

*Transparency and accountability
regulation of NPOs in Europe and the
Public Benefit Status*

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Presentation structure

- ❑ Background: *Study on recent public and self-regulatory initiatives improving transparency and accountability of non-profit organisations in the European Union*
- ❑ Issues in the regulation of PBO status
- ❑ Role of EC and European institutions

Background

- ❑ Study commissioned by the Directorate-General of Justice, Freedom and Security of the European Commission
- ❑ Research started in February 2008
- ❑ Study presented February 12, 2009
 - not yet released to the general public

Background

- ❑ Study originated in intention to enhance implementation of counter-terrorism policies within EU.
- ❑ Scope and relevance go beyond that; nonprofit sector gained economic and social significance over the past decades.

Goals of the Report

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

Scope of Research

- ❑ Geographic: on the EU level and in the 27 Member States

- ❑ Substantive: programmatic and financial accountability and transparency
 1. public accountability to Government
 2. accountability to donors or the general public (*“upward accountability”*)

Definitions: Accountability

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

Definitions: Transparency

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

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

General Findings

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

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

2. Driving force: growing social and economic importance of the sector.

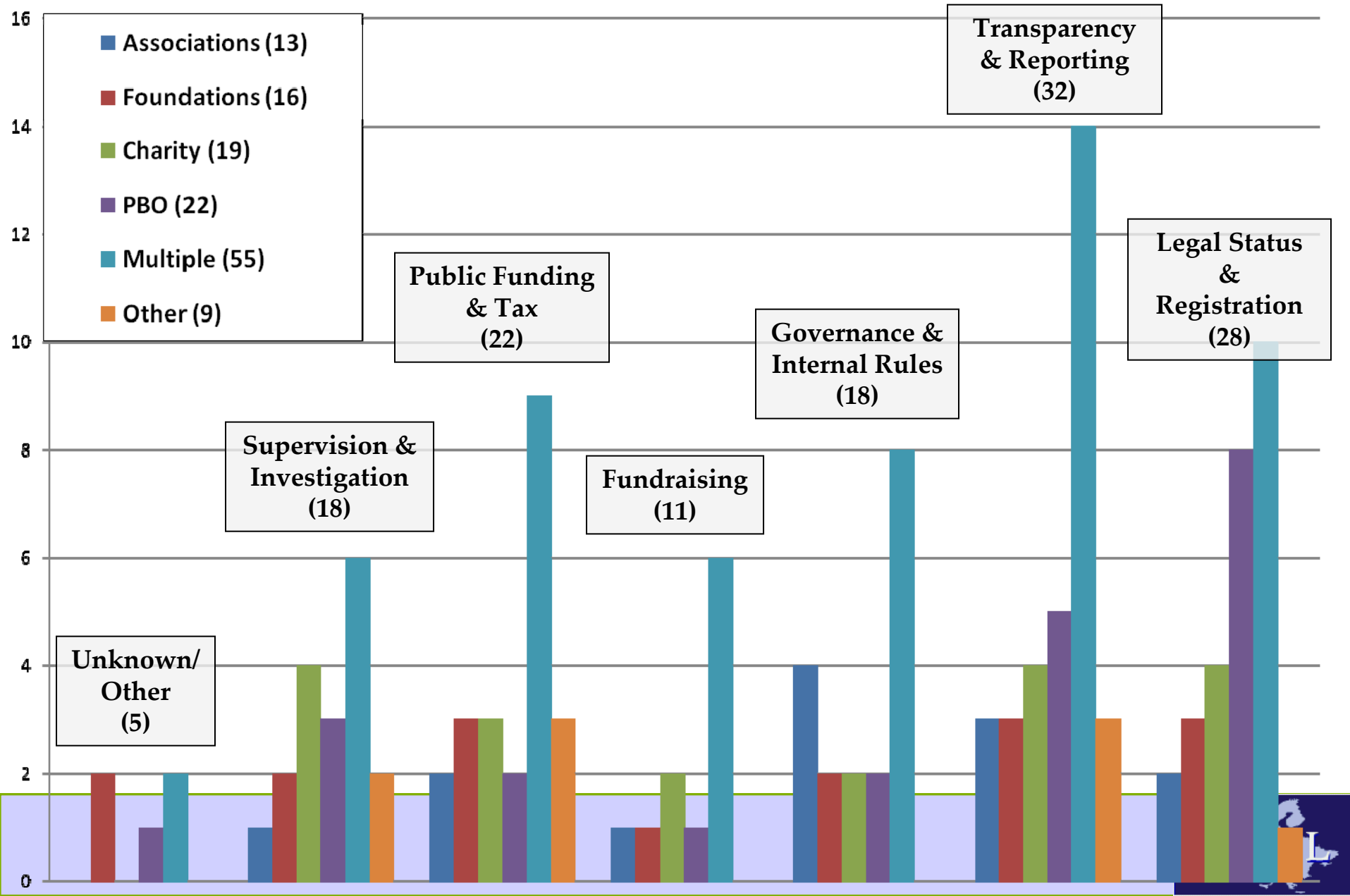
3. Specific motivations include:

- Transparency;
- Value for (public) money;
- Clarification of role – legal and societal;
- Improved governance and effectiveness;
- Prevention of fraud / crime;
- Countering terrorist financing/money laundering threat.

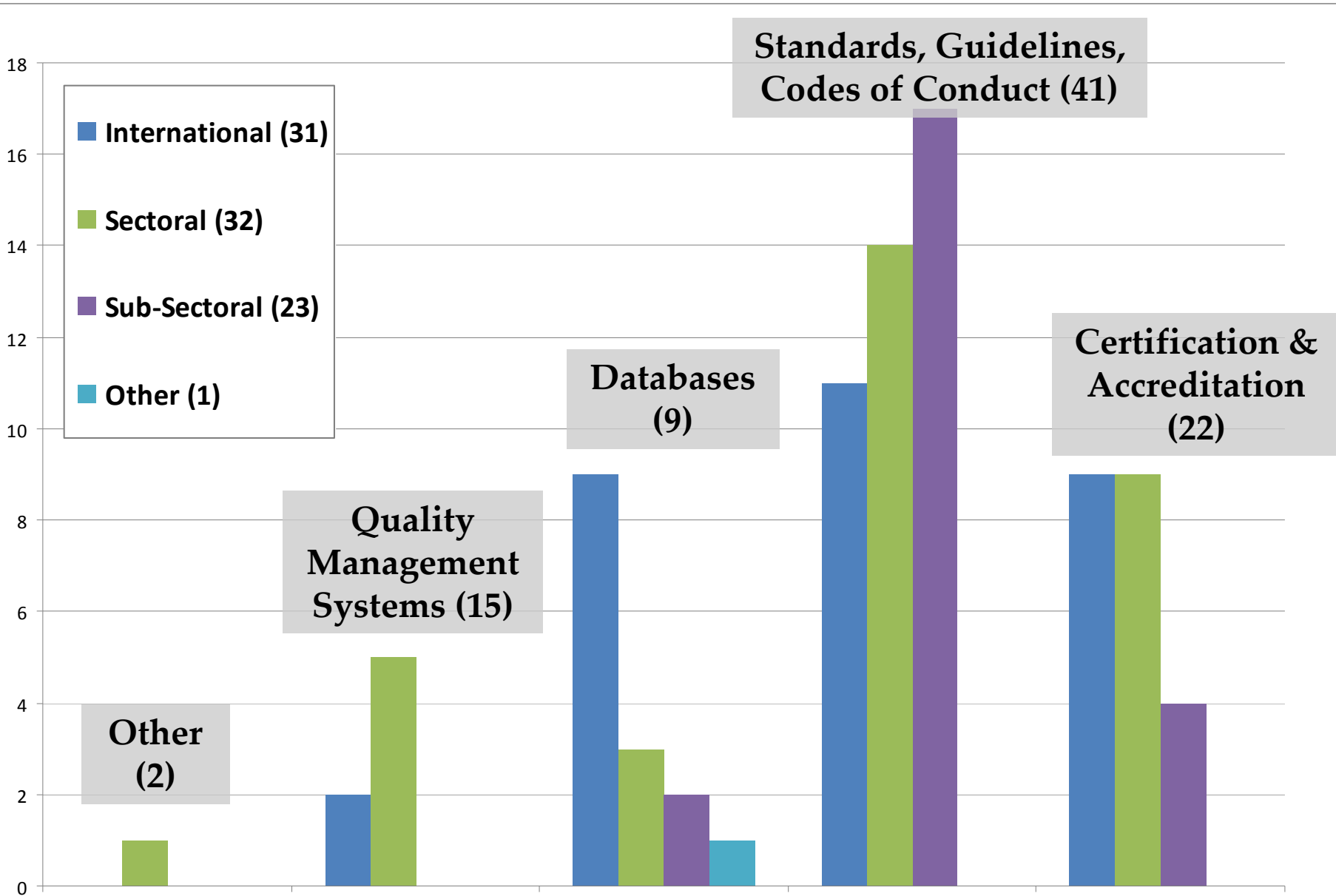
Trends in Public Regulation

- ❑ Developing comprehensive NPO legal frameworks;
- ❑ Creating national registries or making existing registration data more easily accessible;
- ❑ Introducing PBO status and/or strengthening accountability requirements for PBOs;
- ❑ Tightening regulation of fundraising and management of funds;
- ❑ Strengthening supervision and investigation powers;
- ❑ Increasing transparency in public funding for NPOs.

Map of Public Regulation Initiatives



Map of Self-Regulation Initiatives



Legal, Welfare and Development

Models

British Isles

Legal: Common Law
Model: Liberal (Anglo-Saxon)
Sector characteristics: Highly institutionalised, independent

Nordic

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

New Member States

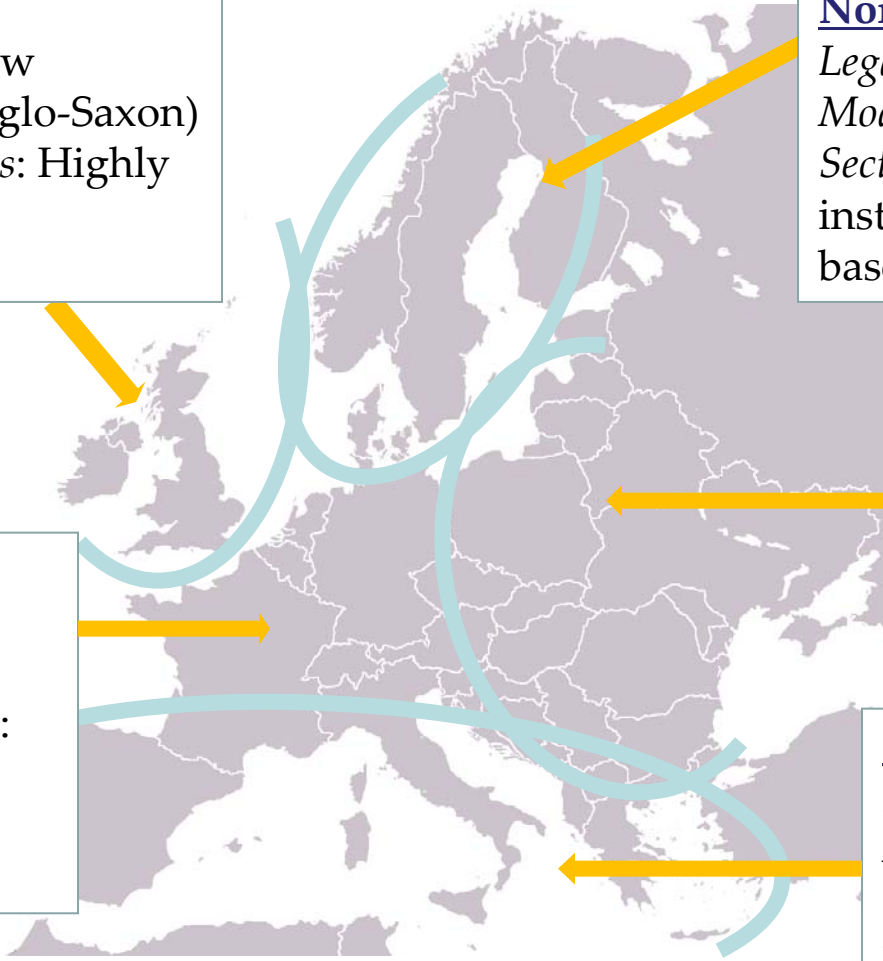
Legal: Civil Law
Model: Emerging
Sector characteristics: weaker, dependent

Continental

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

Mediterranean

Legal: Civil Law
Model: Emerging
Sector characteristics: recently institutionalized



Definition of “Public Benefit”

- No single succinct definition
 - The concept itself consists of several interrelated elements: activity types, beneficiaries, financial conditions etc.
 - Political concept – may leave discretionary room for implementers.
 - Social-cultural concept – evolves over time, public sentiments and expectations change.

Two approaches

- Common Law: “charity concept”
 - Charitable organizations = “sector”
 - Legal form doesn’t matter
 - Unified treatment of exemptions
- Continental Law: “public benefit status”
 - PBOs = “elite” of the sector
 - Applicable (usually) to nonprofit legal forms
 - Builds on other exemptions

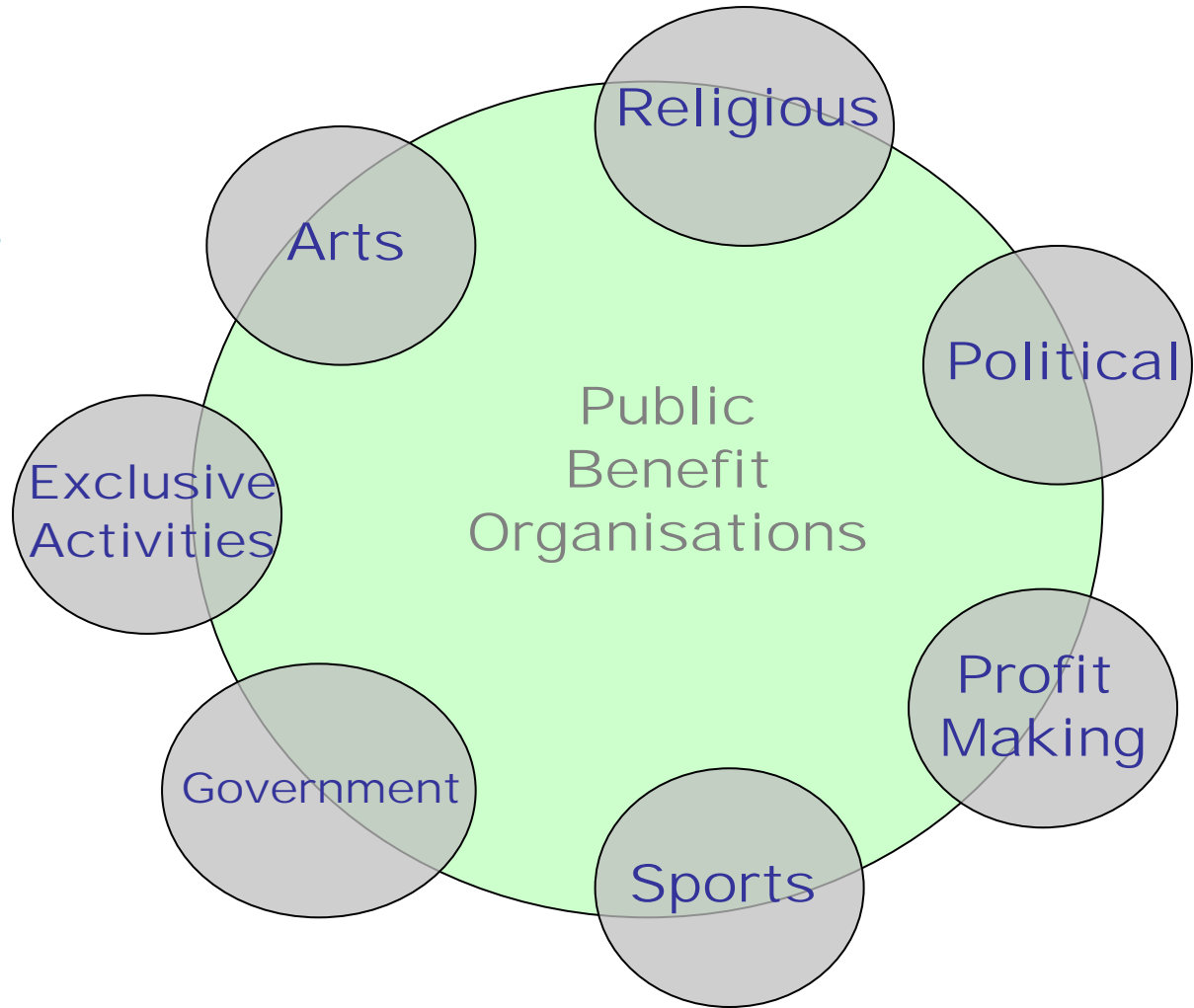
Definition of “Public Benefit”

- Enumeration of types of activities that benefit the public
 - A “catch-all” category (open ended list)
 - “Principal” or exclusive engagement in PB activities
- Criteria related to beneficiaries
 - Public at large
 - The needy
 - Non-exclusive services (e.g. in case of associations)
- Non-profit distribution constraint and possibly further financial restrictions (e.g. all income used for PBO purposes, unrelated economic activities not allowed)

Public Benefit Tests

Fixed or
flexible definitions

Who applies the
test?



Issues in PBO regulation

- What is the overall goal of the regulation?
 - Ensure consistency of tax benefits and accountability for public benefit purposes (more effective fiscal regulation)
- (Why are tax benefits provided?! – Persche case)*
- A range of other political purposes...

What can be goals of PBO legislation?

E.g.:

- ❑ Increase **transparency and accountability** in the sector
- ❑ Encourage flow of **resources** to NGOs – e.g. private giving, 1%
- ❑ Facilitate **state-NGO** relationship – e.g. contracting
- ❑ Facilitate relationship between **NGOs and public**, image building for sector

Issues in PBO regulation

- Minimum standards / low entry scheme
 - Aim to reach out to all NPOs, increase overall level of transparency & accountability

or:

- “Club of excellence” / high entry scheme
 - Aim to set example, or hold to account the most funded or most visible NPOs

Issues in PBO regulation

- How low or high the threshold will be? (I.e. how easy or difficult it will be to become a PBO?)
 - Conditions at entry or through supervision?

- How formal or substantial it will be? (I.e. check papers only or look at what you do?)

Issues in PBO regulation

- ❑ How to ensure proportionality?
- ❑ Should there be levels of PB status?
- ❑ How much is it considered under the “public” or “private” realm?
 - e.g. openness of board meetings, salaries of chief executives

Issues in PBO regulation

- What will be the balance between benefits and obligations?
 - How to deal with existing benefits when introducing a PBO status? (Romania, Lithuania)
- What is the “value” of the “PBO brand”?

Economic activities

Principles for regulating economic activities of NGOs:

- Should be allowed with or without further conditions.
- May be taxed and should receive limited exemptions under further criteria.
- Related and unrelated activities should be treated separately in taxation.
- Should not lead to unfair competition with business (conform with EU state aid provisions?!)

Taxation of NGO economic activities in CEE

Prohibit direct ec.act.	Macedonia
Not subject to tax	BiH
Fully taxed	Albania, Bulgaria, Slovenia
„Relatedness“ test	Estonia, Latvia
„Destination of income“ test	Poland, Kosovo
Hybrid test / tax thresholds	Croatia, Czech Rep, Hungary, Romania, Slovakia, Serbia and Montenegro

EU-level initiatives and the role of European institutions

- ❑ Council of Europe: Recommendations for the Legal Status of NGOs (2007)
- ❑ European Court of Justice: Case law promoting tax incentives across borders (Stauffer case, Persche case – 2009)
- ❑ EFC: A European Foundation Statute?
- ❑ Guidestar: A European NPO Database?

EU-level initiatives and the role of European institutions

- EC as funding agency
 - Problem-points, e.g. 7% cap on administrative expenses

- EC as regulatory agency
 - VAT (6th Directive) – not NGO specific!
 - Counter-terrorism policy: a Code-of-Conduct for NPOs in the EU?

Role of EC in European level regulation of NGOs

□ Regulator

□ “Qualifier”

?

□ Facilitator

Thank you!

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