cooperation is also designed to strengthen the preparations of civil society organizations for accession to the European Union. The dialogue and cooperation encompass all economic and social aspects related to the implementation of the European Agreement. The following bodies are represented on the Estonian delegation to the JCC: the Estonian Chamber of Commerce and Industry, the Network of Estonian Non-profit Organizations (NENO), the Estonian Confederation of Employers (ETTK), the Estonian Farmers Federation, the Estonian Employees' Unions' Association (TALO) and the Confederation of Estonian Trade Unions (EAKL).

Significantly less governmental assistance was extended to Polish nonprofits. Polish NGOs were disappointed to witness the Government's passive attitude in accessing funds that could later be distributed to organized civil society. It is the government's responsibility to negotiate, apply for and manage such funds, although the total amount will also depend on the third sector's capacity as estimated by the EU fund-allocation institutions. Polish NGOs need to learn how to access these funds and how to identify partners for participation in big projects. This is even more urgent given the fact that EU funds will be less available for Polish NGOs after the accession. While NGOs did receive substantial help from EU institutions and from European nonprofit networks, they did not benefit significantly from their government's support in capacity-building, learning, partner-search, and in terms of available funds.

It was only in a few countries that the government actually documented its commitment to involve NGOs in the preparation of the country for accession in any substantial way. The Czech Republic offers a concrete and outstanding example.⁷³ The accession process has given the Czech government an opportunity to develop a specific form of partnership as one of its policies. It is part of the national development program and sectoral operational programs for using the Structural Funds⁷⁴. Although the government does not co-finance the projects submitted under these funds and does not give advance grants, it has established an efficient political and institutional system which assists NGOs as beneficiaries of EU funds..

The National Development Plan is the fundamental document for all operational programs and is being drafted under the auspices of the Ministry for Regional Development. The basic coordinating body in the field of economic and social cohesion is the Steering and Coordinating Committee. One of its members is an NGO representative appointed on the basis of nomination by the Governmental Council for Non-governmental Nonprofit Organisations. The individual chapters of the National Development Plan have been discussed at public workshops with the active involvement of NGO representatives.

http://www.esc.eu.int/pages/en/acs/SCO/future_europe/pays-candidats/docs/intervention_Carr_seminar_en.pdf

⁷³ Information regarding the possibility of non-state non-profit organisations' participation in the process of integration of the Czech Republic into the European Union

<http://wtd.vlada.cz/eng/vybory.htm>

⁷⁴ Prepared on the basis of underlying documents provided by the Ministry of the Environment, the Ministry of Agriculture, the Ministry of Labour and Social Affairs, the Ministry for Regional Development, and representatives of NGOs on the working bodies related to the sectoral operational programmes being drafted by these Ministries.

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

On that basis, several operational programs have been drafted and implemented under the competence of the separate ministries. They permitted NGOs operating in a given area to participate in the preparation of the ministry's "action plans" for the development of that area and to have an improved access to EU funding provided for the same purpose.

For example, the *Joint Regional Operational Programme ("JROP")* was drafted as a multi-fund programme for the European Regional Development Fund and for the European Social Fund within the remit of the Ministry for Regional Development. The Commission for Regional Development was constituted as a basic coordinating body responsible for the preparation of measures concerning regional policies. The non-profit sector has been represented in the Commission as well as in six of the eight working groups established by the Ministry that drafted the Programme. The current version of JROP refers to NGOs as the final beneficiaries of support in respect to the following priorities: Local development of human resources; Improving the environment in municipalities and regions; Revival of rural areas; and Development of tourism in municipalities and regions.

Another operational Programme, *Objective 2 for the Prague Cohesion Region*, was drafted under the competence of the Ministry for Regional Development for purposes of utilization of the European Regional Development Fund by the City of Prague; the non-profit sector is represented in the Commission of the Prague Cohesion Region Council on a principle similar to that applied under JROP. This programming document envisions NGOs as the final beneficiaries of support from the European Regional Development Fund.

Following a similar pattern, NGOs have also been involved in the preparation of several other programs, which allow them to benefit from EU funds. Among these programs are:

- *The Human Resources Development Operational Programme and Single Programming Document for Objective 3 of the Prague cohesion region* drafted within the Ministry of Labour and Social Affairs and offering NGOs an access to the European Social Fund;
- *The Development of Rural Areas and multifunctional agriculture* prepared and implemented by the Ministry of Agriculture and assisting NGOs to utilize the financial resources of the European Agriculture Guidance and Guarantee Fund. The fundamental element of this program includes the establishment of a local action group, which must be capable of, and responsible for, drafting a strategy of local development and its implementation. Local action groups must therefore serve as a well-balanced representation of partners at the location in question, who will be realistically able to enforce such a strategy – the role of NGOs within such groups is unquestionable.
- *The Operational Programme Environment* prepared by the Ministry of Environment and including NGOs as beneficiaries of the financing from the European Regional Development Fund. The partnership principle for this program is being pursued by having representatives of NGOs included in the implementation structure, in particular as members of the monitoring committee. NGOs also participate in the work on preparing the strategic environmental assessment.

During the preparation of the programmatic documents concerning the access to the Structural Fund, representatives of Czech NGOs drafted and submitted their comments

on them. Fourteen regional roundtables were organized and NGOs working in the respective regions had the opportunity to comment on the documents. A number of remarks and comments originated from these roundtables and have been delivered, via several routes, to the drafters of the programming documents. However, a barrier that prevented the proper delivery and use of the comments is that the country lacks a uniform system of submitting comments and remarks agreed upon and approved in advance. If such a system had been applied at the national level, it would have ensured that the necessary space for participation and consultation was provided to representatives of NGOs.⁷⁵

IV.2. Government Support to NGOs

IV.2.1. Capacity building

It was widely recognized in accession countries that NGOs needed to strengthen their organizational capacities in order to be able to access pre-accession, but especially, post-accession financing sources. Strengthening organizational capacity may include training sessions on project planning and proposal writing as well as educating NGOs on how the EU works and how they can participate in EU-wide networks for policy advocacy. Moreover, government support for general organizational development, e.g. helping to introduce quality assurance systems for service-providing NGOs, was also a demonstrated need.

However, apart from the inclusion of such activities in the PHARE and other pre-accession grant mechanisms, governments have done little to increase the capacity of the NGO sector in comparison to the investment made in developing the capacity of enterprises. In the case where there have been such examples, they occurred as a result of the initiative of the individual government agencies or public officials and not a consequence of a coordinated public policy. For example, NGOs in the Czech Republic have been trained on the procedures for application for EU funding; however, this effort was not part of the government's global policy on EU accession or on civil society support and was realized through separate state agencies.

A more positive example could be cited from Hungary, where the government launched a so-called *Proposal Preparation Fund*, which provides technical assistance specifically to local governments, small-region associations and nonprofit organizations. Those organizations that aim to apply to the EU Structural Funds were given the opportunity to send an idea to the Fund. The Fund then provided the necessary means to develop the awarded ideas into full-fledged project proposals, which stood greater chances of securing EU funding. In 2003, the Proposal Preparation Fund awarded close to 500 applicants, including local governments and civil organizations, with technical assistance worth a total value of 27 million Euros. For the 2003 round, the government and the PHARE program both contributed 50% to the Fund; based on the success of this initiative (they received altogether more than 2,800 ideas) the government decided to launch the program again in 2004 at the same level of support, even without the PHARE contribution.

⁷⁵ Similar systems are in place in EU member states (e.g. in Finland) and recently also in Slovakia (pursuant to a governmental resolution). www.rokovania.sk It is worth mentioning among the specific problems the issue of a more precise definition of applicants for a grant, final beneficiaries and target groups (in the programming documents for the Structural Funds).

IV.2.2. Financial means

National financing and co-financing mechanisms are essential not only for NGOs' sustainability in general but they may also be a requirement for access to EU funds. The structure of these mechanisms has been used for the distribution of external funding. For example, in the Czech Republic, the pre-accession assistance provided by the EU under the Accession Partnerships and pre-accession financial mechanisms was administered under a separate Program of Civil Society Development and through the Foundation for Development of Civil Society. The Foundation was based in Prague and was established for this purpose on the initiative of the Czechoslovak Federal Government in 1992. A total of EUR 16,770,000 was distributed under the Program by the end of 2001.

The Estonian Joint Consultative Committee created in 2002 (see above) had concluded that Estonia needed to develop such financing mechanisms. They were necessary not only to improve the level of information regarding pre-accession issues and access to Structural Funds but also to establish a national co-financing system and to ensure NGO involvement in the discussion and adoption of funding solutions.

The Hungarian government chose another way of addressing the need to strengthen NGOs financially at the doorstep of the EU. While the role or importance of NGOs was not explicitly mentioned in the National Development Plan and the consequent policy papers, the Hungarian government emphasized the importance of supporting NGOs in the accession process in its Governmental Strategy Towards the Civil Sector (see Section III). The National Civil Fund, set up to strengthen the NGO sector (see Section I.7) has established a special college (grant-giving body) to support efforts of NGOs in positioning themselves and the sector in the accession process.

In addition, national efforts should be backed up by EU preparatory work. The European Commission should help not only civil servants but also civil society organizations to acquire knowledge of the Structural Funds. Civil society organizations should, on their side, make efficient use of Structural Funds resources in the future and carry out effective preparatory work so as to be ready for the co-financing and management of the projects concerned. The Commission provides support to a number of European-wide NGO networks in order to promote this function, which in turn reach out and educate NGOs in accession countries in European matters. Among these organizations are the European Citizen Action Service (ECAS, www.ecas.org), the European Council for Voluntary Organisations (CEDAG, www.cedag.net) or the TRIALOG project (www.trialog.or.at, which facilitates the inclusion of development NGOs from accession countries into CONCORD, the European NGO confederation for relief and development).

IV.3. Government efforts to apply EU principles on consultation and social dialogue

An important area of government action and an indication of meaningful recognition of the NGO sector is the extent to which governments apply the principles of public participation, consultation and social dialogue in their legislation.

IV.3.1. Involving NGOs in the decision-making processes

In that regard, there have been good initiatives in several accession countries. For example, the Hungarian government introduced the Open Legislation Program to improve the quality of legislation through increasing public participation. In the draft of a new Law on Legislation, several elements are reflected that represent cutting-edge practices in European legislative procedures, and which often concern NGO participation as well (for example, prior and a post-enactment impact assessment, publication of draft legislation etc.). Recent legal initiatives affecting the NGO sector, such as the Law on the National Civil Fund Program and the Draft Law on Volunteering have been widely circulated and discussed among the NGOs in Hungary, and, perhaps more importantly, reflect the comments and considerations NGOs raised in the discussions.

In Poland, the government adopted a Regulation on Social Dialogue in October 2002. The preamble of this document acknowledges and emphasizes the importance of civil society and the organizations that are formed within civil society. The document defines three main categories social partners: collective labor representatives, i.e. trade unions and employers' organizations; organized citizens initiatives, i.e. public benefit associations and foundations; and self-interest representation groups, i.e. professional and commercial associations, local government federations.

The regulation outlines the basic rules for cooperation between government and the named social partners, and it also prescribes rules for the conduct of government and public administration in their relationship with social partners. The regulation contains important and innovative procedures; for example, it obliges the ministries responsible for submitting a legal draft to Parliament not only to consult social partners on the draft, but also to summarize their comments and provide justification if they were rejected, when submitting the draft to the Parliament.

IV.3.2. Assisting NGO representation in EU bodies

The efforts of NGOs have been directed at partnership on two levels: one, with EU institutions, and two, with EU nonprofit networks. Both have provided invaluable assistance in the preparation of the Accession countries' third sectors for joining the Union. As the Polish NGOs declared at the conference on Building Partnerships between the Polish and the EU NGOs, "Polish non-governmental organizations are involved only partially in the activities at the EU level. They do not have the influence on the Community law regulations, which already affects their activities in different fields... The Polish non-governmental sector is not visible among the NGOs in the EU... The crucial barrier is the lack of funds as well as the lack of the Polish NGOs representation..."⁷⁶

The importance of representation is not only in being "close to the source", i.e., having a more complete access to funding and other relevant information, but also in the possibilities for participation in decision-making, discussion and consultation.

The Polish NGO Office in Brussels was founded with these considerations in mind. It is an initiative of over a dozen major Polish nongovernmental organizations, foundations and NGO networks working in a variety of sectors. Its aim is to prepare Polish NGOs

⁷⁶ See materials of the Conference on Building Partnerships between the Polish and the EU NGOs, 5-6 April, 2001, <http://www.fip.ngo.pl/fipeng/html/partnership.html>

A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation

for Poland's membership of the EU. Part of the Office's work consists in easing the entry of Polish NGOs into the various European networks of NGOs. The NGO Office in Brussels and Warsaw spends much of its time providing information on EU policies to Polish NGOs. The work of the Convention on the Future of Europe is one of the areas covered by the Office in its various news items and bulletins. The Polish NGO Office is currently the only NGO representation from a candidate country in Brussels.

Czech NGOs get involved in the European Union's concrete policies (structural, regional, agricultural) by participating in formulating the policies (by making comments) based on the partnership policies elaborated above, and also by being the final beneficiaries or partners of grants and projects under these policies (mostly delivery of social services). Examples of such active NGOs include CpKP (Centre for Communitarian Work), Omega Liberec, SKOK (Standing Commission of the Sectoral Conference), Hnutí Duha (Rainbow Movement). Czech NGOs are also active in local branches of EU networks of NGOs and some address issues linked to EU integration – however, they do so with their own financial resources.

Czech NGOs also monitor compliance by the Czech Republic with its obligations based on the introduction of the *acquis communautaire* into the Czech law. They do that primarily by monitoring the current status, issuing reports, engaging in advocacy campaigns and awareness raising, and co-operating in the drafting of implementing regulations. At present, several organizations engaged in such activities (like the Czech Consumer Protection Association, the Rainbow Movement, Earth's Children) are relatively weak and are often refused by state and public institutions. From the perspective of incorporation of the applicable *acquis communautaire* and further monitoring, however, their role of a "watch-dog" is irreplaceable.

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