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The REGULATORY FRAMEWORK for **FUNDRAISING**

— in EUROPE —

ECNL European
Center for Not-
for-Profit Law

2017



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List of Abbreviations

CEE	Central and Eastern Europe
CSO	Civil Society Organization
DMS	Donors Message Service
EC	European Commission
ECJ	European Court of Justice
EEA	European Economic Area
EFA	European Fundraising Association
EU	European Union
HMRC	Her Majesty's Revenue and Customs
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
IoF	Institute of Fundraising
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
ONLUS	Nonprofit Organization of Social Utility (Italy)
PBO	Public Benefit Organization
PQASSO	Practical Quality Assurance System for Small Organizations Quality Mark
PSMS	Premium Short Message Service
QR Code	Quick Response Code
SMS	Short Message Service
TGE	Transnational Giving Europe
UN	United Nations
UK	United Kingdom
VAT	Value-Added Tax

1. INTRODUCTION

Financial sustainability is a primary challenge for civil society organizations (CSOs) worldwide.¹ Philanthropy, or the voluntary donation of money and other resources for a common purpose, has been a key traditional income source and plays an important role in diversifying CSO funding. It derives from the basic human urge to help other people and support the common good.

In recent years, philanthropy has flourished in all regions of the world. According to the *World Giving Index 2016*, the world is becoming ever more generous, with more people giving time or money or helping others than in the previous seven years. For the first time, more than half of those surveyed say they have helped a stranger in the past year.²

In Europe, three main factors lie behind the recent increase in giving: the growing professionalism of fundraising activities, technological developments, and the better use of social media. The growing professionalism of fundraising activities reflects the CSO sector's firmer commitment to ethical standards of practice and the wider availability of training in fundraising.³ At the same time, better fundraising methods and tools have developed over the past decade. With the expansion of new technologies, solicitations by mail and "street fundraising" (that is, the solicitation of donations in public places), have given way to creative new approaches to gathering significant resources

from individuals and businesses. For example, the collection of cash is increasingly supplemented by non-cash donations, thanks both to a larger number of credit-card owners and to the development of devices and applications that facilitate online transfers. Many CSOs in Europe also now use social media to promote their activities and campaigns and encourage effortless donations.

Despite these positive trends, a robust backlash against civil society is gathering that could threaten the financial sustainability of CSOs around the world. Since 2012, more than 161 laws constraining freedoms of association and assembly have been proposed or enacted in seventy-five countries, including thirty-four initiatives in Europe. The rise of philanthropic protectionism primarily constrains the ability of CSOs to receive cross-border funding, with impediments ranging from requirements that they obtain governmental approval before accepting foreign funding to onerous reporting obligations, stigmatization of foreign-funded CSOs as "foreign agents," prohibitive tax burdens, and limits on the amounts of foreign funding that CSOs may receive or spend.⁴ United Nations (UN) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai has emphasized⁵ that access to funding is an integral part of the freedom of association protected by numerous international human rights instruments.⁶ Thus restrictions on foreign funding are constraining

¹ In this paper, the term "civil society organization" (CSO) is used in the narrow sense to identify any organization that meets the following criteria: 1) it is a voluntary organization established by a private instrument (such as a contract or act of establishment) rather than by law; 3) it may be a membership or non-membership; 4) it is not part of the governmental structure; 5) it is established to pursue public- or mutual-benefit goals; and 6) it is not for profit. The term may include associations, foundations, private institutions, not-for-profit corporations, and any other organization meeting the above criteria. While other forms of organization (for example, political parties, religious organizations, or trade unions) are sometimes included under the rubric "civil society," in this report the focus is on CSOs in the narrow sense only.

² Charities Aid Foundation, *World Giving Index 2016*, 5, https://www.cafonline.org/docs/default-source/about-us-publications/1950a_wgi_2016_report_web_v2_241016.pdf?sfvrsn=4.
https://www.cafonline.org/docs/default-source/about-us-publications/caf_worldgivingindex2015_report.pdf?sfvrsn=2.

³ European Fundraising Association, "Fundraising in Europe 2013/14," March 2014, http://www.fundraising.cz/wp-content/uploads/2014/04/efa_survey_mar_2014.pdf.

⁴ Douglas Rutzen, "Aid Barriers and the Rise of Philanthropic Protectionism," *International Journal of Not-for-Profit Law* 17, no. 1 (March 2015), p.8, <http://www.icnl.org/research/journal/vol17ss1/Rutzen.pdf>.

⁵ United Nations, Human Rights Council (UNHRC), "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai on "Civil Society's Right to Seek, Receive and Use Resources- Human, Material and Financial," A/HRC/23/39, April 24, 2013, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/23/39.

⁶ Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 50 of the Council of Europe's recommendation on the legal status of non-governmental organizations (NGOs) in Europe are among the most prominent examples. For more information see Section 3 of this study.

the space for civil society in a trend that has been noted by media worldwide.⁷

Domestic philanthropy is an important alternative source of funding for CSOs globally, especially in countries where CSOs face restrictions on accessing foreign funding or conducting economic activities, international donors are phasing out their operations, or state support to CSOs is insignificant. However, the legal framework for domestic fundraising can also impose limitations—for example, through measures aimed at preventing terrorism financing and money laundering. In some cases, legislation limits cash payments to CSOs or requires them to identify donors, which can impede their ability to solicit anonymous donations.⁸

This report aims to begin a dialogue on how best to regulate fundraising and create a more enabling environment for the financial sustainability of CSOs. To date there has been comparatively little research on the regulatory framework governing CSOs' fundraising activities. To fill this gap, we look at country-level regulations in Europe, with examples from all regions: Western Europe (England and Wales, Scotland, Ireland, France, and Germany), Central Europe (Hungary, Czech Republic, Slovakia, and Poland), Eastern Europe (Ukraine and Moldova), Southern Europe (Italy and Spain), the Western Balkans (Macedonia), and Northern Europe (Sweden and Finland). We selected these countries to showcase various regulatory models and diverse fundraising traditions. The primary audience for the report is CSOs and public officials who wish to create a better environment for fundraising activities. In addition, the paper should be of interest to academics, researchers, and fundraising professionals who seek to enrich their understanding of this topic.

The report is based on desktop research of country laws and regulations, articles, and studies. It maps out the spectrum of legal issues

affecting fundraising, including definitions of fundraising; international and European legal frameworks and traditions pertinent to fundraising; elements of country-level regulation, such as eligibility, licensing, and reporting requirements; state incentives for fundraising; and the rules governing cross-border donations. In addition, the report looks at self-regulatory initiatives that help shape the fundraising values and practices of CSOs. It ends with a set of conclusions and recommendations about fundraising in Europe and offers case studies for discussion from Slovakia, the United Kingdom (UK), and Spain. The case studies provide insight to the regulatory framework of fundraising in three countries from different regions with different philanthropic culture and legal systems. The UK has a strong charitable tradition with an elaborate legal framework for fundraising. Slovakia has a younger charity tradition and recently underwent a legal reform on fundraising. Spain is known for its vast range of CSO self-regulatory initiatives, including those dedicated to fundraising activities.

The discussion of fundraising regulation is very timely, as over the past decade there has been a desire throughout Europe to revisit the regulatory framework for fundraising. The legislative changes show diverse trends: many aim to reduce administrative burdens and regulatory controls on fundraising activities but there are examples for increasing state oversight. Some countries have introduced new laws: for example, the Polish Act on the principles of conducting public collections and the new Slovak Law on Public Collection were both adopted in 2014. In the UK, the Charities (Protection and Social Investment) Bill conferring additional powers on the Charity Commission to regulate fundraising and proposing a new fundraising regulator was

⁷ See, for example, "Donors: Keep Out," *Economist*, September 13, 2014, <http://www.economist.com/news/international/21616969-more-and-more-autocrats-are-stifling-criticism-barring-non-governmental-organisations>.

⁸ For example, in Kosovo CSOs may receive contributions in cash whose value does not exceed €500 (approximately \$545) from a single source per day but not more than €1,000 (approximately \$1,090) per year. They may pay to a single receiver cash that does not exceed €500 (approximately \$545) in a single day but not more than €5,000 (approximately \$5,450) during the year, based on the Law on the Prevention of Money Laundering and Combating Terrorist Financing adopted in May 2016. In Spain, foundations and associations are required to identify and verify the identity of all persons who provide donations or resources in amounts equal to or greater than €100 (approximately \$109), according to the Prevention of Money Laundering and Terrorist Financing Act, no. 10/2010, April 28, 2010, <http://www.kuvendikosoves.org/?cid=2,191,588>

passed in 2016.⁹ In France, a new regulatory regime for crowdfunding came into force in 2014¹⁰ and a special law on SMS donations was adopted in 2016.¹¹ In Germany, thirteen of the sixteen *Länder*, or federal states, have repealed their Collection Laws in the past two decades. The Finnish Interior Ministry has presented a proposal for a new fundraising act that would replace the current Money Collection Act, make fundraising activities more flexible, and replace the prior authorization procedure.¹²

This report was developed by a team of experts from the European Center for Not-for-Profit Law (ECNL) and International Center for Not-for-Profit Law (ICNL). ECNL is based in Budapest, Hungary, and serves as a leading European resource and research center on civil society law, with a mission of promoting an enabling legal and fiscal environment for civil society in Europe and beyond. ECNL experts have provided support that directly and positively influenced more than eighty policies and laws affecting CSOs across Europe, the Balkans, the Eurasia region, Turkey, Iraq and Mongolia. ICNL promotes an enabling environment for civil society and public participation worldwide. Since its inception in 1992, ICNL has been the world's leading organization promoting progressive laws to govern civil society and has provided technical assistance to CSO law reform initiatives in more than one hundred countries.

⁹ Withersworldwide, "New Fundraising Requirements Introduced in Final Amends to Charities Bill" (February 18, 2016), <http://www.withersworldwide.com/news-publications/new-fundraising-requirements-introduced-in-final-amends-to-charities-bill--2>.

¹⁰ Reid Feldman and Hubert de Vauplane, "France Crowdfunding: Update on the Legal Framework," Renewable Energy Crowdfunding Conference, <http://www.recrowdfunding.eu/news-updates/2015/10/27/the-legal-framework-of-crowdfunding-in-france>.

¹¹ France, Law for a Digital Republic, no. 2016-1321 (October 8, 2016), <https://www.legifrance.gouv.fr/eli/loi/2016/10/7/ECFI1524250L/jo>

¹² "Interior Ministry Proposes New Law on Money Collection," *Finland Times*, November 6, 2014, <http://www.finlandtimes.fi/national/2014/11/06/11417/Interior-Ministry-proposes-new-law-on-money-collection>. Comprehensive reform of the Money Collection Act was suspended in 2016 until further notice. See <http://www.finlandtimes.fi/national/2014/11/06/11417/Interior-Ministry-proposes-new-law-on-money-collection>. Comprehensive reform of the Money Collection Act was suspended in 2016 until further notice. See "Finnish Crowdfunding Act—Ministry of Finance Provides Answers," European Crowdfunding Network (April 12, 2016), <http://eurocrowd.org/2016/04/12/finnish-crowdfunding-act-ministry-finance-provides-answers/>

2.1. DEFINITIONS OF FUNDRAISING

In the broadest sense, “fundraising” encompasses all activities implemented by a CSO to ensure that it has the revenues necessary to sustain itself and achieve its mission.¹³ The *Fundraising Dictionary* developed by Association of Fundraising Professionals defines fundraising as the “raising of assets and resources from various sources for the support of an organization or a specific project.”¹⁴ In principle, three main sources of income are available to CSOs:

1. **Philanthropy**, or financial and in-kind voluntary donations and support from individuals, corporations, and grant-making organizations, such as foundations;
2. **Income-generating activities**, such as fees for services, membership fees, economic activities, and investments; and
3. **Government funding**, including grants and subsidies.¹⁵

In this paper we use the term “fundraising” in the narrow sense to refer to efforts to tap into the first source of income through the solicitation of voluntary philanthropic contributions. Donors may make contributions in different forms, including cash and other monetary donations, in-kind donations, and donations of shares and dividends.

Legal definitions of fundraising vary from country to country or may be totally absent in a national legal framework. In some countries fundraising is defined in the **laws and regulations that set the general framework for CSO operations**. For example, in Hungary, “fundraising” is defined in a government decree on CSO financial management, fundraising, and public benefit status as “an income-generating activity that is carried out by a beneficiary or its proxies to achieve the public benefit or other mission-related purpose of the organization.”¹⁶

2. WHAT IS FUNDRAISING?

¹³ Technical Assistance for Civil Society Organizations (TASCO), *Fundraising and Accessing EU Funds* (Sarajevo: Technical Assistance for Civil Society Organizations, 2011), 14-15, http://www.tasco.org/doc/doc_manual_2.pdf.

¹⁴ The Association of Fundraising Professions was established in 1960 and has now more than 30,000 individual and organizational members worldwide.

¹⁵ Katerina Hadzi-Miceva and Nilda Bullain, *Social Economy: Building Inclusive Economies: A Supportive Financing Framework for Social Economy Organizations* (OECD Local Economic and Employment Development [LEED] Program, 2007), 218. Abstract at <https://www.oecd.org/cfe/leed/thesocialeconomybuildinginclusiveeconomies.htm>.

¹⁶ Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, 350/2011 (XII.30), art. 1 (5) b) (2011), http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100175.TV.

In Moldova and Ukraine, **laws that regulate charities and charitable activities** address fundraising as types of charitable activity or sources of income. In Moldova, fundraising activities are described as "campaigns to collect benefactors and volunteers, including the organization of entertainment, cultural, sports, and other mass events; campaigns for the collection of charitable donations; lotteries and auctions; the selling of property; and donations received from benefactors in accordance with their wishes." The income from such activities is mentioned as one of several sources of revenue for charitable organizations.¹⁷ The Law of Ukraine on Charity and Charitable Organizations defines "public fundraising" as the voluntary collection of targeted assistance in the form of money or property from an indefinite number of persons, including the use of electronic communications or telecommunications to achieve the objectives set out in the law.¹⁸ Other countries delineate fundraising more generally through **laws that regulate "public collection" or "money collection."** These terms typically refer to the collection of voluntary donations from the general public, and they are the most common focus of regulation, perhaps because they are regarded as tapping into the most lucrative fundraising method, according to a survey of European fundraising associations published by the European Fundraising Association.¹⁹ Countries often regulate public collection or money collection in separate public collection laws. For example Finland passed the Money Collection Act in 2006, which says that money collection is "an activity in which money is collected without compensation by an appeal to the public."²⁰

To conclude, fundraising is defined directly or indirectly in some, but not all, national legislations examined in this report. Clear definitions of fundraising and the recognition of fundraising activities as potential sources of income can provide legal certainty to CSOs while

reinforcing their ability to obtain funds. The term "fundraising" as used in this report encompasses the act of collecting donations as well as the purposes of such activities, the forms donations take (for example, cash or in-kind contributions), the targets of fundraising (usually the general public), and types of fundraising methods used.

2.2. COMMON METHODS OF FUNDRAISING

Fundraising methods can generally be divided into two types: traditional approaches and new, digitally based techniques. As CSOs' methods of fundraising multiply, a critical issue is whether—and how—country regulations adapt.

Traditional fundraising methods include face-to-face fundraising, such as door-to-door collections and street fundraising; solicitations by mail; gaming activities, such as lotteries, raffles, and bingo; and the solicitation of bequests and legacies. All fundraising methods that do not use new technologies or any means of digital communication when raising funds from public are considered traditional. As many countries have not yet adapted their laws to apply to new fundraising methods, mainly traditional methods are the subject of special fundraising /public collection laws. In addition, some countries, such as Poland, expressly refuse to regulate digitally based fundraising methods. Poland argues that cash flow is already monitored in the use of digitally based fundraising, so there is no need to introduce additional supervision of these methods.²¹

Although many people still associate fundraising with face-to-face contact, CSOs have become more adept at employing innovative new, **digitally based fundraising methods** to support their fundraising activities.²²

¹⁷ Moldova, Law on Philanthropy and Sponsorship, no. 1420, art. 16, point f) (2002), <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312770&lang=1>.

¹⁸ Ukraine, Law on Charity and Charitable Organizations, no. 25/252, art. 7 (1) (2013), <http://zakon2.rada.gov.ua/laws/show/5073-17>.

¹⁹ European Fundraising Association, "Fundraising in Europe 2013/14," 5.

²⁰ Finland, Money Collection Act, no. 255/2006, art. 3 (1) (2006), <http://www.finlex.fi/fi/laki/kaannokset/2006/en20060255.pdf>.

²¹ "Zbiórki publiczne 2014—mniej formalności dla organizatorów [Public Collections in 2014—Less Paperwork for Organizers]," Infor.pl (August 2014), <http://ksiegowosc.infor.pl/obrot-gospodarczy/inne/695381,Zbiorki-publiczne-2014-mniej-formalnosci-dla-organizatorow.html>.

²² Ján Mihálik, ed., *Hearts and Money Beyond Borders: Fundraising from Individuals for Development and Relief* (Partners for Democratic Change Slovakia, 2012), 189, <http://www.pdcs.sk/en/publications/hearts-and-money.html>.

With the expansion of communications technologies, for example, CSOs are fundraising online and through mobile phones. These newer techniques may be implemented through fundraisers' Internet websites as well as specialized fundraising platforms.

Many CSOs in Europe now use **social media** channels such as Facebook, LinkedIn, YouTube, or Twitter to promote their activities and campaigns. Social media can encourage effortless donations through a "donate" button on the social media platforms. One well-known example is the Ice Bucket Challenge, a social campaign that promoted awareness of amyotrophic lateral sclerosis (ALS) and, after it went viral, enlivened public discussion of charitable giving and the potential of CSOs to innovate in fundraising.²³ According to *Forbes*, more than 2 million people were tagged in Ice Bucket Challenge videos on Facebook in 2014, which were viewed by more than 440 million people.²⁴ According to the national chapter of the ALS Association (ALSA), the challenge brought in \$115 million, and participants donated an additional \$13 million to the association's regional branches. These numbers were unheard of—in 2013 ALSA brought in only \$23.5 million.²⁵

Another new method of fundraising is **crowdfunding**, which is quickly gaining in popularity. Crowdfunding raises small contributions from a large number of people for a specific purpose or project via the Internet. In particular, crowdfunding enables small CSOs or CSOs with a narrow group of beneficiaries to expand their fundraising reach inexpensively. According to research,²⁶ CSOs using

crowdfunding usually record increases in the number of persons interested in volunteering for their organizations. Moreover, in rewards-based crowdfunding, in which donors receive a tangible reward or product in return for their donation, donors themselves engage in promoting the crowdfunding campaign, thus widening an organization's visibility. Another interesting finding is that 46 percent of crowdfunding contributors support projects that are not directly or indirectly beneficial to them.²⁷ According to USAID's *2014 Sustainability Index for Central and Eastern Europe and Eurasia*, Internet sites using crowdfunding or similar approaches exist in most of the Baltic and Visegrad countries and are under development in Armenia, Belarus, and Russia.²⁸

Why Crowdfund?

Crowdfunding's popularity is growing exponentially among both non-profits and their for-profit counterparts. Crowdfunding has two main benefits: it is an extremely efficient method to solicit donations, and it helps CSOs create (sometimes viral) awareness of their cause on social media worldwide.²⁹

Another popular new method of fundraising is through **mobile phone services** such as donors message service (DMS), MyWallet, and Premium SMS (PSMS).³⁰ DMS allows donors to contribute a fixed amount of money to a registered organization by sending an SMS. MyWallet is a service for making purchases and transferring

²³ United States Agency for International Development (USAID), *2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia* (June 2015), 5, 80, 140, https://www.usaid.gov/sites/default/files/documents/1863/EuropeEurasia_FY2014_CSOSI_Report.pdf.

²⁴ Amit Chowdry, "Remember The Ice Bucket Challenge? Donations From The \$220 Million Campaign Enhanced ALS Research," *Forbes*, August 26, 2015, <http://www.forbes.com/sites/amitchowdhry/2015/08/26/remember-the-ice-bucket-challenge-donations-from-the-220-million-campaign-advanced-als-research/>.

²⁵ Ethan Wolff-Mann, "Remember the Ice Bucket Challenge? Here's What Happened to the Money," *Time*, August 21, 2015, <http://time.com/money/4000583/ice-bucket-challenge-money-donations/>.

²⁶ Peter Baeck, Liam Collins, and Bryan Zhang, *Understanding Alternative Finance: The UK Alternative Finance Industry Report 2014* (Nesta, 2014), <https://www.nesta.org.uk/sites/default/files/understanding-alternative-finance-2014.pdf>.

²⁷ "Nine Facts Charities Need to Know About Crowdfunding," *Guardian*, November 11, 2014, <http://www.theguardian.com/voluntary-sector-network/2014/nov/11/nine-facts-charities-need-to-know-about-crowdfunding>

²⁸ USAID, *2014 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 5.

²⁹ Nicole Fallon Taylor, "Crowdfunding Your Startup? 3 Important Trends to Watch," (Business News Daily, March 7, 2016), <http://www.businessnewsdaily.com/7506-crowdfunding-trends-tips.html>

³⁰ For more on SMS payments, see "SMS Payments—A Simple and Convenient Way to Collect Money!" Paysera, https://www.paysera.com/premium_sms_payments.html?ref=161601&gclid=Cj0KEQjw6tepBRDLqLnxouaY_pkBEiQAPIOiBnXaLunyXhaeer4oyw7zF0phCqGGHlhGVsadiKReu3gaAiAw8P8HAQ.

money by mobile phone.³¹ A similar service called WyWallet operates in Sweden. PSMS is a billing mechanism that allows the user to purchase mobile phone-related content (such as ringtones, pictures, and applications) as well as other goods and services, with a certain amount deducted as a donation.

Credit-card donations have also been adapted to new technologies and are a comfortable means for supporting a good cause. There are various ways to donate using credit cards, including direct debit³² and purchases made with a special charity credit card.³³ An interesting new method of fundraising was introduced in 2012 by the Swedish Red Cross, which, upon discovering that cash donations from street fundraising were decreasing, developed a device to connect to mobile phones that allows users to make donations using credit cards.³⁴ Since the reaction to this new technology was positive, numerous companies have targeted CSOs with their own applications and credit-card readers to facilitate donations.³⁵

Comparative practices show that new fundraising methods such as online donations may fall under the scope of public collection laws in some countries. For example, in France,

according to the opinion of the independent state auditing agency, the Court of Auditors (*Cour des comptes*), any public collection via the Internet is subject to the 1991 law governing the auditing of organizations applying for public generosity.³⁶ The court argues that online collections fall within the scope of the definition of public collection provided by the law, since they are nationwide, geographically unrestricted calls for public generosity.³⁷

“Common pence” for the common good

An innovative method for soliciting public contributions in the UK is “Common Pence.” This program allows subway passengers in London to donate funds left on their subway transport cards. Users contribute to a designated charity simply by waving their subway cards, smartphones, or contact-free credit cards at a Common Pence kiosk. Donations are 50 pence each and the designated charity changes each month, so that many charities benefit from this convenient method of collecting donations.³⁸

On the other hand, according to expert commentaries, the laws on public collections in Slovakia and Czech Republic do not apply to online collections because they do not fall within the laws’ definitions of public collections.³⁹ The Polish law on the principles of conducting public collections regulates only anonymous donations

from the public. Thus the legislators’ intention was not to regulate SMS donations and other digitally based fundraising methods, which are not anonymous. In Germany, the collection laws have gradually been repealed in most states. According to the justification of the Baden-Württemberg law in Germany, the use of new media in fundraising means that state regulation is no longer required, especially as citizens have many opportunities to learn about collection

³¹ For more on the MyWallet service, see its website at <http://www.my-wallet.com/>. For information on the WyWallet program, see its website at <http://wywallet.se/>.

³² “Direct debit” is an instruction from a donor to his or her bank authorizing an organization to collect a specified amount of money directly from the donor’s account. See “Direct Debits and Fundraising,” The Wheel, <http://www.wheel.ie/funding/fundraising-guide/direct-debits-and-fundraising-0>.

³³ For more on charity credit cards, see “Compare Charity Credit Cards,” Money Super Market, <http://www.moneysupermarket.com/credit-cards/charity/>.

³⁴ For more on this new fundraising device, see “Mobil kortläsare ska ge mer till Rädda Barnen [Mobile Reader Will Give More to Save The Children,” SVT, 2012, <http://www.svt.se/nyheter/sverige/mobil-kortlasare-ska-ge-mer-till-radda-barnen>.

³⁵ For more information on one such provider, Square, see <https://squareup.com/>.

³⁶ France, Law on the Representation in Favor of Associations and Cooperatives and on the Control of the Accounts of Organizations Calling for Public Generosity, no. 91-772 (1991). <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000162114&categorieLien=id>.

³⁷ On this topic see, for example, “Attention danger: appel à la générosité publique sur votre site internet associative [Warning: Appeal for Public Generosity on Your Association Website],” Loi1901 (June 16, 2008) http://www.loi1901.com/intranet/a_news/index_news.php?id=1114.

³⁸ For more on the project “Common Pence”, see its official website at: www.commonpence.co

³⁹ See, for example, an opinion published on the website of the Coalition for Support of Individual Giving, <http://www.darcovstvo.sk/legislativa/verejne-zbierky/>.

organizers through the Internet and other media to make responsible decisions about giving. As a result, collection laws regulate a decreasing segment of the donations market.⁴⁰

To conclude, CSOs are employing new, inexpensive, digitally based fundraising methods to expand their outreach to potential donors and increase their income from solicited donations. Country-level legislators have responded to this trend by introducing new legislation or expanding the scope of existing public collection laws to cover digitally based fundraising methods. Some countries have decided to exclude these new methods from the scope of public collection laws altogether. It will take time for all European country-level legislation to adapt to this new situation, and many countries have been slow in responding. It is to be hoped that any new regulation will encourage the use of new fundraising methods instead of over-regulating CSOs or imposing additional administrative burdens on them. In the meantime, CSOs are advised to examine whether the existing legislation in any way inhibits their use of digitally based fundraising methods.

⁴⁰ For more information, see "Sammlungsgesetz wird zum Jahreswechsel aufgehoben [Collection Act to be Repealed at the End of the Year]," Baden-Württemberg.de, <http://www.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/sammlungsgesetz-wird-zum-jahreswechsel-aufgehoben/>.

3. THE CONTEXT FOR FUNDRAISING REGULATION IN EUROPE

3.1. WHY REGULATE?

There are various reasons that international bodies, governments, and CSOs themselves decide to shape, control, facilitate, and improve CSOs' fundraising activities. Their reasons typically include:

- **To encourage CSOs' work.** A supportive legal environment for fundraising contributes to the achievement of CSOs' missions by allowing organizations to solicit and collect corporate and individual donations using various means. Ultimately, good fundraising practices promote the financial sustainability of the entire CSO sector.
- **To empower donors.** Fundraising regulations enhance donors' altruistic intentions by providing guarantees that their wishes will be upheld. Many mechanisms aim to ensure that donors' contributions are spent for specified purposes and donors are informed about the results.
- **To enhance philanthropy.** Tax regulations often introduce benefits for individuals and legal entities in the form of tax deductions or tax credits for their donations. Tax benefits serve as an incentive for potential donors to support a publicly beneficial initiative and contribute to the development of philanthropy in the country.
- **To increase public confidence in the third sector.** Fundraising rules and regulations help maintain public confidence by providing standards that CSOs must meet in conducting their fundraising activities. People are more likely to donate to and trust CSOs when they must abide by legal regulations.⁴¹
- **To discourage fraud.** Fundraising regulations aim to increase the transparency and accountability of fundraising activities and avoid the abuse and misuse of collected funds. To serve

⁴¹ Tessel Rezenbrink, "Why Philanthropy is More Successful in Some Countries Than in Others," trans. Astrid de Jong, *Advancing Philanthropy* (Fall 2016): 60-62, <http://www.afpnet.org/files/ContentDocuments/60-62%20Research%20Fall%202016.pdf>.

- this purpose, fundraising regulations may include reporting obligations and require the appointment of a supervising governmental authority to oversee CSOs' fundraising activities.⁴⁵
- **To promote the efficient use of funds.** As fundraising becomes more commercialized, there is rising public concern about the cost-effectiveness of fundraising activities.⁴⁶ To address this concern, fundraising regulations often limit the costs of fundraising activities.⁴⁷

In Europe, fundraising is generally regulated on three levels: international and pan-European legal frameworks, national legislation, and self-regulation by CSOs.

The purpose of statutory regulation

In Finland, the purpose of the Money Collection Act 2006 is to enable fundraising for nonprofit activities while preventing dishonest activity in connection with money collection.⁴²

In Ireland, the Charities Act 2009⁴³ aims to ensure accountability, protect against fraud and the abuse of charitable status, enhance public trust and confidence in charities, and increase transparency throughout the third sector.⁴⁴

3.2. INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORKS

3.2.1. International frameworks

CSOs' right to secure resources is an integral part of the right to freedom of association guaranteed by various multilateral treaties and resolutions, including the International Covenant on Civil and Political Rights (ICCPR) and the UN Declaration on Human Rights Defenders.

Fundraising activities are protected under Article 22 of the **ICCPR**.^{48,49} According to the UN Human Rights Committee, "the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by Article 22 extends to all activities of an association. . . ."⁵⁰ Thus fundraising is a statutory activity that is essential to maintaining the financial sustainability of CSOs.

International Framework Documents Protecting CSOs' Access to Resources, Including Private Giving

- International Covenant on Civil and Political Rights (ICCPR)
 - UN Declaration on Human Rights Defenders
 - UN Special Rapporteur Reports
 - UN Resolution on Civil Society Space
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⁴² Finland, Money Collection Act, no. 255/2006, art.1 (2006).

⁴³ Ireland, Charities Act 2009, art. 12 (2009), <http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/print.html>.

⁴⁴ The Irish Charities Act 2009 established the Charities Regulatory Authority, which supervises fundraising activities.

⁴⁵ Ana Vasilache and Ancuta Vamesu, *Fundraising and Accessing EU Funds* (Technical Assistance for Civil Society Organizations [TACSO], 2011), 36, http://www.tacso.org/doc/doc_manual_2.pdf.

⁴⁶ On this topic, see, for example, "True and Fair Foundation to Publish Report Criticizing Charity Shops and Gift Aid," Civil Society (March 4, 2016), http://www.civilsociety.co.uk/finance/news/content/21408/true_and_fair_foundation_to_publish_report_on_charity_shops

⁴⁷ Oonagh B. Breen, "Regulating Charitable Solicitation Practices: The Search for a Hybrid Solution," *Financial Accountability and Management* 25, no. 1 (February 2009): 116. Abstract at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1327417.

⁴⁸ United Nations (UN) General Assembly, Resolution 2200A (XXI), "International Covenant for Civil and Political Rights," December 16, 1966, art. 22, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁴⁹ Observatory for the Protection of Human Rights Defenders, *Violations of the Right of NGOs to Funding: From Harassment to Criminalization* (World Organization Against Torture [OMCT] and International Federation for Human Rights [FIDH], 2013), 11-12, <http://www.icnl.org/research/library/files/Transnational/hrdef.pdf>.

⁵⁰ UN Human Rights Committee, Communication 1274/2004, "International Covenant on Civil and Political Rights," October 16-November 3, 2006, <http://dag.un.org/handle/11176/262888>.

The right to access resources is also recognized in Article 13 of the **UN Declaration on Human Rights Defenders**, which states that “Everyone has the right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means....”⁵¹

According to **UN Special Rapporteur Maina Kiai**, states have **both positive and negative obligations** to safeguard the right to freedom of association, including access to resources: to take positive measures to establish and maintain an enabling environment, and not to unduly obstruct the exercise of the right.⁵²

Governmental authorities must ensure that all CSOs, including unregistered organizations, enjoy this right. Kiai has stated that “any association, **both registered or unregistered, should have the right to seek and secure funding and resources** from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, governments, and international organizations.”⁵³

The Special Rapporteur has stressed the importance of the free movement of donations to and from abroad, echoing the opinion of former UN Special Representative of the Secretary-General on the Situation of Human Rights Defenders Hina Jilani that “governments must allow access by NGOs [non-governmental organizations] to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as governments.”⁵⁴ The Special Rapporteur’s second thematic report specifically emphasizes civil society’s right to funding and resources and points out that fundraising activities are protected under Article 22 of ICCPR.⁵⁵

Access to resources is important not only to the existence of the CSOs themselves, but also to the enjoyment of other human rights by those benefitting from their work. Hence, undue restrictions on resources available to CSOs undermine civil, cultural, economic, political and social rights as a whole.⁵⁶

In its **Resolution on Civil Society Space** adopted in 2014, the UN Human Rights Council expressed deep concern that some measures taken by states, including provisions related to funding for civil society, have sought or been misused to hinder the work of CSOs. In response, the UN Human Rights Council passed a resolution calling upon states to ensure that provisions on funding for civil society comply with their international human rights obligations and commitments and are not misused to impede CSOs’ work or endanger civil society actors. This resolution underlines the importance of civil society’s right and ability to solicit, receive, and utilize resources for its work.⁵⁷

3.2.2. European frameworks

Several European mechanisms also assert the right of CSOs to raise funds. All of the researched countries are members of the Council of Europe, and twelve of the sixteen countries are members of the European Union. Following are some documents that regulate the right of CSOs to access funding and issues closely related to fundraising at the European level.

⁵¹ The reference is to the UN General Assembly’s Resolution 53/144, “Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” December 9, 1998, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.

⁵² UNHRC, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai,” May 21, 2012, A/HRC/20/27, para. 63-64, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

⁵³ Ibid, para 68.

⁵⁴ Ibid, para. 69. The reference is to the Secretary-General’s Note on “Human Rights Defenders,” UN General Assembly, October 1, 2004, A/59/401, para. 82, http://www.hrichina.org/sites/default/files/human_rights_defenders_note_by_secretary_general.pdf

⁵⁵ UNHRC, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai,” April 24, 2013, para. 16.

⁵⁶ Ibid, para 9.

⁵⁷ UNHRC, Resolution 24/21, “Civil Society Space,” September 23, 2014, A/HRC/27/L.24, <http://www.ishr.ch/sites/default/files/article/files/a-hrc-l24-as-adopted.pdf>.

The **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR) protects the right to freedom of association,⁵⁸ which includes CSOs' right to receive donations and other forms of funding, as reinforced by the Report of the Parliamentary Assembly of the Council of Europe (PACE) of January 2016.⁵⁹ Article 50 of the **Council of Europe's recommendation on the legal status of NGOs VI**⁶⁰ states that "NGOs should be free to solicit and receive funding—cash or in-kind donations—not only from public bodies in their own state but also from institutional or individual donors, another state, or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange, and money laundering and those on the funding of elections and political parties."

At the level of the European Union (EU), various legal acts and regulatory initiatives govern the fundraising activities of CSOs. For example, in 2002 the European Commission (EC) adopted a **directive regulating the protection of privacy in the electronic communications sector**. This directive aims to harmonize member states' national regulations with the protection of fundamental rights and freedoms and emphasizes the right to privacy in the processing of personal data in electronic communications. The directive includes the requirement that prior consent be obtained from

anyone contacted via automated calling systems, fax, or e-mail.⁶¹ Additional requirements may also be imposed on direct-marketing fundraising, such limited hours of the day for telemarketing phone calls.⁶² The directive also regulates the free movement of personal data

European Standards and Legal Documents Relevant to Fundraising Activities

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)
 - Council of Europe's Recommendation on the Legal Status of NGOs CM/Rec (2007)
 - European Parliament Directives on VAT, Privacy in Electronic Communications
 - EU Parliament and Council General Data Protection Regulation
 - ECJ's judgments
-

and electronic communication equipment and services within member states. In 2016 the **EU adopted a regulation that introduced comprehensive reform of data protection rules**.

Among other things, it requires individuals to give explicit consent before a company or charity can process their personal data.⁶³ The Regulation shall apply from May 2018.⁶⁴

The EC also regulates the application of taxation law to fundraising. **Directive No. 2006/112 on the Common System Value-Added Tax (VAT)** provides for a VAT exemption on the supply of services and goods linked to fundraising activities. This directive obliges all EU member states and accession countries to provide VAT-free treatment to all charitable contributions. In particular, Article 132 (1) of the directive stipulates that member states shall exempt from VAT various enumerated transactions, including the supply of services and goods by qualified nonprofit organizations in connection with fundraising events organized exclusively for their own benefit, provided that such an exemption is not likely to cause a distortion of competition. The activities listed as "pursuant to

⁵⁸ Council of Europe, "European Convention for the Protection of Human Rights and Fundamental Freedoms," November 4, 1950, https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Convention_ENG.pdf

⁵⁹ Council of Europe Parliamentary Assembly, "How to Prevent Inappropriate Restrictions on NGO Activities in Europe?" January 8, 2016, para. 3.1. (10), <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=22310&lang=en>

⁶⁰ Council of Europe Committee of Ministers, Recommendation CM/Rec (2007) 14, "On the Legal Status of Non-Governmental Organizations in Europe," October 10, 2007, <https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

⁶¹ European Parliament and Council of the European Union, Directive 2002/58/EC, "Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector," July 12, 2002, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0058&from=EN>.

⁶² See "Marketing and Advertising: The Law," Gov.UK, <https://www.gov.uk/marketing-advertising-law/direct-marketing>.

⁶³ European Parliament and Council of the European Union, Regulation (EU) 2016/679, "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation)," April 27, 2016, http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf

⁶⁴ <http://ec.europa.eu/justice/data-protection/>

(enumerated) points” include hospital and medical care, welfare and social security work, and the protection of children.⁶⁵ The member states are obliged to transpose the EU directive to their legal systems.

EU regulation is relevant for donations via direct debits, too. In 2012 the European Parliament, together with the EC, enacted a **regulation establishing technical and business requirements for direct debits** in euro. The regulation creates an integrated market for electronic payments in euro and makes no distinction between national and cross-border payments.⁶⁶

The EC has recently focused on crowdfunding as an alternative source of CSO financing and is currently exploring its suitability for EU action. In March 2014 the EC adopted a **communication on crowdfunding** and established an expert group called the European Crowdfunding Stakeholders Forum (ECSF) to provide advice and expertise on the issue. The ECSF held its first meeting in September 2014 and discussed the possibility of adopting a Europe-wide code of conduct on crowdfunding.⁶⁷

In the past decade **several judgments of the European Court of Justice (ECJ)** have dealt specifically with the cross-border tax treatment of CSOs and their donors. Particularly important are the ECJ’s judgments in *Hein Persche v. Finanzamt Lüdenscheid (Persche)*,⁶⁸ *Missionswerk Werner Heukelbach eV v. Belgian State (Missionswerk)*,⁶⁹ and the *Commission of the European Communities v. Republic of Austria (EC v. Austria)*.⁷⁰ Through these judgments, the ECJ developed a non-discrimination principle, according to which EU

member states should avoid discriminatory tax treatment of cross-border philanthropic giving. Cross-border donations and these ECJ judgments are discussed in detail in Chapter 4.3.

Finally, in 2012 the EC presented a proposal to the European Council for a new legal form of CSO, the European foundation, which could encourage cross-border philanthropy. The EC’s proposal sought to facilitate cross-border activities by foundations with a public benefit purpose. Although the European Parliament, the European Economic and Social Committee, and the Committee of the Regions have endorsed the proposed statute establishing the European foundation, the EC has decided to withdraw the statute from the EU legislative agenda.

3.3. COUNTRY LEVEL REGULATION

3.3.1. Regulations directly related to fundraising

Fundraising is primarily shaped by national civil codes, which typically provide definitions and rules for “gifts.” In addition, some legislation specifically recognizes and defines “donations” as a special form of gift. For example, in Hungary, a donation is described as monetary or in-kind allowance that is provided free of charge by the donor so as to achieve the primary or public benefit purpose of the beneficiary CSO.⁷¹

The key rules on fundraising and money collection may be regulated on different levels of

⁶⁵ Council of the European Union, Directive 2006/112/EC, “On the Common System of Value Added Tax,” art. 132 (1), November 28, 2006, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006L0112>. See also the formal request of the EC to the Netherlands with respect to the discussed provision.

⁶⁶ European Parliament and Council of the European Union, Regulation 260/2012, “Establishing Technical and Business Requirements for Credit Transfers and Direct Debits in Euro and Amending Regulation (EC) no. 924/2009,” March 14, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0022:0037:en:PDF>.

⁶⁷ For more on this topics, see European Commission, “Crowdfunding,” http://ec.europa.eu/internal_market/finances/crowdfunding/index_en.htm#ecsf.

⁶⁸ *Hein Persche v. Finanzamt Lüdenscheid*, ECLI:EU:C:2009:33, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-318/07>.

⁶⁹ *Missionswerk Werner Heukelbach eV v. Belgian State*, ECLI:EU:C:2011:65, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-25/10>.

⁷⁰ *Commission of the European Communities v. Republic of Austria*, ECLI:EU:C:2005:427, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-147/03>.

⁷¹ Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, art. 1 (5) a).

a country's legal system. The most common layers of regulation are:

1. **Framework laws and regulations on CSOs.**

These laws typically include provisions on the registration, internal governance, supervision, and termination of CSOs. Regulations about fundraising are thus a subset of the general regulatory structure governing the sector. Countries that regulate fundraising activities under framework laws for CSOs include England and Wales,⁷² Ireland,⁷³ and Hungary.⁷⁴

2. **Laws regulating charity and charitable organizations, philanthropy, and sponsorship.**

In some of the countries covered by this report, fundraising activities are regulated in laws on charity or philanthropy and sponsorship. In Macedonia, the Law on Donations and Sponsorships in Public Activities regulates the giving and acceptance of donations and sponsorship. The provisions of the law, however, shall not be applied automatically to all donations and sponsorships. The giver and the receiver shall comply with the requirements only in case they wish to obtain tax benefits after the donation or sponsorship is made.⁷⁵ Similarly, in Moldova, philanthropic activities are regulated by the Law on Philanthropy and Sponsorship but it applies to all philanthropic donations. Donors must also comply with the Regulation on the Manner of Confirmation of Donations for Philanthropic and Sponsorship Purposes if they wish to obtain tax benefits. In Ukraine, public fundraising, fundraising methods,

and reporting requirements are regulated in the Law on Charity and Charitable Organizations.

3. **Fundraising and money collection laws and regulations.**

Some countries regulate public collection and fundraising activities in a separate law. These tend to focus on formal requirements for fundraising and the organization of fundraising activities. Public collection laws often include provisions concerning permits or notifications, the monitoring of money collections, and the utilization of funds raised. Slovakia⁷⁶ and Finland⁷⁷ regulate fundraising through public collection laws.

4. **Other legal acts and regulations.**

Fundraising activities may be explicitly governed by other legal regulations, such as presidential decrees or decrees adopted by local authorities. This is the case in some Southern European countries, including Italy, where fundraising is covered in general regulation of public events, the sale of goods, and lotteries, which are often subject to local regulation.⁷⁸ In addition, some countries use other forms of legal regulation to supplement or further specify provisions of the framework laws regulating fundraising, including requirements for the collection permit, forms, and templates.

Fundraising, and particularly money collection, is often regulated on various levels at once. For example, in Ireland, the Charities Act 2009 (a framework law) and the Street and House-to-House Collections Act 1962 (a money collection law) are both in place. In Finland, the general Money Collection Act 2006 is complemented by

⁷² United Kingdom (UK), Charities Act 1992, c. 41 (1992), <http://www.legislation.gov.uk/ukpga/1992/41/section/60>; Charities Act 2006, c. 41, <http://www.legislation.gov.uk/ukpga/2006/50/contents>; and Charities Act 2011, c. 25 (2011), <http://www.legislation.gov.uk/ukpga/2011/25/contents/enacted>.

⁷³ Ireland, Charities Act 2009, no. 6.

⁷⁴ Hungary, Law on Freedom of Association, Public Benefit Status, and Operation and Support of Civil Society Organizations, CLXXV (2011), http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100175.TV and Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status.

⁷⁵ Association Konekt, *Implementation Guide for the Law on Donations and Sponsorships in Public Activities 2015*, 7, http://donirajpametno.mk/wp-content/uploads/2015/06/Broshura-impl.guide_MKD.pdf.

⁷⁶ Slovakia, Law on Public Collections, no. 162 (2014), <http://www.zakonypreludi.sk/zz/2014-162>.

⁷⁷ Finland, Money Collection Act.

⁷⁸ See, for example, Italy, Presidential Decree no. 605, "On the Provisions on the Taxpayers' Tax register and Tax Code" (September 29, 1973), <http://www.isaonline.it/mag/Dpr605-1973.html>; Legislative Decree no. 507, "On the Revision and Harmonization of Local Taxes on Advertising and Bill-Posting, on the Occupation of Public Spaces and Areas in Local Municipalities and Provinces, as well As of the Tax on the Disposal of Municipal Solid Waste" (November 15, 1993), <http://www.comune.jesi.an.it/MV/leggi/dlvo507-93.htm>; and Decree of the Prime Minister no. 329/2001, "On the Regulation on the Agency for the Third Sector" (March 21, 2000), <http://www.solcoroma.net/legale/3292000.htm>.

a Government Decree on Money Collections, which provides further details on applications for permission to conduct money collections. Similarly, in Ukraine, the Law on Charity and Charitable Organizations regulates the general framework for fundraising and Decree of the Cabinet of Ministers No. 451 provides details on collections.⁷⁹ However, the decree relates only to the collection of donations supporting combat, mobilization readiness, combat effectiveness, and the functioning of the Armed Forces of Ukraine.

3.3.2. Complementary laws

Together with statutory regulations relating explicitly to fundraising, other laws can contribute to its overall regulation. These so-called complementary laws set additional requirements for fundraisers and are often referred to in fundraising and public collection laws. Typical complementary laws include:

- **Tax laws.** Almost every country surveyed in this report recognizes philanthropic giving in its tax laws through tax credits or tax deductions for both corporate and individual donors. Only Slovakia provides no tax benefit for donors, while Hungary and Finland provide tax deductions only for corporate donors. Nevertheless, Slovakia and Hungary, as well as Poland, have enacted a tax-designation mechanism whereby taxpayers may designate a certain percentage of their income tax to CSOs. In addition, tax regulations in all countries surveyed provide VAT and income-tax-free treatment of donations if CSOs comply with conditions set by tax laws.
- **Data protection laws.** Many CSOs maintain databases with information about their donors. Therefore data protection laws

must be taken into consideration. In the UK, charities must follow the regulations of the Data Protection Act as they carry out fundraising activities. In France, the maintenance of donor databases must comply with the Law on Informatics and Liberties, which, among other things, stipulates that persons included in the database must be able to amend or erase their personal information.⁸⁰

- **Accounting and bookkeeping laws.** Accounting laws are one of the most common laws complementing fundraising regulations. They typically regulate the principles and rules of accounting, financial reporting, and audit requirements. Such laws usually specify general reporting rules for all CSOs, including fundraising organizers, or they may require a separate report for each fundraising activity, as in Italy.⁸¹
- **Banking laws.** Direct debits for payment of donations, when allowed, are usually regulated under banking laws. For example, in Moldova, the 2010 Decision of the National Bank No. 8 on foreign exchange operations establishes rules under which individuals may deposit money to support philanthropic or sponsorship purposes.⁸²
- **Licensing laws.** Depending on its nature, event fundraising may be subject to local licensing laws, including those covering alcohol, food safety, and consumer protection. For example, in France, organizers conducting fundraising through the sale of goods must apply for a distinct mark or brand for their products. This special mark has a period of validity of three years and is issued by the Ministry of Public Health.⁸³

⁷⁹ Ukraine, Decree of the Cabinet of Ministers, "On approval of the public collection of donations for military, mobilization readiness, combat effectiveness and functioning of the Armed Forces of Ukraine" no. 451 (June 30, 2015), <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248297007>

⁸⁰ Ingrid-Hélène Guet, *Monitoring Fundraising: A Comparative Survey of ICFO Members and Their Countries* (International Committee on Fundraising, May 2002), 18, http://www.issuelab.org/resource/monitoring_fundraising_a_comparative_survey_of_icfo_members_and_their_countries.

⁸¹ Italy, Presidential Decree no. 605, art. 20.

⁸² Decision of the National Bank no.8, "On Approving the Regulation on the Conditions and Manner of Conducting Foreign Exchange Operations," (January 28, 2010; published in *Official Gazette* no. 41-43, March 23, 2010), <http://lex.justice.md/md/334112/>.

⁸³ France, Law on Publications, Printed Materials and Goods Sold for Philanthropic Purposes, no. 72-618, art. 2 (July 5, 1972), http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=49FAF90376F61124BEF099047BE4C11A.tpdjo05v_2?cidTexte=JORFTEXT000000864831&dateTexte=19720709&categorieLien=cid.

- **Media laws.** Online, broadcast, and telephone fundraising must comply with various laws, including media, advertising, and related consumer-protection laws (including laws on distance selling). In some countries, such as Italy, media and advertising regulations establish tax reductions for CSOs engaged in fundraising.⁸⁴
- **Marketing laws.** Fundraising pursued through direct-marketing methods, such as phone calls, e-mails, door drops, and advertisements, are subject to the laws governing marketing. As described earlier, direct-marketing fundraising at the EU level is regulated by the EC Directive on Privacy and Electronic Communications and shall be transposed into national legislation. The directive includes the requirement that fundraisers obtain prior consent from persons contacted via automated calling systems, fax, or e-mail.⁸⁵ Additional requirements may be imposed in country rules on direct-marketing fundraising, such as limiting the hours of the day for telemarketing phone calls.⁸⁶
- **Consumer protection laws.** Consumer protection laws usually apply to any kind of contract related to the transfer of goods. For example, the Consumer Protection Act in Finland stipulates that certain provisions of the Act apply as well to the private donors.⁸⁷
- **Laws on games of chance.** Fundraising lotteries, bingo games, raffles, and other gaming activities may be covered by the laws on public collection or be subject to specific laws and regulations on games of chance. For example, in the UK, fundraising raffles and other types of lotteries are subject to the Gambling Act 2005 and are regulated by the Gambling Commission.⁸⁸ In Italy, lotteries and other games of chance are considered a state monopoly, and only CSOs that have public benefit status (known as *organizzazione non lucrativa di utilità sociale* or ONLUS) and political parties during local campaigns are allowed to organize lotteries.⁸⁹
- **Child-protection laws.** Fundraising that involves children is subject to child-protection laws. Any person working with children should be vetted in accordance with relevant child-protection laws. In the UK, adults who have regular unsupervised access to children without the presence of parents or caregivers must be vetted through the Criminal Records Bureau.⁹⁰ The protection of children usually specifies the age at which a child is allowed to fundraise, with a requirement for parental consent for children under a certain age.
- **Anti-money-laundering and counter-terrorism-financing laws.** CSOs are usually required to observe laws on anti-money laundering and counter-terrorism financing (known as AML/CT laws) when conducting fundraising activities. Countries have been introducing AML/CT laws based on EU⁹¹ and international standards, including recommendations by the Financial Action Task Force (FATF). However, FATF standards did not consistently provide clear guidance for implementation, and thus were open to misinterpretation and misuse by national regulators. For example, some countries have used FATF standards to overregulate CSOs' fundraising activities by limiting their

⁸⁴ Italy, Legislative Decree no. 507, art. 16 (1).

⁸⁵ European Parliament and Council of the European Union, Directive 2002/58/EC, "Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector," July 12, 2002, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0058&from=EN>.

⁸⁶ See "Marketing and Advertising: The Law," Gov.UK.

⁸⁷ Finland, Consumer Protection Act no. 20.1.1978/38, art.6, <https://www.finlex.fi/fi/laki/ajantasa/1978/19780038>.

⁸⁸ For more information on the UK'S Gambling Commission, see its website at <http://www.gamblingcommission.gov.uk/default.aspx>.

⁸⁹ Italy, Presidential Decree no. 430, "On the Regulation of the Complete Overhaul of the Regulation on Prize-Winning Competitions and Raffles, as well as Raffles Promoted by Local Authorities" (October 26, 2001), <http://www.sviluppoeconomico.gov.it/images/stories/normativa/phpzxrHEi.pdf>.

⁹⁰ Institute of Fundraising, "Fundraising with Children" (June 2008), <http://www.institute-of-fundraising.org.uk/library/fundraising-with-children/fundraising-with-children-jun-08.pdf>.

⁹¹ European Parliament and Council of the European Union, Directive 2005/60/EC, "On the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing" (October 26, 2005.) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0060>.

ability to accept foreign and domestic resources, restricting cash donations, or requiring CSOs to identify donors.⁹² In Spain, foundations and associations are required to verify the identity of all persons who provide donations or resources in amounts equal to or greater than €100 (approximately \$109).⁹³

3.3.3. Regional patterns of regulation

A country's legal framework is often influenced by regional traditions and trends, which can shape national fundraising regulations. For example, approaches to the regulation of fundraising differ significantly in common-law, Scandinavian, Western European, Southern European, and Central and Eastern European (CEE) countries. This difference is due in part to their distinctive legal, social, and political traditions. But the varying nature of their third sectors, levels of civic participation, and common understandings of nonprofit activity are important factors, too.

For example, in **Scandinavia and some Western European countries**, there is no legislative tradition governing fundraising, and a model of third-sector regulation predominates. In Sweden, laws on nonprofit associations do not exist, as the principle of freedom of association is so strongly embedded in society. The only regulation that specifically addresses fundraising deals with a special legal form called a fundraising foundation, whose primary purpose is to raise funds from the public. In France, so as to avoid the over-regulation of fundraising in public spaces, the laws regulate only the reporting and monitoring of fundraising.

The situation is different in **common-law countries**,⁹⁴ where a more extensive system of state regulation together with a tradition of self-regulation are firmly established. For example, the four countries of the UK (England, Scotland,

Wales, and Northern Ireland) and Ireland have strong charitable traditions whose importance and values are safeguarded in statutory regulations. Thus the legal framework for charitable fundraising is elaborate, and it is buttressed by highly effective self-regulation in these countries' third sectors.

Because of their communist backgrounds, the **Central and Eastern Europe (CEE) countries** generally have younger legal and charitable traditions. As a result, it is more difficult in them than in common-law and Scandinavian countries to distinguish clear relationships between statutory regulation and self-regulation. However, both self-regulatory and statutory regimes operate in countries such as Poland, Hungary, Slovakia, and the Czech Republic.⁹⁵

Completely different regulatory regimes can be found in the **Southern European (SE) countries**, where fundraising activities are governed by other legal acts and sub-regulations. Presidential, ministerial, and local government decrees are often complemented by a complex set of self-regulatory initiatives. Statutory regulation in both SE countries researched, Spain and Italy, is very fragmented and often varies from one region to another as a result of widespread local regulation.

3.4. STATUTORY REGULATION VERSUS SELF-REGULATION

Statutory regulations are a valuable means for orchestrating the relationships among the many parties involved in fundraising—CSOs, beneficiaries, donors, the state, and the general public. Legal definitions of permissible activities and fiscal incentives for donors are needed to create an enabling environment for fundraising, while mechanisms to ensure transparency help build the trust that is necessary for a

⁹² For more information on the FATF, see the website of the Nonprofit Platform on the FATF, <http://fatfplatform.org/>.

⁹³ Spain, Prevention of Money Laundering and Terrorist Financing Act, no. 10/2010 (April 28, 2010), <http://www.cicad.oas.org/apps/Document.aspx?ld=1464>.

⁹⁴ Common-law countries have a legal system derived from custom and judicial precedent rather than statutes.

⁹⁵ Angela L. Bies, "Evolution of Nonprofit Self-Regulation in Europe," *Nonprofit and Voluntary Sector Quarterly* 39, no. 6 (December 2010): 1057-1086. Abstract at <http://www.scie-socialcareonline.org.uk/evolution-of-nonprofit-self-regulation-in-europe/r/a1CG000000Gg56MAC>.

philanthropic culture to thrive. Statutory regulation thus lays the groundwork for productive cooperation between the state and civil society and supports the development of a broader culture of voluntary giving.

In many countries, self-regulation by CSOs complements statutory regulation by the state.⁹⁶ It is important to note that self-regulation cannot replace statutory regulation, mainly because their functions and purposes differ. Statutory regulations are established by legislative bodies to define and safeguard transparency and accountability in fundraising by the third sector, while self-regulation occurs when CSOs determine standards for their own behavior. Even if statutory and self-regulatory regimes have similar aims—for example, to facilitate trust or encourage transparency—their spheres of competence are different. For example, some areas, such as tax benefits, can be regulated only by the state, since self-regulation would and could not be universally binding. However, statutory regulation may not address certain issues in full, and self-regulation can provide useful supplements to legal requirements—as, for example, when codes of conduct or rules for ethical fundraising describe how fundraising should be carried out to meet more stringent standards than the law provides.⁹⁷ Therefore self-regulation has an important role in building and maintaining public trust and confidence in the CSO sector and enables CSOs to demonstrate better practices and eliminate loopholes. It is important to strike an effective and appropriate balance between statutory law and self-regulation to achieve a coherent framework for ethical, productive fundraising practices.

What are the most common reasons behind self-regulation in Europe?

- Promotion of transparency and accountability
 - Increased credibility with donors and the public
 - Participation of stakeholders
 - Coalition building
 - Quality management.⁹⁸
-

The interrelation between statutory and self-regulation is well illustrated by the example of **Ireland**, where fundraising activities are regulated by various acts of parliament, such as the Street and House to House Collections Act 1962 and the Charities Act 2009. According to the Charities Act 2009, fundraisers are obliged to follow agreed codes of practice when fundraising from the public. The codes are developed by the third sector and are thus a part of Ireland's self-regulatory regime. But since the Charities Act 2009 refer to the codes as binding, at the same time they are incorporated by reference into the statutory regime.⁹⁹

⁹⁶ Mary Kay Gugerty, "Signaling Virtue: Voluntary Accountability Programs Among Nonprofit Organizations," *Policy Sciences* 42, no. 3 (August 2009): 243-273, <http://link.springer.com/article/10.1007/s11077-009-9085-3>.

⁹⁷ See Gugerty, "Signaling Virtue," and Stephen Lee, "The Regulation of Fundraising: In Search of the 'Public Good' or an Intractable Problem of Vested Interest?" *International Journal of Nonprofit and Voluntary Sector Marketing* 8, no. 4 (November 2003): 307-314. Abstract at <http://onlineibrary.wiley.com/doi/10.1002/nvsm.221/abstract>.

⁹⁸ European Center for Not-for-Profit Law, "Current Trends in Self-Regulation of Civil Society Organizations in Europe: A General Overview" (2015), 4, <http://ecnl.org/wp-content/uploads/2016/10/Current-Trends-in-Self-Regulation-of-Civil-Society-Organizations-in-Europe.pdf>.

⁹⁹ European Center for Not-for-Profit Law, *Study on Recent Public and Self-regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organizations in the European Union* (2009), 67-70, http://ec.europa.eu/dgs/home-affairs/doc_centre/terrorism/docs/initiatives_improving_transparency_accountability_npos_avr09.pdf

4. THE STATUTORY REGULATION OF FUNDRAISING IN EUROPE

4.1. COMMON ELEMENTS OF LAWS RELATED TO FUNDRAISING

Fundraising and particularly money collection are typically regulated both in framework legislation and in fundraising or money-collection laws, decrees, and other legal acts. (The topics most commonly covered by such regulations are examined in detail below.) The provisions set forth in these laws do not necessarily apply to all fundraising practices but only those that are subject to the law. As mentioned earlier, some fundraising methods are excluded from the scope of the law, such as online collections in Slovakia, SMS donations and bank transfers in Poland, and so on. Moreover, laws regulating donations and sponsorships may be applicable only if the donor wishes to obtain tax benefits. It is important to recognize this point so as to avoid overly narrow interpretations of fundraising laws, which could limit the legitimate fundraising activities of CSOs.

4.1.1. Fundraising purposes

Regulations specify various purposes for which fundraising can be conducted. As a general rule, fundraising may be undertaken for legally recognized nonprofit purposes.

Some country legislation allows fundraising for **any nonprofit purpose**. For example, organizations in Hungary may conduct fundraising activities for all mission-related ends, including public benefit purposes.¹⁰⁰ Similarly in Finland, donations may be collected for nonprofit activities. In addition, donations may be sought to assist individuals or families in financial distress and to promote the educational activities of a day-care group, school class, or established study or hobby group.¹⁰¹

In other countries, the laws on public collections limit the purposes for which CSOs may raise funds through fundraising methods that are subject to law. For example, the law may require that the public solicitation of donations be

¹⁰⁰ Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, art. 1 (5) b).

¹⁰¹ Finland, Money Collection Act, art. 6.

limited to **publicly beneficial or charitable purposes**. In Scotland, public benevolent collections may be carried out to benefit benevolent bodies or for charitable, benevolent, or philanthropic purposes.

In countries where public benefit or charitable status exists, the scope of public collection purposes is often linked to the criteria for obtaining public benefit status. For example, in Poland, a recently adopted Act on the Principles for Conducting Public Collections¹⁰² says that public collections must be conducted for a specific purpose, which may be religious in nature or among the thirty-three public tasks defined in the Law on Public Benefit Activity and Volunteerism. These tasks include charitable work, health care, and the support of people with disabilities.¹⁰³

In Slovakia, where public benefit status does not exist, an enumerative list of public benefit purposes is presented in the Law on Public Collections. Under this law, fundraising collections may be organized for a predefined public benefit purpose or to offer individually determined humanitarian assistance to a natural person or a group of individuals in misery, life-threatening danger, or in need of an urgent help after a natural disaster. Public benefit purposes also include the development and protection of spiritual values, protection of human rights, and preservation of natural and cultural values.¹⁰⁴

In Macedonia, the Law on Donations and Sponsorships in Public Activities regulates the giving and acceptance of donations and sponsorships only when donors and recipients wish to receive tax benefits. Consequently, the law's provisions do not apply automatically to all donations and sponsorships. The giver and the receiver of donations must comply with law's requirements if they wish to obtain tax benefits after concluding a donation or sponsorship. The law employs two key terms, "public interest"

and "public activity," but offers conflicting definitions of the kinds of activities falling within the scope of each.¹⁰⁵ According to the law, the purpose of donations and sponsorships must be to achieve, improve, promote, and support activities of public interest.¹⁰⁶ In addition, public benefit status is established and defined by the Law on Associations and Foundations.¹⁰⁷ Therefore two definitions of publicly beneficial purposes exist within the Macedonian legal framework.

To conclude, CSOs can generally fundraise for any legally recognized nonprofit purposes. The laws on public collection may limit its scope to publicly beneficial or charitable purposes, since the applied fundraising methods presumably reach out to an indefinite number of people. Legislation may also limit fundraising purposes by linking them to eligibility for tax benefits after a donation is made. However, this does not mean that CSOs may not fundraise for mutually beneficial purposes through individual giving and other methods that are not subject to the laws on public collection.

4.1.2. Eligibility criteria for organizers of fundraising activities and individuals engaged in fundraising

The law may set certain eligibility criteria for natural and legal persons engaged in fundraising activities. In most countries surveyed, fundraising and money collection may be organized by **eligible legal entities**—usually nonprofit legal entities. In Hungary, for example, fundraising regulations apply to Hungarian foundations and associations.¹⁰⁸ In common-law countries, "charitable fundraising" may be conducted only by organizations with charitable status.

¹⁰² Poland, Act on the Principles of Conducting Public Collections, no. 498 (2014), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140000498>.

¹⁰³ Poland, Law on Public Benefit Activity and Volunteerism, art. 4 1).

¹⁰⁴ Slovakia, Law on Public Collections, art. 2 (1)-(2).

¹⁰⁵ Macedonia, Law on Donations and Sponsorships in Public Activities, Official Gazette no. 47/06, 86/08, 51/2011, art. 3 (September 4, 2015), <http://www.ujp.gov.mk/m/regulativa/opis/68>.

¹⁰⁶ Macedonia, Law on Donations and Sponsorships in Public Activities, art. 11 (1).

¹⁰⁷ Macedonia, Law on Associations and Foundations, Official Gazette no. 52 (2010), art. 73, <http://www.slvesnik.com.mk/Issues/623772ADC92FEE42A1DB496E1E190648.pdf>.

¹⁰⁸ Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, art. 1 (2).

Some countries, such as the Czech Republic, Macedonia, and Sweden, allow for-profit entities to organize public collections as well. But even in such cases, safeguards exist to ensure that collected funds are not used for private gain. For example, the use of collected funds may be restricted to nonprofit or public benefit purposes.

In addition, some countries allow individuals to organize fundraising collections without an institutionalized organizer to back their engagement. For example, the Law of Ukraine on Charity and Charitable Organizations allows anyone to organize a fundraising activity provided that person is not excluded by Article 7, Point 5 of the law. This point stipulates that *“Persons who are in the state or other public service and persons acting on behalf of persons who are in government or other public service, are not entitled to make a public gathering of charitable donations.”*

In the Czech Republic, any legal entity that has residence in the country is allowed to undertake public collections. Regions, departments, and Prague’s city districts are eligible fundraisers as well.¹⁰⁹ Similarly, the Macedonian Law on Donations and Sponsorship in Public Activities allows any domestic legal entity to become a donation beneficiary. In both cases, however, the law says that the purpose of the collection must be publicly beneficial or of public utility.¹¹⁰ In France, non-residents may organize fundraising activities provided they designate a French representative for this purpose.¹¹¹

In Sweden, every legal entity that is registered at a local tax authority or the Swedish Patent and Registration Office is allowed to raise funds from the public. The law also provides for a special legal form called a fundraising foundation, which has the main goal of raising funds for designated public benefit purposes.¹¹²

Some countries, including Finland and the Czech Republic, require fundraising organizations to be **solvent**—that is, they may not have been declared bankrupt or placed under business prohibition.¹¹³

Public collection laws may also establish criteria related to natural persons acting on behalf of the organizer of public solicitations.

- **Minimum age.** Several countries set minimum age requirements for persons to be eligible to conduct public collections on behalf of beneficiary organizations. In Slovakia and the Czech Republic, the minimum age is fifteen, and in Ireland it is fourteen.¹¹⁴ In Scotland, the Public Charitable Collections Regulation differs between street and house-to-house collections. For street collection the minimum age is fourteen, while for house-to-house collection it is sixteen.¹¹⁵ According to the three remaining collection laws in Germany, children under fourteen years of age may not be involved in money collection, while children between the ages of fourteen and eighteen may be involved only in street collections and only until nightfall.¹¹⁶

¹⁰⁹ Czech Republic, Law on Public Collections, no. 117/2001, art. 3 (2001), <http://www.zakonyprolidi.cz/cs/2001-117/zneni-20140101>.

¹¹⁰ Macedonia, Law on Donations and Sponsorships in Public Activities, art. 7 (1).

¹¹¹ France, Decree Related to the Control of Accounts of the Organizations Calling for Public Generosity, no. 92-1011, art.1, (September 17, 1992), https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=3F29344D3C0948725D99689B70770525.tpdila11v_1?cidTexte=JORFTEXT00000724377&idArticle=LEGIARTI000006359594&dateTexte=20000416&categorieLien=id#LEGIARTI000006359594.

¹¹² Guet, *Monitoring Fundraising*, 18.

¹¹³ Finland, Money Collection Act, art. 15 (3); Czech Republic, Law on Public Collections, art. 5 (4).

¹¹⁴ Czech Republic, Law on Public Collections, art. 14 (2); Slovakia, Law on Public Collections, art. 7 (7); Ireland, Street and House to House Collections Act, no. 13, art. 15 (1962), <http://www.irishstatutebook.ie/eli/1962/act/13/enacted/en/html>.

¹¹⁵ Scotland, Public Charitable Collections Regulations 1984, no. 565, art. 5 (1984), <https://www.glasgow.gov.uk/CHttpHandler.ashx?id=17658&p=0>.

¹¹⁶ See Saarland [Germany] Collection Act (SaartSammlG), Law no. 868 art. 8 (July 3, 1968), http://sl.juris.de/cgi-bin/landesrecht.py?d=http://sl.juris.de/sl/gesamt/SammlG_SL.htm#SammlG_SL_rahmen;

Thuringia [Germany] Collection Act (ThürSammlG) (June 8, 1995)

<http://landesrecht.thueringen.de/jportal/?quelle=jlink&query=SammlG+TH&psml=bsthueprod.psml&max=true&aiz=true>; Collection Act Rhineland-Palatinate [Germany] (SammlG) (March 5, 1970),

<http://landesrecht.rlp.de/jportal/?quelle=jlink&query=SammlG+RP&psml=bsrlpprod.psml>.

- **Clean criminal record.** In the Czech Republic, the law requires a natural person who conducts a public collection to have a clean criminal record.¹¹⁷
- **Occupation.** In Ukraine, persons who occupy public positions in the state or other public service and persons who act on behalf of such persons are ineligible to engage in public solicitation for charitable donations.¹¹⁸

Finally, laws may establish certain **criteria for foreign organizations**. In some countries, such as Hungary, the law specifically provides that fundraising regulations apply to foreign organizations raising support for activities in the regulating country. In the Czech Republic, only foreign legal entities registered in EU countries, the European Economic Area (EEA), or Switzerland may organize public collections, and they are required to establish a branch office in the Czech Republic.¹¹⁹ In Macedonia, a foreign nonprofit legal entity may be the recipient of donations if the purpose is to meet public needs in the foreign country caused by natural disasters or humanitarian catastrophes. All other public-interest donations as defined by law are not eligible for tax benefits if made to a foreign legal entity.¹²⁰

To conclude, the law may set eligibility criteria for natural and legal persons to engage in fundraising activities. Country legislation may limit fundraising activities to nonprofit legal entities or allow for-profit legal entities also to organize public collections. Some public collection laws specify additional criteria for natural persons. For example, a minimum age requirement to protect children's rights is quite common. Ultimately, the purpose for which donations may be used is more important than the legal form of the fundraiser. Nevertheless, further discussion is needed to determine whether the exclusion from fundraising of

individuals with criminal records or occupying public positions is justifiable and does not unnecessarily interfere with CSOs' fundraising activities.

4.1.3. Permits and licensing requirements

In many countries, the law does not oblige organizers to obtain authorization for fundraising activities. Among the countries covered by this report, Moldova, Macedonia, Hungary, Spain, and Ukraine fall into this category. In addition, most German states have deliberately repealed regulations that imposed additional burdens on the organizers of public collections.

Some countries, including Finland, France, England, Wales, Ireland, Scotland, and Sweden, as well as three German states, require a **permit** or express authorization to organize a public collection. Under this requirement, organizers must submit an application describing the

Online Registries of Public Collections

Poland and several other countries have introduced online registries of public collections where anyone, including donors, may access general information about a collection. These resources typically include the name of organizer, the purpose of the collection, the place of collection, the fundraising method, and a timeline for conducting the collection.

intended public collection to responsible authorities, who determine whether applicants meet established criteria for obtaining permission or authorization. The requirement to obtain permits typically applies to collections in public places. Except for

France, none of the countries covered by this report requires permission for online fundraising.

Other countries apply a **notification** requirement, whereby organizers must notify the responsible authority of their intention to conduct a public collection and meet other requirements specified in the law. The notification procedure exists, for example, in Poland, where regulations concerning fundraising events were amended in July 2014 to eliminate the requirement that CSOs obtain approval to organize fundraising events. Current

¹¹⁷ Czech Republic, Law on Public Collections, art. 5a.

¹¹⁸ Ukraine, Law on Charity and Charitable Organizations, art. 7 (5) (2013).

¹¹⁹ Czech Republic, Law on Public Collections, art. 3 (2).

¹²⁰ Macedonia, Law on Donations and Sponsorships in Public Activities, art. 7 (2).

regulation requires CSOs simply to post information about their fundraising events on a website administered by the Ministry of Public Administration. If the administrators verify that the information submitted by the organizers is accurate, the information about the collection is published on the electronic portal of public collections and the collection may be organized.¹²¹ The amendments aimed also to respond to current technological trends by refraining from regulating fundraising methods involving flows of money that have already been recorded. Hence the law does not apply to SMS donations, bank transfers, and fundraising via the Internet.¹²²

In contrast, in the Czech Republic, an organizer receives a written **certificate** issued by the state authority after submitting a notification. As this certificate may be considered an official permit, it is questionable whether it is appropriate or accurate to label this procedure a “notification.”¹²³

The situation is slightly different in Slovakia, where the legislature employed a mixed regulatory approach to the issue of approvals for a public collection. In a procedure called a **registration** of the public collection, the organizer is obliged to submit an application and requested documentation to a local authority, as determined by the location of the collection. Based on this submission, the registration authority decides whether to approve the collection and register it in the registry of public collections or deny registration because of a failure to meet legal criteria.¹²⁴

In England and Wales, two types of “public collection approvals” are provided under the Charities Act 2006. The first is a certificate issued by the Charity Commission that is valid for a period of five years. The certificate serves as a qualitative assessment of the organization and its eligibility to conduct fundraising activities. A permit specifying the timeframe for conducting the collection as well as its location

and purpose must also be issued by a local authority, with a period of validity of twelve months. This system of permits aims to avoid the undue inconvenience to the public that would result if, for example, too many collections were organized in the same place at the same time.

In countries where collection permits are required, relevant criteria and procedures are normally regulated in public collection laws. Among the researched countries, Sweden is an exception. Its Public Order Act requires organizers to obtain permission from the local police office to carry out various activities in public places, including fundraising.

It is essential that the legal framework enable CSOs’ fundraising activities without imposing burdensome requirements. Where the law calls for special authorization or notification for fundraising activity, it is important that this requirement not inhibit CSOs from carrying out fundraising activities to support their mission and beneficiaries. In addition, any authorization or notification should be simple and easily completed by all CSOs wishing to organize a fundraising activity. The rules governing the authorization or notification process should be objectively framed and not subject to arbitrary decision-making by the relevant authority. In the context of quickly changing funding patterns, the need for prior authorization is being questioned in some countries.¹²⁵

Exceptions to prior approval or notification requirements

The laws regulating public collections often provide exceptions to notification or approval requirements for certain types of collections. For example, in Poland, the Act on the Principles of Conducting Public Collections stipulates that the collection of money on religious premises does not fall under the law and therefore does not have to be officially reported to state

¹²¹ Poland, Act on the Principles of Conducting Public Collections, no. 498, ch.2 (2014), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140000498>.

¹²² On this topic see, for example, “Zbiórki publiczne 2014—mniej formalności dla organizatorów.”

¹²³ Czech Republic, Law on Public Collections, art. 4.

¹²⁴ Slovakia, Law on Public Collections, art. 5.

¹²⁵ This debate is taking place in Finland, for example. See Auli Stark, “Rahankeräyslaki muuttuu ja muuttuu [Fundraising Act Changes and Changes],” *Kepa* (September 5, 2016),

<http://www.kepa.fi/uutiset-media/blogi/rahankerayslaki-muuttuu-ja-muuttuu>

authorities.¹²⁶ However, collections conducted by religious organizations in public places are not excluded. Similarly, the Czech,¹²⁷ Slovak,¹²⁸ and Saarland (Germany)¹²⁹ laws on public collections exclude from their scope the collection of money by religious organizations.

In Germany, a permit is not required for house collections conducted by an association among its own members. Furthermore, a permit is not required for collections conducted in the place and time of a meeting or other kind of event organized in a closed area among members.¹³⁰ In Finland, collections in closed areas (i.e., indoor collections) are also exempt from the permit requirement. In addition, money collections are exempt if conducted by a day-care center, school class, or established study or hobby group, provided a legally competent person organizes the collection and the funds raised are used to promote study or hobby activities.¹³¹

In England and Wales, “exempt collections” are local and short-term collections exempt from the requirement for certificates or permissions. The organizers of these collections must simply notify the local authority about the purpose, date, and place or location of the collection one day before it takes place or on the first day of a multi-day collection.¹³²

Responsible authority

In the countries covered by our research, the regulatory authority overseeing public collections may be located at the central, regional, or local level of government.

- **Central.** In Poland, the responsible body is the Ministry of Public Administration, which

must be notified of a public collection prior to its starting date.

- **Regional and local level.** In the Czech Republic, the responsible body is the regional office, as determined by the residence of the legal entity organizing a public collection.¹³³ In France, the responsible body is the state representative in the department of residence of the organization.¹³⁴ Organizations headquartered in Paris deposit their declaration with the prefect of Paris.¹³⁵ In Ireland, the authority responsible for granting the permit is the Chief Superintendent of the Garda division with jurisdiction over the place of collection.¹³⁶ To fundraise in public places in Sweden, permission from the local police office is required.¹³⁷
- **Mixed model.** In some countries, the responsible authority may be both central and local, depending on the geographic area of the collection. For example, in Slovakia, the Ministry of Interior approves the registration of a collection if it is to be conducted in several territorial districts. If the public collection is to take place solely in one state district, the respective district office exercises decision-making authority.¹³⁸ In Finland, the responsible body is determined by the location where fundraising is to take place and the location of beneficiaries. For money collections organized within a single state local district, the responsible authority is the police department in the area where the collection is arranged; for money collections to aid individual persons or families, the

¹²⁶ Poland, Act on the Principles of Conducting Public Collections, art. 2.

¹²⁷ Czech Republic, Law on Public Collections, art. 2.

¹²⁸ Slovakia, Law on Public Collections, art. 1 (2).

¹²⁹ Saarland, Collection Act, art. 12.

¹³⁰ Saarland, Collection Act, art.1.

¹³¹ Finland, Money Collection Act, art. 5.

¹³² UK, Charities Act 2006, art. 50.

¹³³ Czech Republic, Law on Public Collections, art. 4 (1).

¹³⁴ France, Law on the Representation in Favor of Associations and Cooperatives and on the Control of the Accounts of Organizations Calling for Public Generosity, no. 91-772, art. 3 (1991), <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000162114&categorieLien=id>.

¹³⁵ France, Decree Related to the Control of Accounts of the Organizations Calling for Public Generosity.

¹³⁶ Ireland, Street and House to House Collections Act 1962, art. 5.

¹³⁷ Sweden, Public Order Act, no. 1617.

¹³⁸ Slovakia, Law on Public Collections, art. 4 (1).

responsible authority is the police department in the domicile of the beneficiary of the collection; and for money collections arranged in larger areas, the responsible authority is the National Police Board.¹³⁹

- In England and Wales, an application for a public collection certificate must be submitted to the Charity Commission, but the permit is actually issued by the responsible local authority.¹⁴⁰ In Italy, the authority issuing the permit depends on the fundraising method involved. When the fundraising activity is carried out in public places (such as streets and squares), the organization must ask for authorization from the local authority.¹⁴¹ An organization that aims to deliver drinks and food during a fundraising event must refer to the Presidential Decree of April 4, 2001, No. 235, which distinguishes between 1) organizations affiliated with a national organization, of which the social objectives are recognized by the Ministry of Interior; and 2) those which are not. In the first case, the organization must present a communication called a “Segnalazione Certificata di Inizio Attività (SCIA)” to the local authority.¹⁴² The SCIA takes the place of formal authorization by the local authority, and the organization need not wait for any other formal authorization. The second category of organization must request formal authorization from the local authority. If the CSO wants to organize a lottery or similar event, it must inform the Ministry of Finance and Economic Affairs of the objective of the event, the municipality in which the event will take place, the number of tickets, and their cost.

Formal requirements for the application

Application procedures vary country by country. As a good practice, legislation allows for easy, timely, and inexpensive procedures, so that applicants are not discouraged from organizing

a collection. Usually the law requires an applicant to submit documentation to the responsible authority. Ideally, the applicant organization does not need to submit documents that are already available to the authorities, such as registration certificates and statutes.

- **Deadline for submission.** In most cases, public collection laws set deadlines or timeframes for submitting applications for planned collections. For example, in Ireland, an application for a collection permit must be submitted not more than six months and not less than fourteen days before the scheduled date or the first day of the collection.¹⁴³ In Scotland, the application may be filed no earlier than eighteen months and no later than two months before the proposed date of collection. In the Czech Republic, short notice is allowed in exceptional cases, such as natural or ecological disasters or to safeguard the health or life of an individual.¹⁴⁴
- **Application form and criteria.** The contents of application forms vary from country to country. Most commonly the application forms request:
 - The date(s) and times of the public collection
 - The location of the collection
 - The purpose of the collection
 - Detailed information about the organizer
 - Detailed information about the individuals acting on behalf of the organizer, including powers of attorney, written contracts, or other documents proving that the individuals are authorized to raise fund on behalf of the organizer
 - A description of the method for collecting contributions

¹³⁹ Finland, Money Collection Act, art. 11.

¹⁴⁰ UK, Charities Act 2006, art. 51 and 58.

¹⁴¹ Italy, Legislative Decree no. 507, ch. II.

¹⁴² Italy, Legislative Decree no. 78, On the Urgent Measures for Financial Stabilization and Economic Competitiveness (March 31, 2010), <http://gazzette.comune.iesi.an.it/2010/176/1.htm>.

¹⁴³ Ireland, Collections Act, art. 5.

¹⁴⁴ Czech Republic, Law on Public Collections, art. 4 (2).

- A public collection certificate currently in effect for the proposed collection.
- **Supporting documentation.** Supplementary documents are usually submitted together with the application. In Slovakia and the Czech Republic, a notice of approval from the Ministry of Foreign Affairs must be submitted with the application if the raised funds are to be used abroad.¹⁴⁵ Additionally in the Czech Republic, the organizer must submit a declaration from the local authority showing that the organizer is not delinquent in paying taxes, social security, insurance, or other state payments.¹⁴⁶ In Italy, each local authority separately decides on requirements for the application and supporting documentation. Some local authorities, such as the municipality of Milan, ask an organizer to submit a copy of the organization's statutes together with the application.¹⁴⁷
- **Other requirements.** Some countries, including Finland, Macedonia, the Czech Republic, and Slovakia, require the organizer to open a separate bank account for the collection.

Decision-making procedure

The decision-making procedure may take a few days up to one and one-half months. As a matter of good practice, a reasonable time limit should be specified for the decision-making. Among the researched countries, the shortest turn-around time is in Poland, where the responsible authority has to verify the information and decide about publishing the collection in the portal within three days of electronic submission of the application and within seven days of receipt of a paper application.¹⁴⁸ The longest procedure may be in Scotland, where the organizer must submit an application no later than two months before the proposed date of a collection, and the responsible authority must notify the organizer of its decision no later than

fourteen days prior to the proposed date. The law, however, permits the organizer and the local authority to agree on a shorter notification deadline.¹⁴⁹ Some countries, such as Germany, apply the general rules of administrative procedure to the issuance of fundraising permits.¹⁵⁰

Grounds for denial

The law shall provide an exhaustive list of justifiable grounds for rejecting a request for registration. Any restrictions on the freedom of association, including access to resources, should be compatible with international human rights standards. Typical grounds for refusing applications to fundraise include:

- **Unlawful purpose.** The purpose of the collection is not in compliance with publicly beneficial purposes prescribed by law, as in Slovakia.
- **Prejudice to the maintenance of public order.** There is a risk that the collection or the use of the collected income will disturb security or the public order, as in Germany.
- **Undue disturbance of members of the public.** The collection is planned for a day or during a week or period, with a frequency, or in a locality that will unduly disturb the public, as in England and Wales.
- **Personal profit.** The collectors would derive personal profit other than the payment of a reasonable commission for their services, as in Ireland.
- **Unresolved issues related to a previous collection.** The applicant did not pay a fine related to a previous collection, as in Slovakia and the Czech Republic, or failed to exercise due diligence in respect to a previous collection, as in Ireland.
- **Failure to obtain prior approval.** The organizer did not obtain required prior approval (for example, to utilize funds

¹⁴⁵ Slovakia, Law on Public Collections, art. 4 (2).

¹⁴⁶ Czech Republic, Law on Public Collections, art. 5 (3, 4).

¹⁴⁷ Municipality of Milan [Italy], Regulation on the Tax for the Occupation of Public Spaces and Areas, art. 11, <https://servizi.comune.melzo.mi.it/hypersicportal/portale/suite/getfile.aspx?ID=293&CATEGORIA=NORMATIVA>

¹⁴⁸ Poland, Act on the Principles of Conducting Public Collections, art. 10 (1).

¹⁴⁹ Scotland, Charities and Trustee Investment Act, art. 86.

¹⁵⁰ Saarland, Collection Act, art. 14.

abroad), as in Slovakia and the Czech Republic.

- **Incomplete application form.** The information provided in the application is incomplete and is not supplemented within a specified time period, as in Poland.

Permit conditions

A permit may be issued for a specific collection, a specific time period, or both. In almost all researched countries that have an authorization requirement, a permit is valid for a defined period of time. The period of validity may depend on the subject of the permit. For example, in Finland, the maximum period of validity is five years, but permits for collections to assist individual persons or families are in force for no more than six months.¹⁵¹ In the England and Wales, the maximum period of validity is five years, but the Charity Commission has the discretion to shorten this term,¹⁵² and the validity of a permit to conduct a public collection at a specific time and place is only twelve months.

The only countries that do not impose time limits on the validity of permits are the Czech Republic and Sweden. In the Czech Republic, collection permits may be issued for an undetermined period of time, with the requirement that the organizers have to undergo annual audits of the collected funds. If the collection is announced for a definite time frame, the duration of the permit may not exceed three years from time of notification of the collection.¹⁵³ In Sweden, collections may be held for a fixed time period or until further notice. In the latter case, the police may revoke the permit in the interest of traffic, public order, or safety.¹⁵⁴

Permit holders are usually obliged to notify the authorities about any changes that affect the approval to hold public collections. For example,

in Finland, the permit holder must notify the authorities without delay and in writing of changes related to the permit holder or organizer, collection, professional fundraiser, or the collection beneficiary. Additionally, the permit holder must report any changes that have occurred in the administration of the fundraising organization that would affect the permit approval.¹⁵⁵

Grounds for withdrawing permits

If a fundraiser ceases to fulfill the conditions necessary for receiving a permit, the state authority may issue a written warning or withdraw its authorization to conduct the fundraising activity, effective for a temporary period or permanently. The authority issuing a permit ordinarily has the discretion to decide whether there are actual grounds for withdrawing the permit. If it finds that such grounds exist, it may withdraw a permit permanently or impose a less strict measure to correct the deficiencies.

In Finland, the granting authority must withdraw a permit if “the permit holder no longer meets the criteria set for receiving a permit and has not by the set deadline corrected a deficiency in them that could have been corrected without delay.” The permitting authority first issues a written warning to the fundraiser to correct the deficiencies before a set deadline. If the fundraiser fails to make the corrections on time, the permitting authority then withdraws the collection permit. Additionally, the permit must be withdrawn when the permit holder requests this to happen.¹⁵⁶

The local authority in England and Wales may withdraw a permit, attach any condition to the permit, or vary an existing condition on the permit under circumstances stipulated by law. These include a reasonable belief by the local authority that (1) there has been a change in the

¹⁵¹ Finland, Money Collection Act, art. 8. The period of validity was increased from two to five years in the 2014 amendment to the act.

¹⁵² UK, Charities Act 2006, art. 51.

¹⁵³ Czech Republic, Law on Public Collections, art. 2a.

¹⁵⁴ Sweden, Public Order Act, no. 1617, art. 18 (1993),

https://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Ordningsslag-19931617_sfs-1993-1617/

¹⁵⁵ Finland, Money Collection Act, art. 18.

¹⁵⁶ Ibid., art. 23 (1). Paragraph 2 of this article describes other grounds for withdrawing a permit—for example, a violation by the permit holder or practical arranger (i.e., professional fundraiser) of the Money Collection Act, a decree issued under it, or conditions of the permit. The decision to withdraw the permit is optional and made the granting authority.

circumstances that prevailed at the time the permit was issued; (2) under current circumstances the permit would not be granted or would be granted under different conditions; (3) the information provided by the permit holder was false or misleading; or (4) there has been or is likely to be a breach of condition of the permit or a breach of condition is continuing.¹⁵⁷

In Ireland, the Chief Superintendent may revoke a collection permit if any grounds exist either in relation to the organizer of the collection or the collection itself that would cause the permit to be refused at the time of application.¹⁵⁸

In the three German states considered in this report, the competent authority may prohibit a collection or its continuation if (1) there is danger that the security or public order is disturbed by the collection or by using the collection yield; (2) no sufficient guarantee for the proper conduct of the collection or the relevant and good quality use of collection income is given; or (3) there is a risk that the expenses of collection will be available in a clear disproportion between the net revenue from the collection.¹⁵⁹

Consequences of unauthorized collections

In most countries researched, an organization conducting an unauthorized collection—that is, without a valid collection permit when required—is guilty of an offence. The punishment of such an offence is usually a penalty or a fine. However, in Sweden and Ireland, a person who breaches provisions of the laws regulating public collections, including unauthorized collections, may be liable to a fine

or imprisonment for a term not exceeding six months.¹⁶⁰

The amount of fines varies from one country to another. The lowest fines are in Ireland (£50 or approximately \$60) and Slovakia (€100 to €1,000, approximately \$110 to \$1090).¹⁶¹ In Germany, the fine may not exceed €5,000.¹⁶² The highest fine for unauthorized collections is in the Czech Republic, where the organizer of such a collection has to pay a fine of CZK 500,000 or about \$20,200.¹⁶³

The Scottish Charities and Trustee Investment Act addresses situations in which an unauthorized person performs a fundraising activity on behalf of another “benevolent body” or organization that is allowed to solicit charitable contributions. In such a case, the benevolent body may file an application with the sheriff informing him of a suspected unauthorized collection. The sheriff may then decide to interdict the collection and request that the unauthorized person give all collected contributions to the complaining benevolent body.¹⁶⁴

In principle, any sanction imposed on CSOs should be consistent with the principle of proportionality and therefore be the least intrusive means to achieve the desired objective. At all times sanctions should be enforceable and effective at ensuring the specific objectives for which they were enacted. When deciding whether to apply sanctions, authorities should apply measures that are the least disruptive and destructive to the right to freedom of association.¹⁶⁵

¹⁵⁷ UK, Charities Act 2006, art. 61 (1-4).

¹⁵⁸ Ireland, Collections Act, art. 12. The grounds for refusing a permit as described in Articles 9 and 10 include possible disturbance of the public order and possible misuse of the proceeds to benefit an object that is unlawful or contrary to public morality or an organization in which membership is unlawful.

¹⁵⁹ Rhineland-Palatinate, Saarland, and Thüringen, Collection Acts, art. 9 (3).

¹⁶⁰ Ireland, Collections Act, art. 25; Sweden, Public Order Act, art. 29.

¹⁶¹ Ireland, Collections Act, art. 25; Slovakia, Law on Public Collections, art. 15 (1).

¹⁶² Saarland, Collection Act, art. 10 (2).

¹⁶³ Czech Republic, Law on Public Collections, art. 25a.

¹⁶⁴ Scotland, Charities and Trustee Investment Act 2005, art. 82.

¹⁶⁵ Organization for Security and Cooperation in Europe Office for Democratic Values and Human Rights (OSCE/ODIHR) and Venice Commission Guidelines on Freedom of Association, “Joint Guidelines on Freedom of Association,” art. 237 (January 1, 2015), <http://www.osce.org/odihr/132371>.

4.1.4. Fundraising tools

CSOs may apply a variety of fundraising tools to solicit income through private giving. Some fundraising and public collection laws provide lists with detailed descriptions of allowed fundraising methods. For example, the Law on Public Collections in the Czech Republic recognizes the following allowed fundraising methods: the collection of contributions in a special bank account established solely for this purpose and identified prior to the collection for a period specified in the notice of the collection; collection sheets; collection boxes; the sale of items, if the contribution is included in the price; the sale of tickets to cultural, sports, or other publicly accessible events organized for the purpose of obtaining contributions, if the contribution is included in the admission price; donor SMS via telecommunications terminal equipment¹⁶⁶; and cash contributions to the treasury created by a legal entity. It is also possible to conduct a collection using a different method with the permission of a regional office.¹⁶⁷ The Law on Public Collections in Slovakia recognizes a similar set of fundraising methods.¹⁶⁸

Other countries provide lists of fundraising methods or fundraising arrangements that are not considered money collection for philanthropic purposes. For example, public collections for religious purposes and collections within a smaller, closed community may be excluded from the scope of public collection regulations. The Polish Act on the Principles of Conducting Public Collections does not consider as a public collection any collection for church or religious purposes if it takes place on religious premises; is organized as a lottery; takes place among a group of friends; takes place among children inside school premises, organized by school authorities; or is made on the premises of

a public office, under the authorization of the director, or another workplace.¹⁶⁹

What are the most popular fundraising methods in Europe?

According to the European Fundraising Association Survey 2015, traditional methods of fundraising, including direct mail, public and street collections, and membership fees, remain the major income sources for CSOs. However, online, mobile, and digital fundraising techniques have become much more important in recent years. Several countries, including Italy and Slovakia, now identify mobile phone or SMS fundraising as one of their top three fundraising methods.¹⁷⁰

The UK's Charities Act 2006 recognizes two types of public charitable collections: collections in a public place and door-to-door collections. A charitable appeal is not a public charitable collection if the appeal is:

- a) Made in the course of a public meeting
- b) Made on land within a churchyard or burial ground contiguous or adjacent to a place of public worship, or on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it, where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise)
- c) Made on land to which members of the public have access only—by virtue of the express or implied permission of the occupier of the land, or by virtue of any enactment, and the occupier is the promoter of the collection

¹⁶⁶ 'telecommunications terminal equipment' means a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public telecommunications networks (that is to say, telecommunications networks used wholly or partly for the provision of publicly available telecommunications services), according to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0005&from=EN>.

¹⁶⁷ Czech Republic, Law on Public Collections, art. 9.

¹⁶⁸ Slovakia, Law on Public Collections, art. 7(1).

¹⁶⁹ Poland, Act on the Principles of Conducting Public Collections, art. 2.

¹⁷⁰ European Fundraising Association, "Fundraising in Europe 2015" (November 2015), 9, <http://fundraising.cz/v1/wp-content/uploads/2015/11/EFA-Survey-Fundraising-in-Europe-2015.pdf>

- d) An appeal to members of the public to give money or other property by placing it in an unattended receptacle.¹⁷¹

Similarly, in the three German states that regulate fundraising, the legislation recognizes street collections (on streets or squares, trattorias, pubs, or accessible in other public spaces) and home collections (from house to house, especially with collection lists).¹⁷² These two types of collections are always subject to permission. In addition, in Saarland and Thüringen, permission is required for the 1) distribution of goods or the provision of services with charitable purposes, and 2) the sale of tickets for public art events that are organized with the indication that one or more blind artists is involved. In Saarland, permission is also required for the collection of worn clothing, dirty laundry, textile waste, waste paper, and other waste.

Fundraising and money collection laws may also forbid certain types of fundraising tools and methods. For example, the Finnish Money Collection Act prohibits, in connection with money collection, the conduct of lotteries or games in which participants are promised prizes based in whole or in part on chance, chain letters or comparable methods, pyramid schemes, and money collections in which the collections could be confused with trading or acquiring members for an association.¹⁷³

Following are some examples of how specific fundraising methods and tools are regulated. The examples show that traditional fundraising methods, such as collection boxes and street collections, have a well-established regulatory practice adapted to their needs. Legal frameworks governing the new fundraising methods have recently begun to emerge and are being tested by some countries. An enabling regulation for any fundraising method can serve various purposes: it can raise awareness of this means of supporting CSOs' missions and beneficiaries, regulate the definition and basic rules to avoid uncertainty and misuse, provide for tax benefits, and so on. On the other hand, regulation should not be autotelic. If there have been no impediments to or misuse of certain

fundraising mechanisms, there may be no need to regulate them. In some cases, self-regulation is sufficient to promote fundraising mechanisms while increasing public confidence in the sector. Examples show that over-regulation, such as setting low thresholds for the collected funds, can limit the potential of new fundraising methods. Therefore it is important to find a healthy balance that takes into account national and regional traditions and trends.

Collection boxes

Collection boxes are one of the most traditional and widespread fundraising methods. Specific legal requirements for collection boxes can be found in several countries, including Hungary, Ireland, Slovakia, and the Czech Republic. The laws usually establish requirements for the appearance of the collection box and procedures for opening it. The rules commonly specify that the box remain sealed during the process of solicitation, that it bear the name of the body for which the collection is being made (and sometimes contact information for the organization), and that a set of collection boxes be numbered individually for proper identification.

In Ireland, the collected money must be placed in the collection box in the presence of the donor, and the box must be delivered unopened and with its seal intact to the holder of the collection permit or a person authorized by the permit holder.¹⁷⁴ In Hungary, at least two authorized representatives of the fundraising organization must be present when the collection box is opened. They must prepare a record about the condition of the box and the donated cash it contains (with an inventory of the denominations), and afterwards they must ensure that the donated funds are registered in the accounts of the beneficiary. In the case of a collection box that serves to collect in-kind donations such as clothing and is difficult to move, the inventory may be made at the seat or

¹⁷¹ UK, Charities Act 2006, art. 45-46.

¹⁷² Rhineland-Palatinate, Collection Act; Thuringia, Collection Act; and Saarland, Collection Act.

¹⁷³ Finland, Money Collection Act, art. 9.

¹⁷⁴ Ireland, Charities Act 2009, art. 94.

place of business of the fundraising organization.¹⁷⁵

prohibits fundraising collections on public transportation.¹⁷⁸

Countries without special regulations may still follow certain procedures for securing collection boxes. For example, in Moldova no special regulations exist on this type of fundraising. In using collection boxes CSOs observe the following procedures: a) they conclude an agreement of cooperation with the institution “hosting” the collection box (a trade center, bank, etc.) or else locate the box in a public place without supervision; b) when the collection box is opened, a commission composed of members of the beneficiary CSO is present and prepares minutes recording the size of the amount in the box; and c) the CSO reports the sum of money raised as part of its income. Unfortunately, fraud is possible for the exact reason that there is no mechanism in place to supervise collection boxes, and CSOs themselves are not clear about such activities in their self-governance rules.¹⁷⁶

Street collection and door-to-door collection

To preserve public order, countries ordinarily introduce certain requirements or limitations on collections organized in public places. These may include:

- **Formal requirements.** For example, in Hungary, at the request of state authorities, fundraisers must prove their identity by displaying a proxy provided to them by the beneficiary organization, along with company extracts.¹⁷⁷
- **Limitations on collections at certain locations.** For example, the Czech Republic

Sale of goods

The law may establish conditions on the type and sale of goods for philanthropic purposes. For example, in Slovakia, all goods sold for philanthropic purposes must be clearly marked with the amount of the contribution. If this is not possible because of the nature of the product, the legal entity responsible for its sale must publish the amount at the place of sale prior to the start of the collection event.¹⁷⁹ Similar requirements exist in Slovakia for the sale of tickets that include a charitable contribution.¹⁸⁰ In France, goods sold for philanthropic purposes must bear a distinct mark or brand, which is issued by the Ministry of Public Health for a period of three years. The actual market value of the goods sold for philanthropic purposes must be equal to at least 50 percent of the selling price.¹⁸¹

The law may limit the sale of certain categories of goods for philanthropic purpose. As an example, the Ukrainian Law on Charity and Charitable Organizations prohibits the public raising of charitable donations in the form of excisable goods.¹⁸²

Collection in private premises

When the collection takes place in the private residences of natural persons or on the premises of legal entities, the law may require the consent of the owner, tenant, or administrator of the premises. For example, this is the case in both Slovakia and Hungary.¹⁸³

¹⁷⁵ Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, art. 10.

¹⁷⁶ Serghei Neicovcen, Daniela Vidaicu, and Vasile Cioaric, *Study on Fundraising by Moldovan Civil Society Organizations from Domestic Resources: Opportunities and Perspectives* (Chisinau: Contact, 2016), 27, http://ecnl.org/wp-content/uploads/2016/02/R69-Studiu-Colectare-de-fonduri-final_ENG_FINAL.pdf

¹⁷⁷ Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, art. 8.

¹⁷⁸ Czech Republic, Law on Public Collections, art. 15.

¹⁷⁹ Slovakia, Law on Public Collections, art. 10 (1).

¹⁸⁰ Slovakia, Law on Public Collections art. 11 (1).

¹⁸¹ France, Law on Publications, Printed Materials and Goods Sold for Philanthropic Purposes, art. 2.

¹⁸² Ukraine, Law on Charity and Charitable Organizations, art.7 (6).

¹⁸³ Slovakia, Law on Public Collections, art. 3 (7); Hungary, Decree on Certain Issues of the Financial Management of Civil Society Organizations, Fundraising, and Public Benefit Status, art. 9.

Some countries do not regulate collections on private premises. For example, the Polish Law on Principles of Conducting Public Collections provides that only collections in public places are regulated under this law. Thus collections in private residences are excluded from the scope of regulation.¹⁸⁴

SMS donations and fundraising phone numbers

The general requirements of SMS donations may be regulated by law or be based solely on an agreement between the facilitating organization and telephone providers, as in Ireland. LikeCharity, an Irish company established to help charities raise money, has, in partnership with six mobile phone providers, launched an SMS donation service to ensure that 100 percent of the money raised, including VAT, goes directly to the intended charity.¹⁸⁵

Regulations may require a phone service provider to inform the legal entity organizing a collection of the number of messages received and the sum of the contributions.¹⁸⁶ The law may also set reporting requirements or deadlines for SMS collections.¹⁸⁷

SMS donations and the phone numbers used in fundraising may be regulated by media laws and regulations. For example, in Hungary, the National Media and Info-communications Authority Decree¹⁸⁸ identifies priority numbers and other numbers to be used in fundraising for public benefit causes. Only members of the Charitable Council,¹⁸⁹ which includes five large CSOs, such as the Red Cross, may use priority fundraising numbers (135d).¹⁹⁰ Another priority fundraising number is the “national cooperation line” (1357), to be used in case of a national catastrophe. Other numbers (13600-13609) may

be used by intermediary organizations managing fundraising for public benefit organizations (PBOs) or directly by PBOs themselves (13610-1369). The National Media and Info-communications Authority must disclose these numbers on its website along with the intermediary organizations or PBOs using them. Fundraising organizations must also publish the following information on their websites: 1) the total income received from phone calls and SMS messages; 2) of this amount, the fee provided to phone service providers; 3) the amount used for operational costs; 4) the amount used directly to support those in need; 5) the number of supported recipients; and 6) a detailed description of activities implemented with the collected donations.¹⁹¹ Interested CSOs must first reach agreements with phone service providers about the accessibility of the fundraising phone numbers. Based on this agreement, permission to use a fundraising phone number is then requested from the authority, which issues a permit based on its decision.

In France, the legal regulation of SMS donations was recently introduced with the adoption of the Digital Republic Law of October 2016. The law allows donors to send financial contributions to CSOs via SMS with a value of up to €50 (approximately \$55) for each single-payment transaction and a cumulative monthly value of up to €300 (approximately \$325) for payment transactions for the same CSO. The law also established an obligation for telephone providers to report annually to the Prudential Control Authority.¹⁹² By passing this regulation legislators hoped to encourage more young people to donate to CSOs.

¹⁸⁴ Poland, Act on the Principles of Conducting Public Collections, art. 1 (1).

¹⁸⁵ “Mobile Providers Launch 100% Text Giving in Ireland,” Fundraising Ireland (January 23, 2013), <http://www.fundraisingireland.ie/whats-new/current-news/mobile-providers-launch-100-text-giving-in-ireland/>. For more on LikeCharity see <http://www.likecharity.com/#overview>.

¹⁸⁶ Czech Republic, Law on Public Collections, art. 16.

¹⁸⁷ Slovakia, Law on Public Collections, art. 8.

¹⁸⁸ Hungary, National Media and Infocommunications Authority Decree on the National Allocation Plan of Electronic Communications Network Identifiers, (IX.26.), art. 3.8, (March 2011), http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100003.NMH.

¹⁸⁹ The Charitable Council supports people in need by distributing assets confiscated in criminal procedures.

¹⁹⁰ For example, 1359 is the priority fundraising number for Red Cross.

¹⁹¹ Hungary, National Media and Info Communications Authority Decree on the National Allocation Plan of Electronic Communications Network Identifiers, art. 3.8.

¹⁹² France, Digital Republic Law, no. 2016-1321 (October 8, 2016), <https://www.legifrance.gouv.fr/eli/loi/2016/10/7/ECFI1524250L/jo>.

Fundraising via electronic communications

Electronic communications include direct phone calls, faxes, e-mails, and other methods of direct interaction with donors. In EU member states, the EC directive on privacy and electronic communications sets forth general rules applicable to this method of fundraising. The directive requires a charity to receive prior consent from a donor to be contacted and provide an opportunity for the donor to opt out or unsubscribe from unsolicited communications.¹⁹³

Furthermore, separate rules may apply to each of these methods of contact. For example, in the UK, a charity representative making a telemarketing phone call must introduce himself or herself and provide the charity's contact information, if requested. To transpose the rules of the EC directive to national legislation, telephone, fax, mail, and email preference services were created by the government. These preference services provide information on the rules governing direct marketing via electronic communications and allow individuals and corporations to register their numbers so as to block incoming phone calls, faxes, e-mails, or text messages.¹⁹⁴

Crowdfunding

Crowdfunding via the Internet must also comply with data protection laws. The provider of an online crowdfunding portal administering a donor database must strictly abide by national data protection legislation—in particular, by requesting each donor's approval to process his or her personal data.¹⁹⁵

Crowdfunding is gaining in popularity across Europe, and some countries, including France, Finland, and Spain, have recently introduced

new legal frameworks for it. Such regulations may or may not be applicable to charitable donations. In France, the decree on crowdfunding adopted in 2014 is not compulsory for charitable donations, although it may be beneficial for CSOs to apply it. The decree allows individuals to make donations and lend money to CSOs at no interest or at lower interest rates than banks generally offer, thus constituting a departure from banks' lending monopoly. The maximum amount permitted for this type of loan is €1,000 (approximately \$1,090) per project for interest-bearing loans and €4,000 (approximately \$4,360) per project for interest-free loans.¹⁹⁶

The new French regulation also introduced the legal status of "crowdfunding intermediary," a platform that facilitates donations, loans, the investment of capital in startups, and other permissible methods of crowdfunding. Only legal entities are eligible to obtain this status, and once it is acquired, they are subject to explicit rules of conduct and must have professional liability insurance. All crowdfunding intermediaries are supervised by l'Autorité de Contrôle Prudentiel, an independent administrative body attached to the Bank of France.¹⁹⁷

Since 2015 crowdfunding has been regulated in Spain by Law 5/2015 on the Promotion of Business Financing.¹⁹⁸ The activities of crowdfunding platforms are subject to authorization by the National Securities Market Commission (CNMV) and registration in the CNMV's registry. The law does not apply to crowdfunding by CSOs. Some members of the Spanish and European community have found the law controversial and complain about the limits set by the law on the amounts they can raise through crowdfunding. According to the

¹⁹³ European Parliament and Council of the European Union, "Directive Concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector," art. 13.

¹⁹⁴ For more on direct marketing laws in the UK, see "Marketing and Advertising: The Law," Gov.UK. For a description of Telephone Preference Service in the UK, see its website at <http://www.tpsonline.org.uk/tps/index.html>.

¹⁹⁵ See, for example, the rules for using the Slovak donor online portal at <https://www.darujme.sk/sk/pravidla/>.

¹⁹⁶ France, Decree on Crowdfunding, no. 2014-1053 (2014), <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029463569&categorieLien=id>.

¹⁹⁷ For more on the new crowdfunding regulation in France, see "Le financement participatif (Crowdfunding)," ACPR Banque de France, <http://acpr.banque-france.fr/agrements-et-autorisations/le-financement-participatif-crowdfunding.html>.

¹⁹⁸ For more on Spain's Law on the Promotion of Business Financing, no. 5/2015 (April 27, 2015), see Uria Menendez, "Newsletter on Corporate and Commercial Law" (April 2015), http://www.uria.com/documentos/circulares/730/documento/5685/053_April_2015_ENG_Crowdfunding_.htm.

law, non-qualified investors¹⁹⁹ may not invest more than €3,000 (approximately \$3,270) per project or more than €10,000 (approximately \$10,900) within any twelve-month period in projects published through a single crowdfunding platform.²⁰⁰

In England and Wales, talks continue regarding the adoption of crowdfunding regulations. Since April 2014 the Financial Conduct Authority, a regulatory body independent of the UK government, has supervised crowdfunding practices to ensure that consumer protection rules are safeguarded.²⁰¹

Payroll giving

Payroll giving permits donors to make regular or sporadic donations from their monthly salaries or personal pensions. This method of giving is currently in place in the UK, where the payroll scheme is administered by payroll giving agencies (PGAs). The process for payroll giving is simple: an employee asks the employer to deduct a certain amount of donation from his or her gross income, which the employer disburses directly to the PGA, which then sends it on to the charity chosen by the employee. PGAs may charge an administrative fee for facilitating the process of payroll giving.²⁰²

Lotteries

Lotteries and similar events can be an effective means of raising funds, as they include a motivation for donors to engage in giving. In Sweden, Finland, and Ireland, there are special laws regulating charitable lotteries.

In Italy, lotteries are a domain reserved for CSOs and political parties, and other legal entities are not permitted to organize similar events. When

organizing a lottery an organization must indicate the number and type of prizes, the number and price of tickets, the place where the prizes will be exhibited, the place and the time for drawing tickets, and the time of delivery of prizes to the winners. The presidential decree on the revision of the rules governing competitions, including lotteries, sets a maximum value on all tickets sold during such an event—for example, the threshold on tickets for lotteries is €51,645.69 (approximately \$56,300).²⁰³

Similarly, in Sweden, national charitable lotteries can be organized only by CSOs pursuing public benefit activities. They must apply for licenses, which permit them to organize lotteries or bingo games to raise funds for their operations. Requirements include public notification of value of the prizes, which must be at least 35 percent and not more than 50 percent of the value of the stakes; an indication of the ticket price on the ticket; and dedication of “a reasonable amount” of the proceeds to the organizer.²⁰⁴ The law does not specify what constitutes a “reasonable” amount but by common practice the minimum threshold is about 20 percent.²⁰⁵

4.1.5. Utilization of collected funds

To avoid fraud and the misuse of contributions, laws governing public collections, particularly those that require permits, may establish certain restrictions on the utilization of collected funds. These restrictions most commonly include a requirement that funds be used for the purpose indicated in the permit and a timeframe for the utilization of contributions. Caps on the administrative costs of fundraising activities may be introduced to ensure that the collected funds are used efficiently.

¹⁹⁹ Spain’s Law on the Promotion of Business Financing, no. 5/2015, differentiates between qualified and non-qualified investors primarily on the basis of proven economic capacity.

²⁰⁰ Jamie Novoa, “Spanish Government Limits Amount Startups Can Raise via Equity Crowdfunding to EUR 5 million,” Novobrief (January 8, 2015), <https://novobrief.com/limits-equity-crowdfunding-spain/>.

²⁰¹ Financial Conduct Authority, “The Financial Conduct Authority’s Regulatory Approach to Crowdfunding over the Internet and the Promotion of Non-Readily Realizable Securities by Other Media,” policy statement 14/4 (March 2014), www.fca.org.uk/static/documents/policy-statements/ps14-04.pdf.

²⁰² UK, HM Treasury, Cabinet Office, and HM Revenue and Customs, “Consultation on Payroll Giving” (January 24, 2013), <https://www.gov.uk/government/consultations/consultation-on-payroll-giving>.

²⁰³ Italy, Presidential Decree no. 430, art. 13 (2).

²⁰⁴ Sweden, Lotteries Act, no. 1000, art. 16 (1994), <https://www.notisum.se/rnp/sls/lag/19941000.htm>.

²⁰⁵ “Country Profile: Sweden,” Association of Charity Lotteries in the European Union (Acleu), <http://www.acleu.eu/static/ACLEU/pdf/CL%20in%20Sweden.pdf>.

Following are some of the common legal limitations related to the utilization of collected funds. These rules apply only to public collection methods that are subject to public collection laws and should by no means be interpreted broadly to apply to all means of soliciting donation.

Purpose

The most common restriction related to the utilization of collected funds is that they must be spent only on the purposes designated in the collection permit. The laws may offer limited options for changing the designated purpose. Modifications may be permitted, for example, when the designated purpose is achieved without exhausting all collected contributions or the purpose becomes redundant or cannot be achieved because of some unexpected circumstance, such as the death of the collection's beneficiary. Accordingly, the Czech Law on Public Collections permits modification of the purpose for utilizing collected funds in cases in which the previous purpose becomes redundant. The modification must be approved by the appropriate regional office, and the organizer of the fundraising activity must inform the public about the change of the purpose.²⁰⁶ In France there are special rules for collections co-organized by more than one organization or by an agency on behalf of a group of organizations. In such situations the organizations can submit a joint collection declaration specifying how the funds will be redistributed among them. The declaration should also specify what happens if it is not possible to distribute funds to one of the organizations.²⁰⁷

Timeframe

Some public collection laws introduce a time period for utilizing funds raised. For example,

the Slovak Law on Public Collections stipulates that collected funds must be used within one year of the termination of the collection. However, CSOs collecting money for international aid have an extended period of twenty-four months.²⁰⁸ In Finland, the timeframe for utilizing collected funds is indicated in the permit and is determined by the purpose of the collection. However, this period must not exceed ten years.²⁰⁹

Administrative costs

To avoid excessive non-charitable expenditures, some countries have introduced caps on the administrative costs of organizing and implementing the fundraising activity. The main goal of these caps is to avoid fraud and promote the efficiency of fundraising organizations. Costs considered "administrative" usually involve the material and technical support needed to organize the collection and manage and administer the collected funds. Expenditures that exceed the threshold may result in the fundraiser's ineligibility for future public collection permits.²¹⁰ Thresholds range from 5 percent in the Czech Republic²¹¹ to 25 percent in Slovakia.²¹² In Sweden, administrative and fundraising costs together shall not exceed 25 percent.²¹³

Finnish Money Collection Act 2006

"If the funds raised or part of them cannot be used for the purpose laid down in the money collection permit or if such use is not appropriate because of material changes in circumstances or for some other reason, the permitting authority may on application amend the purpose for which the funds will be used."²¹⁴

²⁰⁶ Czech Republic, Law on Public Collections, art. 20.

²⁰⁷ France, Law on the Representation Leave of Associations and Mutuals and on Auditing of Organizations Applying for Public Generosity, art. 3a.

²⁰⁸ Slovakia, Law on Public Collections, art. 13.

²⁰⁹ Finland, Money Collection Act, art. 16.

²¹⁰ Oonagh B. Breen, "Regulating Charitable Solicitation Practices," 118.

²¹¹ Czech Republic, Law on Public Collections, art. 23.

²¹² Slovakia, Law on Public Collection, art. 2.

²¹³ Swedish Fundraising Control, "The Swedish Fundraising Control's Standards for 90-Accounts," art. 12 (May 17, 2006), <http://www.insamlingskontroll.se/sites/default/files/Standards%20-%20F%C3%B6reskrifter.pdf>.

²¹⁴ Finland, Money Collection Act, art. 20.

4.1.6. Reporting requirements

Since CSOs benefit from the generosity of people through fundraising, it is important that organizations uphold a sufficient level of transparency. Transparent operations enable CSOs to establish their credibility and earn the public's confidence and support. CSOs are accountable to their donors and beneficiaries as well as to state authorities and the public.

In many countries, including the Czech Republic, England and Wales, Finland, France, Italy, Poland, Slovakia, and the three German states, there are special requirements for reporting income from fundraising activities. The rules governing transparency and accountability usually oblige a fundraiser to share the following information:

- **The results of the fundraising effort**—that is, the total amount of funds raised, etc.
- **The utilization of funds raised**—whether they actually get to the declared beneficiaries or destination, and what is achieved by using the funds raised.
- **Other costs covered by funds raised**—the amount spent on administrative expenses, marketing, and campaigning, and the net income from fundraising used directly for the declared purpose.

A CSO's report on collected funds **may be part of general reporting requirements**, such as an annual financial report. Often, however, **separate reports** must be submitted to the authority supervising the fundraising or money collection activity. In addition, some countries require that interim reports be submitted on collections exceeding a prescribed period of time, such as twelve months in Slovakia and Poland.²¹⁵

Reports may include different types of data, depending on the country legislation. For example, the Slovak Law on Public Collections requires a report on each fundraising activity, which must include an overview of collection costs and the utilization of net proceeds from the

collection, along with supporting documentation.²¹⁶

Transparency, accountability and effectiveness

An important driving element for the growth of philanthropy is public trust. When donors do not have faith that their donations will be used for the envisioned purpose, they are not willing to give. The recently published Palgrave Handbook of Global Philanthropy revealed that lack of trust in CSOs is considered a deterrent to philanthropy in almost all twenty-five countries studied in the report. To increase public trust in CSOs, the handbook suggests making CSOs more transparent, accountable, and effective.²¹⁷

Deadlines for reporting may vary, depending on the type of report and the duration of the fundraising activity. In general, narrative and financial reports are submitted by CSOs on an annual basis. Financial reports on fundraising activities must be submitted within a prescribed period of time after termination of the fundraising activity. The organizer is also obliged to submit a report on the utilization of proceeds from the collection.

In Poland, the law distinguishes between collections of long and short duration. For collections of long duration—that is, exceeding one year—the fundraising organization must report within thirty days after the close of every six-month period on the types and amount of contributions raised. Additionally, the organizer must report within thirty days after the end of every twelve-month period on the utilization of funds.²¹⁸ In the case of short-term collections, the organizer must submit a financial report within thirty days of a collection's termination. For reporting on the utilization of funds, the rules depend on the legal form of the organizer, but generally all organizations must report within thirty days of the end of each twelve-month period, beginning at the termination of the collection.²¹⁹

In Finland, an account must be submitted within six months of the termination of the permit period to the authority that granted the permit.

²¹⁵ Slovakia, Law on Public Collections, art. 13.

²¹⁶ Ibid.

²¹⁷ Rezenbrink, "Why Philanthropy is More Successful in Some Countries Than in Others?", 60-62

²¹⁸ Poland, Act on the Principles of Conducting Public Collections, art. 17.

²¹⁹ Ibid., art. 16.

The authority must audit and approve the account. In the permit decision, the permit authority may 1) order the permit holder to draw up an interim account; 2) order the permit holder to draw up a new account if the account submitted is deficient or must be supplemented or adjusted due to minor deficiencies or errors; or 3) place the permit holder under obligation to report that the funds raised through the collection have been used for the purpose specified in the money collection permit (final report).²²⁰

The New Charities Act 2016 adopted in England and Wales also provides special reporting requirements related to fundraising for larger charities with gross incomes exceeding £1 million (approximately \$1,200,000). The annual report shall be submitted to the Charity Commission and must include information about a charity's use of commercial participators or professional fundraisers; the monitoring conducted by the charity of fundraising activities carried out on its behalf to ensure compliance; the number of complaints received by the charity related to fundraising; and the steps the charity took to protect people in vulnerable circumstances and others from unreasonable intrusion into their privacy, unreasonably persistent approaches, or undue pressure to donate to the charity.²²¹

The laws usually require the fundraiser to **inform the public about the utilization of donated funds** by disclosing accounting and activity reports. For example, the Czech Law on Public Collections stipulates that the organizer of a public collection must inform the public about the results of the collection using the same means used to promote the collection. This disclosure must be made no more than one month after the regional office approves the accounting report.²²² Slovak CSOs collecting money under the Law on Public Collections must

publish preliminary and final reports on their websites and keep them publicly accessible for at least two years.²²³

In contrast, the Italian regulation on reporting does not require the publication of a financial report or even submission of a report to state authorities. The only legal requirement is that the organizer need to prepare such a report and have it available in case of a tax inspection.²²⁴

To conclude, the law may set certain reporting requirements on fundraising activities. These requirements may be part of general reporting requirements (such as an annual financial report), or they may involve a separate report, particularly in countries where fundraising is subject to authorization or notification. In principle, the **reporting requirements should be proportionate to the activity and not unnecessarily burdensome to CSOs**. They should also acknowledge CSOs' duty to respect the rights of donors, beneficiaries, and staff, as well as their right to protect legitimate confidentiality.²²⁵ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association warns against frequent, onerous, and bureaucratic reporting requirements, which can unduly obstruct the legitimate work carried out by CSOs.²²⁶

4.1.7. Monitoring by state authorities

Supervision may be **performed by the authority granting permits and certificates to fundraise or by other body**. In Finland, the National Police Board and the police departments that grant permits are responsible for monitoring the implementation of money collections. The National Police Board may issue opinions and guidance on the implementation of

²²⁰ Finland, Money Collection Act, art. 21.

²²¹ UK, Charities (Protection and Social Investment) Act, art. 13 (4) (2016), <http://www.legislation.gov.uk/ukpga/2016/4/contents>.

²²² Czech Republic, Law on Public Collections, art. 24.

²²³ Slovakia, Law on Public Collections, art. 13.

²²⁴ Italy, Legislative Decree on the Reorganization of the Fiscal Regulation of Non-Commercial Entities and of Not-For-Profit Organizations of Social Utility, no. 460, art. 8 (December 4, 1997), <http://www.parlamento.it/parlam/leggi/deleghe/97460dl.htm>.

²²⁵ OSCE/ODIHR and Venice Commission, "Joint Guidelines on Freedom of Association, art. 104; Council of Europe, Committee of Ministers, Recommendation CM/Rec 14, "On the Legal Status of Non-Governmental Organizations in Europe," October 10, 2007, art. 64, <https://wcd.coe.int/ViewDoc.jsp?id=1194609&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

²²⁶ "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai," A/HRC/23/39 (April 24, 2013), para. 38.

money collections.²²⁷ Similarly, in common-law countries such as Scotland, permits to organize specific fundraising activities in public areas are granted by local authorities, which are also responsible for enforcing laws and preserving public order.²²⁸

In Ireland and Italy, the supervisory authority is different from the entity granting permission to fundraise. In Ireland, the Chief Superintendent grants fundraising permits but the Charities Regulatory Authority, the national statutory regulatory agency for charitable organizations, supervises fundraising activities.²²⁹ In Italy, fundraising activities are authorized by different state authorities, depending on their nature, but are supervised by the agency for ONLUS.²³⁰

In other countries, such as France, there are also **several authorities involved in supervision**. The Court of Auditors ensures that donations are used for the purposes for which they are given and can audit the ultimate beneficiaries. The General Inspectorate for Social Affairs supervises social organizations, while the General Inspectorate for National Education and Research for Education and Research Organizations is the supervising authority for educational organizations.²³¹

The supervision of fundraising by state authorities usually includes oversight of fundraising activities as well as the utilization of collected funds. Their supervision typically focuses on several main concerns:

- **Compliance with laws.** Traditionally, supervising authorities verify that fundraising activities are performed in compliance with the laws. For example, in Sweden, police authorities generally supervise all events held in public spaces, including public fundraising. In particular, they may prohibit the continuation of the

activity if it is contrary to the law, disrupts public order, or causes potential disruptions of traffic.²³²

- **Compliance with conditions indicated in the permit.** Fundraising permits may include requirements about how the fundraising activity shall be performed. To verify compliance, supervising authorities in Finland have access to a “money collection supervision database,” which includes all information about permit applications, issued permits, cancellations of permits, written warnings, and so forth.²³³
- **Eligibility to fundraise.** The law may stipulate the obligation of fundraisers to identify themselves and show necessary documentation to state authorities upon request. For example, the Czech Law on Public Collections stipulates that a person acting on behalf of an organization must show a copy of the proxy issued by the legal entity, including personal information about the fundraiser, if requested by a state authority.²³⁴ In Ireland, a member of the Garda Síochána may demand the name and address of the person acting as a collector.²³⁵
- **Fundraising efficiency.** Statutory regulation may establish an administrative cap on the amount of fundraising proceeds that may be diverted from the public benefit or charitable cause. The purpose of the administrative cap is to avoid excessive spending on the implementation of the fundraising activity.

In addition to state authorities, **donors and self-regulatory bodies may also take part in supervising fundraising activities**. In England and Wales, the “disclosure upon receipt model”

²²⁷ Finland, Money Collection Act, art. 26.

²²⁸ Scotland, Charities and Trustee Investment Act 2005, art. 92.

²²⁹ See the website of Ireland’s Charities Regulatory Authority at <http://www.charitiesregulatoryauthority.ie/>.

²³⁰ Italy, Prime Ministerial Decree no. 329, “Regulation on the Authority for the Third Sector,” art. 3 (1) (March 21, 2000), <http://www.solcoroma.net/legale/3292000.htm>.

²³¹ France, Code of Financial Jurisdiction, art. L. 111-8 (2015),

http://www.legifrance.gouv.fr/affichCode.do?sessionid=AA6C064390726B356CC997EF4A4FA948.tpdila24v_2?cidTexte=LEGITEXT000006070249&dateTexte=20151030.

²³² Sweden, Public Order Act, art. 23.

²³³ Finland, Money Collection Act, art. 27.

²³⁴ Czech Republic, Law on Public Collections, art. 14.

²³⁵ Ireland, Street and House to House Collection Act, art. 19.

requires a charity to disclose its fundraising efficiency ratio to donors at the moment it solicits money. This model empowers donors to form an opinion about the efficiency of the charity and make an informed decision about whether or not to contribute.²³⁶ This model of supervision complements state supervision, since it focuses on administrative costs rather than the net amount of solicited funds used for the public benefit purpose, and it does not monitor compliance with other legal provisions. In Sweden, monitoring is conducted by a self-regulatory body called the Swedish Fundraising Control.²³⁷

Controls **need to be fair, objective, and non-discriminatory**.²³⁸ The activities of CSOs should be presumed to be lawful in the absence of contrary evidence.²³⁹

4.1.8. Legal penalties for non-compliance

Most countries allow for the correction of discrepancies in reports and set penalties or other sanctions for non-compliance with certain fundraising regulations. However, any sanctions **must always be consistent with the principle of proportionality**—that is, they must be the least intrusive means to achieve the desired objective. Sanctions must at all times be enforceable and effective to ensure the specific objectives for which they were enacted. When deciding whether to apply sanctions, authorities must take care to apply the measure that is the least disruptive and destructive to the right to access resources.²⁴⁰

At a minimum, the **law should allow a CSO to correct minor deficiencies** in its reports and oblige the authorities to provide notice in case a CSO fails to submit reports. In Finland, for example, a permitting authority may require the permit holder to draw up a new report if the submitted report is deficient. The organization

may also be requested to supplement or adjust the report if there appear to be errors in spelling or calculations or other minor deficiencies.²⁴¹

If the authorities discover that relevant legal provisions have been breached, they may impose sanctions, but only after sending a written warning. Sanctions may include fines, a prohibition on the collection or its continuation, and withdrawal of money collection permits. In some countries (e.g., the Czech Republic, Finland, Germany, and Ireland), public collection laws regulate the consequences of non-compliance with fundraising rules, while in other countries (e.g., Moldova, Poland), administrative and criminal codes and sanctions apply.

For example, in Germany, if a fundraising organization fails to comply with the criteria upon which the permit was based, the competent authority may forbid continuation of the collection. In such a case a trustee is appointed by state authorities to control the management and perform the duties of the organizer. The trustee is entitled to enter the premises and registered office of the organizer, and the organizer must provide the trustee with collection-related documents as well as the collected funds.²⁴²

In Macedonia, a fine equal to €5,000 (approximately \$5,450) is imposed on a legal entity that fails to prepare a report on donations given and received. In addition, a fine of about €500 to €1,000 (approximately \$545 to \$1,090) is imposed on the responsible persons within the legal entity for the same misdemeanor.²⁴³

The Czech Law on Public Collections lists twenty-five acts that are a breach of legal provisions and punishable by a fine of CZK 50,000 to 500,000 (approximately \$2,020 to \$20,200).

²³⁶ Breen, "Regulating Charitable Solicitation Practices," 120.

²³⁷ For more information, see the Swedish Fundraising Control's website at <http://www.insamlingskontroll.se/en>.

²³⁸ UNHRC, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai," A/HRC/23/39, April 24, 2013, para. 38.

²³⁹ Council of Europe, Council of Ministers, "On the Legal Status of Non-Governmental Organizations in Europe," art. 67.

²⁴⁰ OSCE/ODIHR and Venice Commission, "Joint Guidelines on Freedom of Association," art. 237.

²⁴¹ Finland, Money Collection Act, art. 21.

²⁴² Saarland, Collection Act, art. 10.

²⁴³ Macedonia, Law on Donations and Sponsorships in Public Activities, art. 23.

These acts include non-compliance with the requirements of a specific method of collection, failure to submit notification of a collection, continuation of a collection after the expiration of the collection permit, non-compliance with reporting requirements, and utilization of funds for purposes other than those indicated in the permit.²⁴⁴

4.1.9. Professional fundraisers and commercial participators

Hiring professionals to raise funds on behalf of an organization or for publicly beneficial purposes is becoming more and more widespread. Throughout Europe, professional fundraising associations have been established whose members offer fundraising services to CSOs. Despite the fact that professional fundraising has become a more common practice, few countries regulate this activity in their laws. The **legal regulation of professional fundraising is most often found in jurisdictions with long-standing fundraising traditions**, such as some common-law and Scandinavian countries. In addition, some laws exist in CEE countries, including Ukraine and Hungary, which acknowledge the existence of professional fundraisers.

Definitions of professional fundraisers vary. According to Scotland's Charities and Trustee Investment Act, a "professional fundraiser" is a person (other than a benevolent body or a company connected with it) who carries on a fundraising business, or any other person who, for reward, otherwise solicits money or other property for the benefit of a benevolent body or for charitable, benevolent, or philanthropic purposes.²⁴⁶

What helps fundraising?

According to the European Fundraising Association, growing professionalism in fundraising is one of the main factors with a positive impact on fundraising in the past years.²⁴⁵

It must be emphasized that the professional fundraiser may not be associated in any way with the organization or benevolent body²⁴⁷ on whose behalf fundraising is conducted, except by contract for the fundraising services. Thus the professional fundraiser may not at the same time be an employee or volunteer in the organization. If the fundraiser is associated with the organization, the fundraiser is not considered a professional but rather a *benevolent*²⁴⁸ fundraiser.²⁴⁹

The definition of a "professional fundraiser" in England and Wales is similar to the Scottish definition. The main difference is that in Scotland, a fundraiser solicits money for the benefit of organizations or for charitable, benevolent, or philanthropic purposes, whereas in England and Wales, a fundraiser solicits money solely for the benefit of organizations.²⁵⁰

Legal frameworks in Scotland and England and Wales also recognize "**commercial participators**". For example, Scottish law acknowledges commercial participators or persons who have a for-profit business rather than a fundraising business, but in the course of that business engage in a promotional venture that represents that benevolent contributions are to be given to or applied for the benefit of one or more particular benevolent bodies or applied to charitable, benevolent, or philanthropic purposes.²⁵¹ Thus a chocolate factory that sells its goods with a promise that a contribution for each item bought by consumers will be made to a house for orphans would be a "commercial participator."

²⁴⁴ Czech Republic, Law on Public Collections, art. 25a.

²⁴⁵ European Fundraising Association, "Fundraising in Europe 2013/14," 8.

²⁴⁶ Scotland, Charities and Trustee Investment Act 2005, art. 79 (1).

²⁴⁷ According to Scotland's Charities and Trustee Investment Act 2005, art. 79 (1), a "benevolent body means a body (including a charity) which is established for charitable, benevolent or philanthropic purposes."

²⁴⁸ "Benevolent fundraisers" are (a) benevolent bodies and companies connected with them, (b) persons concerned in the management or control of such bodies or companies, (c) employees or agents of— (i) such bodies or companies, (ii) persons concerned in the management or control of such bodies or companies, and (d) volunteers acting for or on behalf of such bodies or companies.

²⁴⁹ "Fundraising and the Law," Institute of Fundraising Scotland (2009), <http://www.institute-of-fundraising.org.uk/guidance/fundraising-regulation/legislation/scotland/>.

²⁵⁰ UK, Charities Act 1992, art. 58.

²⁵¹ Scotland, Charities and Trustee Investment Act 2005, art. 79 (1).

In most countries where professional fundraising is regulated, the law requires a **formal written agreement between the professional fundraiser and the beneficiary organization**. The law often establishes prescribed requirements for such agreements. For example, in Ukraine, the law requires that an agreement include the purpose of the collection, the location and time period of the collection, the procedure for utilizing funds raised, provisions on public access to financial reports of the organization, and parties' responsibilities in case of breach of contract.²⁵²

In Scotland, the Charities and Trustee Investment Act 2005 also requires an agreement between a professional fundraiser and a benevolent body.²⁵³ The content of the agreement is described in the Charities and Benevolent Fundraising Regulations 2009. In contrast to Ukraine, the required content focuses more on the relationship between two parties to the agreement than the collection itself. The agreement must include the name and address of each party, the effective period of the agreement, terms relating to the termination and variation of the agreement, and the manner in which the professional fundraiser or commercial participator is remunerated.²⁵⁴ The regulation may also permit the parties to designate a third person to conduct fundraising activities, similar to the "trustee" permitted under German law.²⁵⁵ Other laws specifically exclude this possibility, as is the case in Hungary.

In a response to the recent events in which the fundraising practices of charities gained attention in the UK, the government amended the regulation on agreements between professional fundraisers/commercial participators and charities. According to Article 13 (3) of the Charities (Protection and Social Investment) Act 2016, the agreements must now specify (1) any voluntary scheme for regulating fundraising, or any voluntary standard of fundraising, that the professional fundraiser or commercial participator undertakes to be bound by for the purposes of the agreement; and (2) the manner in which the professional fundraiser or commercial participator is to protect people

in vulnerable circumstances and others from unreasonable intrusion into their privacy, unreasonably persistent approaches, or undue pressure to donate to the charity. The agreements must also enable charities to monitor compliance with these requirements.²⁵⁶

4.2. STATE INCENTIVES FOR FUNDRAISING

4.2.1. Indirect state support

States indirectly support the development of philanthropy in various ways, most commonly by introducing tax benefits for donors and beneficiaries based on the amount of the donation. Tax benefits allow donors (usually both individuals and legal entities) to pay a reduced income tax as reported on their annual tax statements. Tax benefits for CSOs include income-tax exemptions for the donations they receive and preferential VAT treatment. In addition, Hungary, Italy, Poland, Slovakia, and Moldova have introduced a "percentage mechanism" whereby individuals (and, in Slovakia, corporations) are entitled to designate a specified percentage of their income-tax payment to CSOs.

Tax benefits for donors

Tax incentives for philanthropy are not the key impetus for giving, but **they can affect how much people give**. According to research, when tax rates are higher—and deductions are thus more valuable—people give more. Many European governments support private giving by introducing tax incentives for individual and corporate donors. In fact, among the countries covered in this report, only Slovakia provides no tax benefits to donors, and Hungary and Finland limit incentives to corporate donors only. Other countries provide incentives **either as tax deductions or tax credits**. A tax deduction allows donors to deduct all or part of their

²⁵² Ukraine, Law on Charity and Charitable Organizations, art. 7 (3).

²⁵³ Scotland, Charities and Trustee Investment Act 2005, art. 81 (1).

²⁵⁴ Scotland, Charities and Benevolent Fundraising Regulations 2009, art. 2 (2).

²⁵⁵ Saarland, Collection Act, art. 7.

²⁵⁶ UK, Charities (Protection and Social Investment) Act, art. 13 (3).

donation from their taxable income, thereby decreasing the value of their tax base. A tax credit allows donors to subtract a portion of their donation from tax owed. The threshold for tax deductions and tax credits and for designated beneficiary organizations differs from country to country.

Tax incentives for donors are **often associated with the public benefit concept**. In some countries, tax benefits are available to donors if their donations are made for public benefit purposes. For example, in Macedonia, for a donor to receive tax benefits, the Law on Donations and Sponsorships in Public Activities requires state authorities to confirm that the donation is in the public interest. However, the Law is still not fully functional in practice and it does not stimulate donations, mostly because of the long and complicated administrative procedure for determining public interest.²⁵⁷ In other countries, tax benefits may be obtained only for donations to certain categories of CSOs. For example, in Hungary, tax deductions are available only for donations to organizations having public benefit status.

The **threshold for tax deductions and tax credits is often different for individual and corporate donors** within the same country. For example, in Poland, corporations may deduct donations with a total value of up to 10 percent of their tax base, whereas individuals are allowed to deduct up to 6 percent.²⁵⁸ In some countries, even the form of tax incentive may differ for individuals and corporations. For example, in Spain, individuals may receive tax credits, whereas corporations benefit from tax deductions on donations.²⁵⁹

According to our research, **the most common form of tax incentive is the tax deduction**. The law usually sets a certain threshold, which may be a percentage of taxable income or a

percentage of the amount of a donation. Donors generally may deduct from 1 to 30 percent from their taxable income, with a few exceptions in which the threshold is even higher. For example, in Hungary, the pre-tax profit of a corporation may be reduced by 20 percent of the donation if the donation supports the public benefit activity of a PBO or by 40 percent of the donation if the donation is provided under a long-term donation contract.²⁶⁰ The deduction can be made up to the amount of the pre-tax profit on the aggregate. The pre-tax profit may be reduced by 50 percent if the donation supports the Hungarian Relief Fund, the National Cultural Fund, or a higher-education institution in the course of a grant agreement.

Some countries—for example, Poland, the Czech Republic, Ukraine, and the UK—allow **deductions for in-kind support**. Others—such as Italy and Finland—stipulate that cash donations only may be deducted. A special form of tax incentive known as “gift aid” may be used by individual donors who pay taxes in the UK. Under this provision, cash donations to charities may be treated as having been made after the deduction of income tax at the basic rate, currently set at 20 percent. Charities may then reclaim the amount of the basic rate income tax on the donation from Her Majesty’s Revenue and Customs (HMRC). Hence, for example, if a basic-rate taxpayer donates £100 (approximately \$120), the charity receives an additional £25 (approximately \$30) from HMRC, so that the full amount of donation is £125 (approximately \$150). To make a gift aid donation, the donor must complete a gift aid declaration form.²⁶¹

In a few countries, **tax benefits are provided on donations to endowments**. In Germany, where special income-tax benefits are provided to (wealthy) individuals, an individual donor may deduct up to €1,000,000 (approximately \$1,090,000) for a donation to the endowment of

²⁵⁷ Simona Ogenovska, “Monitoring Matrix Report on Enabling Environment for Civil Society Development in Macedonia 2015,” Monitoring Matrix, http://monitoringmatrix.net/wp-content/uploads/2015/12/Monitoring-Matrix-Country-Report-Macedonia-2015_eng_final.pdf

²⁵⁸ Poland, Law on Income Tax from Individuals, nr. 80, art. 26 (10), point 5 (July 26, 1991), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19910800350>; Law on Income Tax from Legal Persons, no. 21, art. 18 (1), point 1 (February 15, 1992), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19920210086>.

²⁵⁹ Spain, Law on the Taxation of Non-Profit Entities and Tax Incentives for Philanthropy, no. 49, art. 19 (December 23, 2002), <https://www.boe.es/buscar/act.php?id=BOE-A-2002-25039>.

²⁶⁰ A long-term donation contract is a monetary contribution provided under an agreement between a PBO and a donor, whereby the donor commits to making a donation in a given year and subsequent donations in the same or larger amounts at least once a year for at least three years without any consideration in return.

²⁶¹ See “Tax Relief when You Donate to a Charity,” Gov.UK, <https://www.gov.uk/donating-to-charity/gift-aid>.

a foundation established for qualifying purposes. The deduction may be made in the year of the donation or spread over the following nine years.²⁶² France has also introduced a tax credit on the wealth tax for those taxpayers who make donations to public utility foundations (cash or full ownership of listed companies' shares). The tax credit is calculated at 75 percent of the donation, with a limit of €50,000 (approximately \$54,500).²⁶³

Other examples of charitable tax relief include **exemptions of legacy gifts to charities** through the will of a donor from the inheritance tax and gifts of shares or property. Legacies to qualified CSOs are tax exempt in, for example, Macedonia, Italy, France, and Germany.

In the UK, the **payroll-giving scheme** allows employees to donate to charities directly through withholdings from their regular pay. Those donations provide income-tax relief to the donors.

Tax treatment of funds raised

Donations are a traditional source of income for CSOs. Therefore, as a matter of good practice, **CSOs in Europe are exempt from corporate income tax**. All countries covered in this study permit this exemption. Tax treatment of foreign donations is discussed in the next chapter.

Funds raised during fundraising events or by the sale of goods or event tickets often receive favorable tax treatment through the application of tax exemptions. As mentioned above in the discussion of international and European standards, EC Directive No. 2006/112 obliges all EU member states and accession countries to provide for **VAT-free treatment of all charitable contributions** in their national legal frameworks. Thus in the UK, all charities may qualify for tax exemptions on receipts from fundraising events. This means that admission charges and income from the sale of brochures, commemorative gear, and other goods and

services in connection with a fundraising event is VAT exempt.²⁶⁴ In Macedonia, the VAT paid on goods and services supplied to a beneficiary shall be returned to the donor from the state budget if the donation was made in the public interest.²⁶⁵ Similarly in Italy, fundraising initiatives are VAT exempt, subject to the following conditions: 1) they are occasional events; 2) they are performed in connection with celebrations, anniversaries, or awareness-raising campaigns; and 3) the goods sold in connection with them are modest.²⁶⁶

With the arrival of new technologies, laws had to adapt to emerging fundraising methods. European governments are still in the process of amending laws to accommodate new trends. One challenge is to secure **VAT exemption for donations made by SMS**. For example, in Macedonia, state authorities have yet to incorporate such an exemption into the tax laws, and despite that country's generally VAT-free treatment of donations, contributions made by SMS are still subject to VAT. The same applies to SMS donations in Moldova. In contrast, in the Czech Republic, SMS donations are VAT exempt.²⁶⁷

Percentage tax designation mechanism

Several countries—Hungary, Italy, Moldova, Poland, Slovakia, and Spain²⁶⁸—have introduced a percentage tax designation mechanism. The mechanism allows individual (and, in Slovakia, corporate) taxpayers to **transfer a portion of their income-tax payment to a qualifying purpose or beneficiary** as defined by law (either separate laws, tax laws, or annual budget laws). It is important to emphasize that the amount raised from these tax designations is not a donation but budgetary support. Hence although it is not a form of philanthropy in its

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²⁶³ France, General Tax Code, art. 200.

²⁶⁴ UK, HM Revenue and Customs, "UK Fundraising Events: Exemption for Charities and Other Qualifying Bodies" (January 27, 2011), <http://www.hmrc.gov.uk/charities/fund-raising-events.htm#6>.

²⁶⁵ Macedonia, Law on Donation and Sponsorship in Public Activities, arts. 15, 15a, 15b.

²⁶⁶ Italy, Legislative Decree 460, art. 26.

²⁶⁷ Czech Republic, Law on Value Added Tax, no. 235/2004 Coll., art. 21 (2004).

²⁶⁸ It also exists in other countries not covered by the paper, such as Romania and Lithuania.

traditional form, it does shows similar elements.²⁶⁹

The tax designation mechanism was first introduced in Spain in 1979 and Italy in 1985 to support the Catholic Church and thereby accommodate the separation of church and state. In Italy, non-believers can designate a percentage of their income tax to support state social programs rather than the church and in Spain to support a state social program of their choice.²⁷⁰ In 2006 Italy introduced another tax designation mechanism that permits individuals to designate an additional 0.005 percentage of their income tax to other organizational forms, including CSOs. The Italian and Spanish models are not regulated by separate standing laws but rather are applied through annual state budget legislation.

In CEE, Hungary was the first country to introduce a tax designation mechanism in 1996. The Hungarian approach later served as a model for other countries in the region.²⁷¹ In Hungary and Poland, individuals may allocate 1 percent of their annual income tax to organizations included in an authorized pool of eligible CSOs. In Poland, only PBOs are eligible to receive tax designations, whereas in Hungary public benefit status is not a requirement, although the beneficiary organization must perform public benefit activities. In Slovakia, the law provides a list of activities that organizations must perform to be eligible to receive tax designations. In addition, Slovakia is the only country in which both individuals and legal entities are allowed to designate their tax, and their tax designations are combined with regular donations and volunteering.²⁷² The tax designation mechanism was most recently introduced in Moldova and will allow individual taxpayers to designate 2

percent of their paid annual income tax from year 2017 onwards.²⁷³

What is the Added Value of the Tax Designation Mechanisms?

According to a recent impact assessment, the added value of tax designation mechanisms is of two main sorts:

1. Civil society-related

- Encourages the “rootedness” of civil society and the participation of citizens in CSOs
- Enables decentralized, flexible, less bureaucratic public funding for CSOs
- Increases visibility, transparency, and public image of CSOs
- Satisfies the financial needs of CSOs, participating in replacing departing donors
- Helps the public learn and practice modern solidarity (“the school of philanthropy”)
- Clearly differentiates public benefit entities from the rest of the CSO sector

2. Not related to civil society

- Helps with the reform of church financing
- Allows taxpayers to allocate part of their taxes (participatory budgeting)
- Secures funding for public benefit purposes.”²⁷⁴

In addition to CSOs in the narrow sense, other entities in certain countries may benefit from the percentage mechanism. For example, in Hungary, 1 percent may be designated to certain public institutions, such as the Hungarian Academy of Sciences and the Hungarian State Opera. An additional 1 percent may be designated to a church or specific state budget

²⁶⁹ Nilda Bullain, *Percentage Philanthropy and Law* (European Center for Not-for-Profit Law and NIOK, 2004), 7-8, http://szazalekosadomany.honlaphat.hu/files/sharedUploads/1229/onepercent.hu/onepercent.hu_study/Chapter_2_ECNL.pdf.

²⁷⁰ Ibid., 2.

²⁷¹ Ibid.

²⁷² Individuals may designate 2 percent of their annual income tax. In the event the taxpayer has volunteered for at least 40 hours within the taxation period (which must be proved by a copy of certificate issued by the organization for which the taxpayer volunteered), the taxpayer is permitted to designate 3 percent. Legal entities may designate 1.5 percent of their annual income tax. They may designate up to 2 percent if they made a direct donation to any taxpayer established for non-profit purposes with the value of at least 0.5 percent of their tax, to be paid in the taxation period. Slovakia, Law on Income Tax, no. 595, art. 50 (2003), <http://www.zakonypreludi.sk/zz/2003-595>.

²⁷³ Nearly 500 non-profit organizations will benefit from the 2% mechanism in 2017. For more information, see: <http://justice.gov.md/libview.php?l=ro&idc=4&id=3298>

²⁷⁴ Boris Strečanský and Marianna Török, *Assessment of the Impact of the Percentage Tax Designations: Past, Present, Future*, September 2016, p. 41. http://www.erstestiftung.org/wp-content/uploads/2016/09/Tax_Percentage_Study_Web.pdf.

priority. In Slovakia, churches and religious societies, organizations with an international component, and designated organizations such as the Anti-Drug Fund and the Fund for Development of Scientific Education and Preparation are also entitled to receive percentage designations.

The percentage designation **mechanism plays an important role in strengthening civil society** by providing resources to CSOs, increasing the skills of CSOs in communications and community outreach, and raising public awareness about the sector overall. It also contributes to the development of a philanthropic culture and serves as an indicator of the level of public support for CSOs. Nevertheless, it must be emphasized that this form of indirect state support is **not a substitute for other forms of favorable tax treatment** of CSOs.

4.2.2. Direct state support

In addition to indirect state support, some countries recognize the importance of philanthropy and fundraising by providing direct support. Raising funds for institutional and operational costs is often challenging for CSOs, as donors usually prefer to support concrete, immediate, and visibly tangible results. In some countries, state authorities recognize this problem and have initiated mechanisms for providing direct support to CSOs.

For example, in the UK the government implemented a **matching funding scheme** from 2008 to 2011 to complement voluntary giving to institutions of higher education. This program significantly motivated universities and colleges to improve their fundraising practices and raise more income from philanthropy. Matching funding from the government was tiered, and depending on which level of participation they

chose, institutions could receive £1 from the government for every £1, £2, or £3 (approximately \$1.20, \$2.40 and \$3.60) of eligible donations.²⁷⁵ The scheme was not renewed, but similar programs are still in place, such as UK Aid Match, which provides funds to CSOs working in international development.²⁷⁶

A similar state funding scheme in Hungary is called supplementary normative support. The National Cooperation Fund, a state institution, provides institutional support to CSOs that carry out fundraising activities. The support may equal 5 percent of the donations collected and declared by the applicant organization in the previous tax year but may not total more than HUF 500,000 (approximately \$1,770).²⁷⁷

It is also a good practice to **recognize fundraising costs as eligible administrative cost** for state grants. For example, in Finland the Ministry of Foreign Affairs provides financial support to partnership organizations in order to strengthen development cooperation. Besides administrative staff's work, mail, telephone and copying, administrative costs include fundraising expenses, too. Eligibility for support depends on an organization's efficiency at fundraising and the mobilization of resources in general. Partnership organizations are encouraged to secure their financial sustainability by conducting fundraising activities.²⁷⁸

4.2.3. Cross-border donations

In the past few years, more than 75 countries have introduced new legal constraints on civil society. A particularly onerous barrier is restrictions on CSOs' access to foreign funding.²⁷⁹ Despite international recognition of the concept of free movement and free trade, donors and beneficiary organizations still report difficulty engaging in unfettered, tax-beneficial,

²⁷⁵ For more about matching funding for higher education, see "Postgraduate Support Scheme," Higher Education Funding Council for England, <http://www.hefce.ac.uk/sas/pss/>.

²⁷⁶ For more information, see "UK Aid Match," Gov.UK, <https://www.gov.uk/international-development-funding/uk-aid-match>.

²⁷⁷ Hungary, Law CLXXV of 2011, 56. § (1) a), and of 5/2012. (II.16.) KIM Decree, art. 12 (3).

²⁷⁸ For more information about partnership agreement schemes in Finland, see Government of Finland, Ministry of Foreign Affairs, "Support for Partnership Organizations," <http://formin.finland.fi/public/default.aspx?nodeid=49328&contentlan=2&culture=en-US#instructions>.

²⁷⁹ International Center for Not-for-Profit Law, "A Mapping of Existing Initiatives to Address Legal Constraints on Foreign Funding of Civil Society" (July 1, 2014), 1, <http://www.icnl.org/research/resources/foreignfund/A%20Mapping%20of%20Existing%20Initiatives%20to%20Address%20Legal%20Constraints%20on%20Foreign%20Funding%20of%20Civil%20Society.%20July%202014.pdf>.

cross-border philanthropy. The barriers can take various forms. In Russia, CS

Os receiving foreign funding and engaged in ‘political activities’ must register as “foreign agents” (with the attendant implication that they are spies for foreign powers); in Egypt, CSOs must obtain the government’s permission prior to receiving foreign funding; in Uzbekistan, foreign funding is channeled through a state monitoring agency; and in Bangladesh, CSOs must register at a state office if they want to seek foreign funding.²⁸⁰

The countries covered in this report have not introduced direct restrictions on income from foreign sources. However, **some national laws include discriminatory provisions in terms of cross-border giving.** For example, in Macedonia, under the Law on Donations and Sponsorships in Public Activities, the list of eligible public-interest purposes for tax-deductible donations is narrower if they involve foreign rather than domestic beneficiaries. Specifically, if the beneficiary is a foreign legal entity, donations for the public interest are tax deductible only if given in response to natural disasters or humanitarian catastrophes.²⁸¹ In Slovakia and the Czech Republic, the law requires a fundraiser to request the approval of the Ministry of Foreign Affairs if the funds raised are to be used abroad.²⁸² The explanatory note for the Slovak law notes that that the ministry’s opinion on the planned collection is required to safeguard the “interests and obligations” of Slovakia.²⁸³ Elsewhere in the EU, donations sourced in another member state are sometimes subject to different, and therefore discriminatory, tax treatment than domestic donations. In particular, organizations receiving donations from abroad may not always be able to claim the same tax benefits as with domestic donations.²⁸⁴

Historically around the world, tax benefits have generally been restricted to domestic CSOs and to donors giving to CSOs in their own countries.

This limitation was rooted in the application of the “domestic connection” approach for tax incentives. According to this approach, only the activities of domestic CSOs were of interest to the state, and therefore tax incentives were limited to encouraging support for domestic CSOs. Another reason for the exclusion of foreign-based CSOs from tax-deductible donations was the lack of clear guidance for determining whether a foreign-based CSO, governed by a different country’s legislation, was comparable to a domestic organization eligible for tax-privileged status or tax benefits.²⁸⁶

Typical Examples of Cross-Border Philanthropy

According to the Transnational Giving Europe and European Foundation Center research on taxation of cross-border philanthropy in Europe, the most common scenarios of cross-border philanthropy are:

- “A donor asks for tax incentives when giving across borders within the EU.
- An EU-based PBO applies for tax benefits on its investment income in another EU member state.
- A PBO receives a legacy from abroad and asks for an inheritance tax exemption or reduction.”²⁸⁵

This traditional regulatory approach has been overhauled in the past decade by several judgments of the ECJ specifically dealing with the cross-border tax treatment of CSOs and their donors. Particularly important are the ECJ’s

²⁸⁰ David Moore and Zenn Jacob, “Defending Cross-Border Funding for Civil Society,” *Alliance* 3 (September 1, 2013), 21-22, <http://www.icnl.org/research/library/files/Transnational/Alliancejzdm.pdf>.

²⁸¹ Macedonia, Law on Donations and Sponsorships in Public Activities, art. 7(3).

²⁸² Slovakia, Law on Public Collections, art. 4 (2).

²⁸³ Slovakia, Law on Public Collections, explanatory note.

²⁸⁴ Ineke A. Koele, *International Taxation of Philanthropy* (IBFD, 2007), 37. Abstract at: <http://www.ibfd.org/IBFD-Products/International-Taxation-Philanthropy>.

²⁸⁵ Thomas von Hippel, “Taxation of Cross-Border Philanthropy in Europe after Persche and Stauffer: From Landlock to Free Movement?” (European Foundation Center and Transnational Giving Europe, June 1, 2014), 11, http://efc.issuelab.org/resource/taxation_of_cross_border_philanthropy.

²⁸⁶ *Ibid.*, 12-13.

judgments in *Persche*,²⁸⁷ *Missionswerk*,²⁸⁸ and *EC v. Austria*.²⁸⁹ Through these judgments, the ECJ developed a non-discrimination principle, according to which EU member states should avoid discriminatory tax treatment of cross-border philanthropic giving.

Persche and *EC vs. Austria* dealt with the possibility of donors claiming tax benefits for cross-border donations. In *Persche*, a German taxpayer requested a tax deduction for his in-kind donation to a Portuguese PBO. His application was rejected despite the fact that the Portuguese PBO met all formal requirements of German law to receive tax-deductible donations. In its judgment, the ECJ stipulated that donations are protected under EU legislation on the free movement of capital and must not be subject to discrimination. The denial of tax incentives on donations within the EU single-market area is permissible only when the foreign beneficiary organization is not comparable to a domestic organization that is eligible to receive tax-deductible donations.²⁹⁰

Similarly, in *EC vs. Austria*, the EC alleged that Austrian tax law was in conflict with the protection of donations guaranteed under legislation on the free movement of capital. The Austrian law provided tax benefits only for donations to eligible organizations with legal residence in Austria. The ECJ ruled that the denial of the right to claim tax benefits only because the foreign organization does not have a legal seat in the country was discriminatory and referred to its opinion in the *Persche* case. The denial of deductibility would be applicable only if the foreign organization was not comparable to the domestic organization, which was not the case in *EC vs. Austria*.²⁹¹

The question of whether foreign and domestic legal entities are comparable must be resolved through a comparability test, which determines whether a donation has a public benefit purpose or an organization is considered publicly beneficial. The country in which the tax

incentive is sought establishes rules for proving comparability. Some countries, such as Spain, apply an open clause for determining purposes that can be considered to have public benefit. Other countries, such as the Czech Republic and Germany, have a closed list that enumerates specific public benefit purposes that qualify for tax incentives. In a majority of EU countries, the national tax authority performs the comparability test.

The decision-making process and legal requirements for the comparability test vary from country to country. Some countries, such as Finland, Ireland, and the UK, apply formal decision-making procedures, while other countries, including the Czech Republic, France, and Germany, decide the issue on a case-by-case basis. Some countries have a straightforward approach and demand only that the organization meet the requirements of domestic law and hold public benefit or similar status. For example, in Sweden, donations made to a foreign-based public benefit foundation qualify for tax relief if they meet the same requirements as domestic donations and the foundation's country is part of the EEA or has concluded a tax treaty with Sweden. In addition, the recipient organization must send a statement of the donation to the Swedish tax authorities.²⁹²

In *Missionswerk*, the ECJ resolved the issue of whether an organization with public benefit status in one EU country is required to pay a tax on a legacy received from a testator in another EU country. According to the law of the country in which the legacy was designated (Belgium), PBOs are eligible for a reduced tax rate on legacies provided they have a seat in Belgium or, in the case of foreign PBOs, the testator had lived or worked in the country in which the foreign PBO is based. In *Missionswerk*, the testator was a Belgian citizen who had appointed a German PBO as her beneficiary although she had never lived or worked in Germany. The ECJ concluded that discrimination in this case was not justified because the German organization was

²⁸⁷ Hein Persche v. Finanzamt Lüdenscheid, ECLI:EU:C:2009:33, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-318/07>.

²⁸⁸ Missionswerk Werner Heukelbach eV v. Belgian State, ECLI:EU:C:2011:65, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-25/10>.

²⁸⁹ Commission of the European Communities v. Republic of Austria, ECLI:EU:C:2005:427, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-147/03>.

²⁹⁰ Von Hippel, "Taxation of Cross-Border Philanthropy in Europe after Persche and Stauffer," 16.

²⁹¹ Ibid., 20.

²⁹² "Profile of Sweden," European Foundation Center, http://www.efc.be/country_profile/sweden/.

comparable to Belgian PBOs. Thus the decision of the Belgian tax authorities was invalid because they failed to carry out a proper comparability test.²⁹³

The above examples show that EC judgments have been resolving the problems of cross-border donations among EU member states, although there are still some instances of non-compliance. Whether or not they are EU member, **countries should refrain from imposing barriers to cross-border philanthropy**, since the ability to seek and secure resources from both domestic and foreign sources is essential to CSOs' existence and operations.²⁹⁴ Rather, national laws should *facilitate* the flow of donations from abroad and remove limitations and other burdens on cross-border philanthropy. To facilitate cross-border giving, states should guarantee equitable treatment for cross-border and domestic donations, including giving donors the opportunity to qualify for tax benefits on their contributions.

²⁹³ Von Hippel, "Taxation of Cross-Border Philanthropy in Europe after Persche and Stauffer," 18.

²⁹⁴ UNHRC, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", A/HRC/23/39 (April 24, 2013), para. 8.

5. SELF-REGULATORY INITIATIVES ON FUNDRAISING IN EUROPE

What is self-regulation?

Self-regulation is driven by the shared will of CSOs to cooperate on a voluntary basis to achieve better results in their general operation or in some specific area, such as fundraising.²⁹⁵

5.1. THE PURPOSE OF SELF-REGULATION

As the nonprofit sector expands and gains influence, the need to ensure good governance, accountability, and transparency grows. One of the most important ways to fulfill this need is with a system of self-regulation. In recent decades, **CSO self-regulatory initiatives have burgeoned around the world.** In 2010, One World Trust identified a total of 350 self-regulatory initiatives worldwide, and many more have appeared since that time.²⁹⁶ When they self-regulate, CSOs establish norms and standards for their own behavior and make a critical effort to build and maintain public trust in the civil sector. In addition, self-regulation can help forestall additional state regulation.

Self-regulation is especially common in fundraising, as it is an effective means of showing that organizations meet recognized ethical standards in their fundraising practices. Most self-regulatory initiatives in fundraising are based on the key principles of transparency and accountability. They may stress other values, too, such as integrity and truthfulness, the participation of key stakeholders, quality management, a commitment to social change,²⁹⁷ and, above all, the promise that donations collected from donors will be used for their intended purpose in an efficient way. Most self-regulation in fundraising includes norms or standards of practice in the three critical areas: financial management, program management, and governance. Financial management norms typically include an obligation for organizations to publish their annual financial reports in an easily accessible manner. The program

²⁹⁵ European Center for Not-for-Profit Law, "Current Trends in Self-Regulation of Civil Society Organizations in Europe," 3.

²⁹⁶ Robert Lloyd, Virginia Calvo, and Christina Laybourn, "Ensuring Credibility and Effectiveness: Designing Compliance Systems in CSO Self-Regulation," briefing paper 127 (One World Trust, July 2010), 1, http://rendircuentas.org/wp-content/uploads/2010/08/SRI_Compliance_Mechanisms.pdf.

²⁹⁷ CIVICUS, *Accountability for Civil Society by Civil Society: A Guide to Self-Regulation Initiatives* (April 2014), 10, <https://civicus.org/images/stories/CIVICUS%20Self-regulation%20Guide%20Eng%202014.pdf>.

management norms require CSOs to report on the activities implemented throughout the year. Governance standards aim to preserve transparency and accountability in the internal functioning of the organization and enhance the effectiveness, integrity and trustworthiness of CSOs.

In Europe, the trend of developing systems of self-regulation is **common both to mature and younger CSO sectors**. For example, self-regulatory initiatives have recently appeared in the Czech Republic, Hungary, and Slovakia, all countries with a communist past and a strong tradition of statutory regulation. While CSO self-regulation in fundraising is most common at the national level, several important initiatives exist at the international and European levels, too. Both country-level and international initiatives tend to reflect two common approaches to self-regulation. “Low entry” schemes reach out to all CSOs by setting relatively flexible minimum standards for transparency and accountability in fundraising, while more stringent “excellence” models set higher standards and sometimes seek to hold the best-funded or most visible CSOs to account.²⁹⁸

1. According to the One World Trust’s database of self-regulatory initiatives, **only two of the researched countries, Moldova and Ukraine, have no functioning self-regulatory system**,²⁹⁹ although initiatives have been launched in recent years.³⁰⁰ Some of the countries researched—including, for example, the UK, Ireland, France, and Spain—have numerous self-regulatory initiatives focused on fundraising. In the UK, there is, in addition to other mechanisms, the Code of Fundraising Practice,³⁰¹ developed by the Institute of Fundraising;

the Practical Quality Assurance System for Small Organizations Quality Mark (PQASSO), a certification mechanism;³⁰² and the Charity Times Awards,³⁰³ recognizing excellence in fundraising. Ireland also has a Code of Practice, and best practices in fundraising are honored with the National Awards for Excellence in Fundraising.³⁰⁴

5.2. COMPLIANCE AND ENFORCEMENT MECHANISMS

Ensuring compliance is a difficult but crucial aspect of credible standards of self-regulation. According to the One World Trust’s mapping of national-level self-regulation, **there are two main approaches to assuring compliance: proactive and reactive**.³⁰⁵ In the proactive approach, CSOs are required to monitor and report on their compliance with agreed standards and principles. Their compliance assessment may occur at the moment they join an initiative or throughout the entire membership lifecycle. Reactive mechanisms monitor compliance, and when there is a reasonable belief that a member is non-compliant, they may threaten removal from the initiative. Reactive mechanisms tend to rely on complaints-based sanctioning, in which stakeholders may submit a complaint when they suspect that a member has breached the common standards and principles.³⁰⁶

Among the most common compliance mechanisms are self-assessments, which are conducted by the organization itself and are

²⁹⁸ European Center for Not-for-Profit Law, “Current Trends in Self-regulation of Civil Society Organizations in Europe,” 4.

²⁹⁹ “A Database of Civil Society Self-Regulatory Initiatives,” One World Trust, <http://www.oneworldtrust.org/csoproject/>.

³⁰⁰ According to the president of the Institute of Professional Fundraising, a Ukrainian fundraising association, the development of a code of professional conduct for fundraising in Ukraine was the most important work for 2014. In Moldova, a code of ethics for CSOs was approved by National Forum of NGOs in 2009 but was criticized by experts as too stringent and difficult to comply with. As a result, there is no official information on the number of signatories to the code and its implementation in practice.

³⁰¹ “Code of Fundraising Practice,” Institute of Fundraising, <http://www.institute-of-fundraising.org.uk/code-of-fundraising-practice/sections/>.

³⁰² “Practical Quality Assurance System for Small Organizations Quality Mark,” Charter Committee, <http://www.comitecharte.org/>.

³⁰³ See the website of the Charity Times Awards at <http://www.charitytimes.com/awards/index.php>.

³⁰⁴ “National Awards for Excellence in Fundraising,” Fundraising Ireland, <http://www.fundraisingireland.ie/whats-new/current-news/the-national-awards-for-excellence-in-fundraising-2016/>.

³⁰⁵ One World Trust: *Building a common framework: Mapping national level self-regulation initiatives against the INGO Accountability Charter*, May 2012. Available at: <http://www.intrac.org/pages/en/michael-hammer.html>

³⁰⁶ European Center for Not-for-Profit Law, “Current Trends in Self-Regulation of Civil Society Organizations in Europe,” 5-6.

usually desk based; peer assessments, which are performed by another member of the initiative and can include interviews, surveys, or field visits; third-party assessments, which are performed by an external body and can include both desk-based work and field visits; and complaints procedures, which enable stakeholders formally to submit complaints to a body responsible for investigations.³⁰⁷ All these compliance mechanisms may be applied to any type of self-regulatory initiative, including initiatives targeting CSO fundraising.

IoF's Code of Fundraising Practice

The code sets requirements in the following areas:

1. Key principles and behaviors
 2. Working with volunteers
 3. Working with children
 4. Working with third parties
 5. Fundraising communications
 6. Direct marketing
 7. Reciprocal mailing
 8. Telephone
 9. Digital media
 10. Trusts
 11. Major donors
 12. Corporate partnerships
 13. Raffles and lotteries
 14. Payroll giving
 15. Events
 16. Public collections
 17. Static collections
 18. Legacies
 19. Payment of fundraisers
 20. Handling donations³⁰⁹
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³⁰⁷ Lloyd et al., "Ensuring Credibility and Effectiveness," 5.

³⁰⁸ Ibid.

³⁰⁹ Institute of Fundraising, "Code of Fundraising Practice."

³¹⁰ Ibid.

5.3. SELF-REGULATION MODELS ON FUNDRAISING

5.3.1. Codes of conducts and codes of ethics

Codes of conduct and codes of ethics are the **most common type of self-regulatory initiative**. These codes typically present a set of standards defined and agreed by a group of CSOs for use as a guide in their behavior and practices. Codes of conduct and ethics can **establish general rules for behavior** or set forth more detailed regulations for specific aspects of CSO operations. They are usually adopted by umbrella organizations to apply internationally, sector wide, or to a specific sub-sector of civil society.³⁰⁸

Numerous benefits can arise from adherence to a code of conduct. Compliance can send a positive signal to donors that a CSO is committed to transparency and accountability. It can also facilitate cooperation and the exchange of best practices among signatory organizations. For example, CSOs may share their experiences in the implementation of some of the standards, which can be helpful for others seeking to improve their practices.

The **challenge**, however, is to determine whether CSOs fully or only partially comply with a code when no effective compliance mechanism is in place. Moreover, it may be time consuming to set up a code and ensure its continuous relevance.³¹⁰

An important international code of conduct addressing CSO fundraising is **the International Statement of Ethical Principles in Fundraising**, executed at the Fourth International Fundraising Summit in 2006 in Netherlands. Ratified so far by organizations from thirty countries, the International Statement expresses the five universal principles of honesty, respect, integrity,

empathy, and transparency. Its standards of practice for fundraisers address six key areas: donations, relationship with stakeholders, communications and public information, fundraising management reporting, payments and compensation, and compliance with national laws.³¹¹ Although the International Statement is not legally binding and has no sanctioning mechanism, it has had a proven impact. The statement influenced, for example, the reform of the codes of conduct in both Poland and Ukraine.³¹²

On a country level, codes of conduct specifically dedicated to fundraising have been adopted in Ireland, Hungary, Spain, and the UK, among other countries. In Ireland, members of Fundraising Ireland are required, as a condition of membership, to abide by its general Code of Professional Conduct.³¹³ Similarly in Hungary, compliance with the Ethical Codex of Fundraising Organizations is required before a CSO can be recognized as an “ethical fundraising organization” and become a member of the Self-Regulation Body for Fundraising Organizations. In the UK, the Code of Fundraising Practice³¹⁴ developed by the Institute of Fundraising (IoF) sets forth detailed standards of behavior that all members are expected to meet.

Elements of effective self-regulatory mechanisms

The standards should be formulated with clear and concise terminology and presented in an organized, user-friendly format, so that they can be adapted to CSOs’ different forms and sizes as well as their particular challenges.³¹⁵

5.3.2. Certification and accreditation schemes

Certification and accreditation schemes are established to evaluate an organization’s activities, governance, and other practices in relation to a defined set of standards. They send a positive signal to public when an organization is compliant. Accreditation and certification represent a mark of quality and offer CSOs the valuable challenge of maintaining high standards in organizational values, performance, and outcomes. The special advantage of certification and accreditation schemes for fundraisers is that they **provide a public, credible, and verifiable signal of quality and trustworthiness to donors**. A drawback to certification or assessment schemes can be their lengthy assessment procedures.

Certification and accreditation, which are not interchangeable terms, have been variously defined by a host of organizations. For example, according to the International Standards Organization, certification is the process whereby an independent body audits an organization’s management system and issues a written assurance that it conforms to a set of standards, whereas accreditation is the process whereby a body is found to be competent to issue a certification.³¹⁶ However, in the civil society sector, both accreditation and certification mechanisms refer to the schemes evaluating compliance of an organization with a set of standards.³¹⁷ Verification of compliance with accreditation and certification standards can be performed by process of self-review, peer review, or—the most popular option—third-party review.³¹⁸

³¹¹ Association of Fundraising Professionals, “International Statement of Ethical Principles in Fundraising” (October 2006), http://www.afpnet.org/files/ContentDocuments/Statement_of_Ethical_Principles_in_Fundraising.pdf.

³¹² Oonagh B. Breen, “Minding the Pennies: Global Trends in the Regulation of Charitable Fundraising,” University College Dublin Working Papers in Law, Criminology, and Socio-Legal Studies, Research Paper no. 9 (2015), 8, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2483047##.

³¹³ Fundraising Ireland, “Code of Professional Conduct,” http://www.fundraisingireland.ie/assets/files/downloads/FundriasingIRL_Code_of_Conduct.pdf.

³¹⁴ Institute of Fundraising, “Code of Fundraising Practice.”

³¹⁵ CIVICUS, *Accountability for Civil Society by Civil Society*, 35.

³¹⁶ International Center for Not-for-Profit Law, “NGO Accreditation and Certification: The Way Forward? An Evaluation of the Development Community’s Experience,” 36, http://pdf.usaid.gov/pdf_docs/Pnadb766.pdf.

³¹⁷ Ibid.

³¹⁸ According to the research conducted by One World Trust in 2009, nearly three-quarters of certification schemes operate on the basis of third-party certification. Third-party certification mechanisms ordinarily assess either ethical fundraising practices together with appropriate utilization of the funds, or the operational quality of the organizations.

A range of fundraising certification and accreditation schemes exist in Europe. On the international level, the **International Committee of Fundraising Organizations (ICFO)**, established in 1958, aims to harmonize accreditation standards and procedures across borders and create an international platform for the discussion of accreditation issues among fundraising organizations. The ICFO is composed of thirteen national fundraising monitoring agencies and five supporting members that certify organizations conducting fundraising in their home countries.³¹⁹ In 2003, the ICFO developed a set of international standards for CSOs engaged in raising funds from the public. The standards address the governing body's members and responsibilities, fulfillment of public benefit goals, financial responsibilities, fundraising practices, and public information.

Several accreditation and certification schemes also exist on the national level. For example, a third-party certification scheme for fundraising was introduced in Hungary following widespread recognition that donors needed better assurances that their donations were being properly used. In May 2012, the Nonprofit Information and Education Centre (NIOK) along with other CSOs adopted the Ethical Codex of Fundraising Organizations.³²⁰ The Self-Regulation Body for Fundraising Organizations was established to propagate and supervise enforcement of the codex.³²¹ Registered CSOs (i.e., foundations, associations, and public benefit nonprofit corporations) that raise funds and have operated in Hungary for more than a year may apply to join the body provided they agree to comply with the codex—for example, by ensuring transparency in their operations and meeting financial management requirements. Organizations that are approved as members

may use the Seal of Ethical Fundraising Organizations in their communications.

Accreditation and certification procedures **typically include a formal application, review, and decision.** For example, the Charter Committee, an ICFO member from France, issues seals (so-called “seals of agreement”) to organizations that adhere to its Code of Ethics. It has a lengthy certification process, during which the committee decides whether to accept a particular application, then performs a desktop review of the applicant organization's documentation along with field visits to measure the organization's degree of compliance with the standards. A positive report to the committee's decision-making body results in the conclusion of an agreement with the applicant organization. The newly certified organization receives a tagline marked “donate with trust” that serves as a seal of quality.³²²

As a matter of good practice, **some certification schemes are tiered, thus allowing CSOs to adhere to lower or higher levels of standards** according to their capacity. For example, PQASSO, which was launched in 1997 in the UK, provides three levels of certification in each of twelve areas (e.g., planning for quality, governance, management, and monitoring and evaluations). All organizations must meet the criteria for the first level, whereas more developed organizations or those with more resources may seek to achieve levels two and three.³²³

A certificate **may be valid for a defined period of time.** The Swedish Fundraising Control Association grants “90 accounts,”³²⁴ or specially numbered bank accounts, to compliant fundraising organizations for a period of no longer than three years, with a possible

³¹⁹ Supporting members are individuals or organizations that support the aim of ICFO and wish to take part in its discussions and meetings. Six countries covered by this paper have monitoring national agencies that are “ordinary” or “supporting” members of ICFO: the Czech Association of Public Benefit Organizations, founded in 2010; the French Charter Committee, founded in 1989; the German Central Institute for Social Issues, founded in 1893; the Italian Institute of Donations, founded in 2004; the Spanish Fundación Lealtad, founded in 2001; and the Swedish Fundraising Control Association, founded in 1980. All except of Association of Public Benefit Organizations are ordinary members of ICFO.

³²⁰ Self-Regulation Body for Fundraising Organizations, “Etikai Kódex,” http://www.atlathatosag.eu/hu/mukodes/etikai_kodex.html.

³²¹ Its main body is the general assembly, while the Ethical Committee approves applicant CSOs and investigate complaints. http://www.atlathatosag.eu/hu/mukodes/testulet_mukodese.html.

³²² Le Comité de la Charte, Procedure of Agreement, http://www.donencon fiance.org/759_p_45004/l-agreement.html.

³²³ One World Trust, “A Database of Civil Society Self-Regulatory Initiatives: Practical Quality Assurance System for Small Organizations Quality Mark.” For more information on PQASSO, see the NCVO website at <http://www.ces-vol.org.uk/PQASSO/>

³²⁴ So-called “90 accounts” are accounts with a number in the range 90 00 00 to 90 99 99 and accounts within the range 900-00 to 909-999. These accounts are given only to charitable organizations established exclusively for fundraising purposes that undergo a certification procedure by the Swedish Fundraising Control Association.

extension.³²⁵ Similarly, the “donate with trust” tagline issued by French Charter Committee is valid for three years with possible renewal, after a successful completion of a renewal procedure.³²⁶ The Italian Donations’ Institute³²⁷ and German Central Institute for Social Issues³²⁸ require organizations to renew their certifications every year. Other mechanisms, such as the Hungarian Seal of Ethical Fundraising Organizations, are valid for an indefinite period, but often the certifying body regularly monitors organizations for compliance with standards and can withdraw certification in cases of non-compliance.

5.3.3. Information services

Information services are self-regulatory mechanisms in which the CSO sector **enhances transparency and accountability by disclosing data about organizations**. They can be a useful passive fundraising tool in enhancing a CSO’s visibility, promoting its activities, and informing donors about its results. Donors may also use information such as financial reports to verify a CSO’s bona fides.³²⁹ Information services **can be linked to other sources of information**, such as CSO registries, official lists of organizations receiving public funding, official governmental journals, tax administration authorities, or insurance companies. Usually an umbrella organization or other administering body collects the information in an easily researchable online database that can benefit a range of stakeholders. The service can application based—that is, including only subscribing organizations—or can serve as a directory for all CSOs registered in a particular country or region. Drawback of information

services can be that the administration of data is often time consuming and the services require widespread promotion to benefit registered organizations.³³⁰

The **European Fundraising Association (EFA)** is a network of eighteen member associations and observers representing the European-wide fundraising community. EFA’s mission is to strengthen and develop the fundraising profession in Europe and increase fundraising activity. EFA serves as an information hub about fundraising and provides training and certification to fundraisers, fundraising associations, and trainers. All EFA members abide by the International Statement of Ethical Principles in Fundraising.³³¹

A popular information service is **GuideStar**, originally established in the United States. The first European GuideStar was introduced in the UK, and after its rapid success the model spread to other European countries, including Germany and Ireland. The GuideStar model works in a similar way from country to country. The administrating authority of the mechanism collects basic information about subscribed CSOs from state registries, their own websites, and other publicly accessible sources. The information typically includes contact details and financial reports. The information is entered into the country-level GuideStar database, and its administrating authority then invites each CSO to review its entry and provide additional information on its work and activities.³³²

Other self-regulatory information services include the Adhat database in Hungary and the KLON and JAWOR directories in Poland. Similar to GuideStar, Adhat³³³ includes data from the

³²⁵ For more information on the Swedish Fundraising Control’s standards for 90-accounts, see Swedish Fundraising Control, “Guidelines,” <http://www.insamlingskontroll.se/en/pages/guidelines>.

³²⁶ Le Comité de la Charte, Procedure of Agreement, art. 8.

³²⁷ “Diventare Socio IID,” Istituto Italiano Donazione, <http://www.istitutoitalianodonazione.it/it/attivita/iid-per-il-non-profit/diventare-socio-iid>. This requirement applies to organizations with annual revenues of more than €300 million. Organizations with lower revenues must also renew their accreditation annually, but under different conditions.

³²⁸ “German Social Institute for Social Issues,” *Deutsches Zentrainstitut für Soziale Fragen*, <http://www.dzi.de/dzi-institut/german-central-institute-for-social-issues/>.

³²⁹ European Center for Not-for-Profit Law, *Study on Recent Public and Self-regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organizations in the European Union* (European Center for Not-for-Profit Law, 2009), 72, http://ec.europa.eu/dgs/home-affairs/doc_centre/terrorism/docs/initiatives_improving_transparency_accountability_npos_avr09.pdf

³³⁰ One World Trust, “A Database of Civil Society Self-Regulatory Initiatives.”

³³¹ For more information on the European Fundraising Association, see its website at <http://www.efa-net.eu/>.

³³² For more information on GuideStar, see its website at <https://www.guidestar.org/Home.aspx>.

³³³ For more information, see Adhat’s database at <http://adhat.hu/adhat-adatbazis-alapitvany-es-egysegulet-kereso>. See the Klon/Jawor directory at <http://www.klon.org.pl/>.

National Office for the Judiciary and other publicly available sources. Additional information, such as organizational purpose, goals, activities, achievements, and fundraising methods, is voluntarily uploaded by participating CSOs. The database is part of a special fundraising website maintained by NIOK, which provides a platform for various online fundraising methods, including crowdfunding and donations by credit card. Poland's KLON and JAWOR directories also present publicly accessible information about domestic and foreign CSOs. CSOs may decide to add more information about their activities.³³⁴ Both databases serve as important resources for CSOs by providing information on support organizations, CSO centers, volunteer centers, and other institutions important for CSO operation. They can also provide pro bono legal advice.

5.4. OTHER CSO METHODS FOR PROMOTION OF BEST PRACTICES

In addition to the above models, there are other methods that aim to promote best practices in the sector. They are typically informal, lacking an institutionalized management system or compliance mechanism. Examples of these initiatives include working groups and awards.

5.4.1. Working groups

Working groups are informal groups of CSO experts that meet to discuss common concerns, share best practices, or produce reports, recommendations, and other materials to benefit a wider public. They may be cross-

sectoral or consist of individuals operating in a particular field or sub-sector. Working groups often develop toolkits, self-assessment instruments, standards, and guides to facilitate the adoption of best practices, including in the area of fundraising. They can also serve as a catalyst for launching more formalized self-regulatory initiatives to serve the entire CSO sector.³³⁵

For example, a working group composed of eight Irish umbrella bodies developed a sector-wide code of conduct in Ireland between 2010 and 2012 to conform to the new Charities Act passed in 2009. Currently 326 organizations are compliant with the Governance Code and 954 organizations are on the way to adopting it. Additional resources help Governance Code users, including a practical guidebook on all aspects of fundraising targeted at small volunteer-led community groups.³³⁶ The Governance Code Working Group meets regularly to oversee the adoption of the code by the sector and address outstanding issues, such as communications, promotion, technical matters, and engagement with stakeholders, to ensure that the code continues to be relevant to the sector and wider Irish society.³³⁷

Working groups exist in the UK and France as well. The Quality Standards Group in the UK focuses on encouraging the beneficiaries of donations collected by charities to participate in all stages of project implementation and press for the accountability of charities to them.³³⁸ The French National Coordination of International Solidarity CSOs created an ethics and transparency working group to ensure that members comply with ethical standards in decision-making and practice.³³⁹ The ad hoc Central and Eastern European Working Group on Nonprofit Governance developed *A Handbook*

³³⁴ One World Trust, "A Database of Civil Society Self-Regulatory Initiatives."

³³⁵ For example, one of the working groups of the Slovak Coalition for the Promotion of Individual Giving is developing a self-regulatory approach to transparency issues.

³³⁶ Sandra Velthuis, *Sustainable Communities: A Funding Handbook for Community-Led Groups*, The Wheel (September 2016), http://www.wheel.ie/sites/default/files/the_wheel_EPA_handbook_web.pdf

³³⁷ For more information on the Governance Code, see its website at: <http://www.governancecode.ie/>

³³⁸ One World Trust, "A Database of Civil Society Self-Regulatory Initiatives."

³³⁹ One World Trust, "A Database of Civil Society Self-Regulatory Initiatives." More about this initiative can also be found on the website of the National Coordination of International Solidarity CSOs ("Coordination SUD"), <http://www.coordinationsud.org/>

of *NGO Governance* that has been translated into more than twenty languages since 2004.³⁴⁰

5.4.2. Awards

Some self-regulatory initiatives present awards to **recognize the performance of outstanding organizations**. CSOs considered for awards are usually assessed in a competitive process focused on excellence, innovation, or good practice in several areas, including fundraising.³⁴¹ The bestowal of awards usually entails positive publicity for awardee organizations and can also promote good practices and a commitment to transparency and accountability throughout the sector. However, when a CSO decides to take part in a competition and the results of the evaluation are negative, it may damage the organization's reputation.³⁴²

For example, the Charity Times Awards in the UK recognizes the quality of charities' activities in various fields. They include an award for fundraising technology and to the fundraising team of the year.³⁴³ The Irish National Awards for Excellence in Fundraising recognize outstanding performances only in the field of fundraising, including the best national fundraising campaign, best national fundraising event, and professional fundraiser of the year.³⁴⁴ In Hungary the Civil Award was introduced in 2016 to help the best domestic CSOs and most successful projects become more widely known. The award has seven categories, including the most successful fundraising campaign.³⁴⁵

³⁴⁰ Marilyn Wyatt and the Central and Eastern European Working Group on NGO Governance, *A Handbook of NGO Governance* (European Center for Not-For-Profit Law, 2004), http://ecnl.org/dindocuments/455_Governance_Handbook.pdf

³⁴¹ CIVICUS, *Accountability for Civil Society by Civil Society*, 32.

³⁴² *Ibid.*

³⁴³ For more information about the Charity Times Awards 2015, see <http://www.charitytimes.com/awards/>.

³⁴⁴ This awards scheme was created by Fundraising Ireland.

³⁴⁵ For more information on the Civil Award, see its website at: <http://civildij.hu/>

6. CONCLUSIONS AND RECOMMENDATIONS

Based on our research we propose the following conclusions and general recommendations to enrich their discourse on fundraising and support the creation of sound national and international norms for statutory and self-regulatory approaches to fundraising.

1. Assess the legal framework to boost domestic fundraising

Domestic philanthropy is on the rise and becoming more professional around the world. It has great potential to serve as an independent, alternative source of funding for CSOs, especially in countries where CSOs face limited access to foreign funding or state support or are constrained from conducting economic activities. Governments have a positive obligation to provide an enabling legal environment for CSOs to exercise freedom of association, including the right to secure resources. Some European states have begun to revise their fundraising regulations by introducing new laws to regulate public collections and fundraising via new technologies or repealing existing laws to simplify administrative procedures. We recommend that all countries revisit their national legislation to assess whether the current legal framework supports the diversification of CSO resources and allows fundraising activities to flourish.

2. Define fundraising consistently

There is no universally applied definition of fundraising. In the widest sense, fundraising is understood to be the process whereby CSOs access funds to finance their activities, including from the government, philanthropy, and income-generating activities. In the narrowest sense, fundraising refers solely to the process of soliciting philanthropic contributions. The definition of “fundraising” can encompass references not only to the act of “collecting donations,” but also to the purposes of fundraising, forms of donations (cash or in kind), the target group of fundraising (usually the general public), and examples of fundraising methods. The collection of philanthropic contributions from the general public—often called public collection or public fundraising—is the method of fundraising most frequently recognized and regulated by the law. We recommend to develop clear definitions and use them consistently to avoid misunderstanding on when and to whom fundraising rules are applicable. It is a good practice to recognize fundraising activities as a potential source of

income for CSOs to reinforce CSOs' ability to fundraise.

3. Recognize the influence of country traditions on fundraising regulation

Factors such as the political, economic, and social environment and the tradition of philanthropic giving are important considerations for establishing an enabling framework for fundraising activities. In Scandinavia and some Western European countries, there is a lack of legislative tradition in the field of fundraising and self-regulation predominates. In common-law countries, state regulation is firmly established along with a tradition of self-regulation. CEE countries have a younger charitable tradition, with relatively new legal frameworks and recent expansion of self-regulatory initiatives. It is recommended to take the country context into consideration and adjust the fundraising regulations to the local needs.

4. Strengthen the complementary roles of statutory and self-regulatory approaches

Statutory schemes and self-regulation are closely interrelated and have complementary role. Some areas, such as tax benefits, can be regulated only by the state, while other areas, such as ethical principles, are properly the domain of self-regulatory initiatives. It is recommended to strike an integrated regulatory framework with an effective and appropriate balance between statutory and self-regulation approaches to achieve ethical and productive fundraising practices respecting the interests of both donors and fundraisers.

5. Document the universe of fundraising regulation

The state can regulate fundraising activities through framework laws and regulations, separate public collection laws and regulations, and other legal acts, such as local government decrees. However, the universe of fundraising regulation is much broader than this. Laws on accounting, taxation, data protection, licensing, child protection, games of chance, anti-money laundering and counter-terrorism financing, and other topics may all have provisions that shall be observed by fundraisers. Therefore it is recommended to document and raise the awareness of donors and CSOs of all legal

regulations applicable to fundraising in order to help them comply with the law.

6. Avoid limits on legitimate fundraising purposes

CSOs can generally fundraise for any legally recognized nonprofit purposes. The laws on public collection may limit the scope of fundraising to publicly beneficial or charitable purposes, since the applied fundraising methods potentially reach an indefinite number of people. Or legislation may limit fundraising purposes by linking them to eligibility of obtaining tax benefits after donations. However, these limitations do not mean that CSOs cannot fundraise for mutual benefit purposes through individual giving and other methods not subject to the laws on public collection. Therefore it is important to define the scope of legitimate fundraising purposes in a way that it does not interfere with the right of CSOs to access resources. If the law sets limitations for certain cases (i.e. eligibility for tax benefits after donation) it should also provide clarity that such rule shall not be applied in an expansive manner.

7. Establish minimally intrusive eligibility criteria for fundraisers

European law often sets certain criteria for natural and legal persons to be involved in fundraising activities. In most of the countries surveyed, public collections may be carried out only by nonprofit entities. In countries where for-profit entities can also organize public collections, legal safeguards ensure that the collected funds are not used for profit or gain. Ultimately, the purpose for which income from public collections is used is more important than the legal form of the fundraiser. Some public collection laws also set criteria for natural persons involved in fundraising. For example, minimum age requirements are common and may be justified to protect children's rights. On the other, limitations for people with criminal record or public position may be questionable. No matter what the eligibility criteria, we recommend that they be minimally intrusive so as not to interfere with the right of CSOs to access resources.

8. Revisit the need for notification/permission requirements and ensure consistent and simplified procedures

Some countries, especially those with a separate law on public collection, require prior state

approval, notification, or permission before a public collection can take place. Some laws provide exceptions to this requirement based on the limited scope of a fundraising activity (for example, among members of a CSO only), its location (as when it takes place locally or indoors), or its short duration. In all cases, it is essential that the legal framework enable fundraising activities by CSOs without imposing burdensome administrative requirements. Therefore, we recommend to revisit the need for state approval or notification if such requirement is already in place as there may be other means to ensure accountability and protect against misuse of funds. Whenever legislation still calls for special authorization or notification for fundraising activities, such requirements should be compatible with international human rights standards and not inhibit CSOs from carrying out fundraising activities to support their mission and beneficiaries. The procedure should be simple and easily performed by all CSOs wishing to organize a fundraising activity. Ideally, applicant organizations should not have to submit documents that are already available to the authorities, and, as shown in some European practices, the decision-making procedure should not take more than few days if conducted electronically. In particular, legislation should provide an explicit and limited number of justifiable grounds for rejecting requests for permits. The rules governing the authorization or notification process be objectively framed so as not to subject CSOs to arbitrary decision-making by relevant authorities.

9. Ensure the applicability of new fundraising methods

Comparative examples show that traditional fundraising methods, such as collection boxes and street collections, remain popular among CSOs in Europe and are subject to well-established regulatory practice. At the same time, with the expansion of digital technologies, new methods of fundraising are emerging, particularly in countries that already have a strong tradition of fundraising. CSOs are tapping into crowdfunding, innovative mobile phone applications, and other digitally based fundraising methods to multiply their outreach and increase donations inexpensively. Some countries have started to adapt their legal frameworks to accommodate these new approaches. While regulation can raise awareness of these new ways of supporting

CSOs' missions and beneficiaries, provide definitions and basic rules to avoid uncertainty and misuse, provide for tax benefits, and so on, it is essential that it not be autotelic. Regulation should encourage the use of new fundraising methods rather than creating additional administrative burden for CSOs, which can limit their use. If there are no impediments to or misuse of new fundraising methods, there may be no need to regulate them. In some cases self-regulation may be sufficient to promote new tools and increase public confidence in the sector. We recommend that legislation be assessed to ensure that it does not inhibit CSOs from using new fundraising methods.

10. Avoid constraints on the utilization of funds

To avoid fraud and the misuse of contributions, laws governing public collections, particularly those that require permits, may establish certain restrictions on the utilization of collected funds. These restrictions most commonly include the requirement that funds be used for the purpose indicated in the permit within a set timeframe. Caps on the administrative costs of fundraising activities are sometimes also introduced to ensure that the collected funds are used efficiently. We recommend that these rules apply only to public collection methods that are subject to public collection laws and by no means be interpreted broadly to apply to all methods of soliciting donations.

11. Ensure proportionate transparency and reporting requirements

Since income from fundraising is derived from the public, it is important that recipient organizations adhere to a high standard of transparency. CSOs are accountable to their donors and beneficiaries as well as state authorities and the public. Therefore CSOs may have special reporting requirements for income generated from fundraising activities, including documentation of the results of fundraising efforts and the utilization of funds raised. It may be part of the general reporting requirements (e.g. annual financial report) or constitute a separate report that must be submitted to the authorities supervising fundraising or money collection activities. While transparent operations enable CSOs to establish their credibility and earn the public's confidence and support, organizations must also respect the privacy rights of donors, beneficiaries, and staff and protect confidentiality when needed. We recommend that reporting requirements be

proportionate and not unnecessarily burdensome or intrusive for CSOs.

12. Ensure fair and objective supervision of fundraising

Most countries provide general rules in their framework regulations on supervising CSOs. In addition, some countries have separate regulations on supervising cash collections, usually by the permitting authority or another state body. The supervision of collections typically entails verification of compliance with applicable laws and conditions indicated in the permit, if required. The law may also provide for a complementary form of supervision called “disclosure upon receipt model,” which requires fundraising organizations to disclose their fundraising efficiency ratios so donors can make informed decisions about directing their donations. Whatever the approach, we recommend that the supervision of fundraising activities be fair, objective, and non-discriminatory.

13. Regulate professional fundraising

Fundraising professionals can help CSOs boost their income from donations and thereby secure their financial sustainability. Hiring professionals to raise funds on behalf of an organization or for publicly beneficial purposes is increasingly widespread. The legal regulation of professional fundraising is most often found in countries with more developed fundraising traditions, but similar laws and regulations are emerging in other countries, too. We recommend that the regulation of professional fundraising provide basic rules for agreements between professional fundraisers and beneficiary organizations as well as legal guarantees that fundraisers will not misuse the funds raised.

14. Acknowledge the state’s role in developing philanthropy

Favorable tax regulations can support the development of philanthropy by improving the mobilization of resources from fundraising. Countries that seek to realize this potential offer tax incentives to donors and exemption from income tax, VAT and other taxes for beneficiary CSOs. In addition to tax benefits, other good practices include direct state support to CSOs conducting fundraising activities through matching funding and other schemes. We recommend that states acknowledge their role in supporting the development of philanthropy

by introducing various tax advantages for private giving.

15. Enable cross-border philanthropy

Cross-border donations, though increasingly common, are still subject to discriminatory treatment in several European countries. Historically, tax incentives were restricted to domestic CSOs, and only donors giving to domestic CSOs had access to tax benefits. This traditional regulatory approach has been overhauled in the past decade by several judgments of the ECJ, which established a “non-discrimination principle” to safeguard the equal tax treatment of cross-border donations. Since the ability to seek and secure resources, both domestic and foreign, is essential to CSOs’ existence and operations, national laws should facilitate the flow of donations from abroad and remove limitations and additional burdens on cross-border philanthropy. We recommend to remove any existing barriers to cross-border philanthropy and guarantee the same treatment for cross-border and domestic donations, including tax benefits for donors.

16. Support emerging self-regulatory initiatives

In the past decades, self-regulatory initiatives have become widespread around the world, including in countries with relatively young and small third sectors. CSOs increasingly use self-regulation to establish norms and standards for practices that are otherwise not regulated by law but are important for building and maintaining public trust and confidence in civil society. Self-regulation is especially common in fundraising, as it enables CSOs to demonstrate credibility to potential donors. There are a variety of self-regulation methods, including code of conducts, certification and accreditation schemes, information services, awards, working groups and others. Each method has its strengths and weaknesses so it is advisable to consider these when CSOs decide to introduce self-regulation. Also, it is important that the self-regulation is grass rooted and tailor made for the needs of civil society sector. Otherwise, it will not be recognized and applied expansively.

7. CASE STUDIES

Slovakia, the UK, and Spain have diverse fundraising traditions and take different approaches to the regulation of fundraising activities. Slovakia is a former communist state that transitioned to democracy in the 1990s, which propelled the development of a new culture of philanthropy, including fundraising. In contrast, the UK is a common-law country with a well-established tradition of philanthropy, and its statutory regulation of fundraising is complemented by a host of independent self-regulatory practices. In Spain, the strong role of the state means that CSOs have traditionally been funded mainly by government, with private philanthropy playing a secondary role. In recent years, however, individual solidarity and fundraising campaigns have increased, and several self-regulatory initiatives have also emerged.

These case studies show the complexity of the regulatory framework for fundraising in these three very different countries. They were developed by local experts based on questionnaires addressing statutory and self-regulatory issues. They focus on the legislative framework for fundraising, CSOs' fundraising activities and methods (including recent developments), transparency and accountability rules, and self-regulatory initiatives.

7.1. FUNDRAISING IN SLOVAKIA

After the fall of the communist regime in 1989, Slovakia adopted a democratic government that has encouraged the growth of civil society.³⁴⁶ As CSOs have sought to raise awareness of and provide solutions to public issues, they have solicited financial support from the public. Public collections were already conducted during the socialist period, and traditional methods continued to be the most popular approach to fundraising in the 1990s. Even today, a person holding a donation box on a street corner in Slovakia engages in one of the most effective methods for raising funds for philanthropic purposes.

At the same time, new methods of fundraising have begun to emerge, and public perceptions

³⁴⁶ This case study was developed by Igor Polakovič.

are gradually changing. Support for philanthropy is no longer perceived solely as donations to the poor. Money is now raised for a wide range of causes using a broad assortment of tools. Moreover, fundraising for “the common good” is not only the domain of CSOs but also of individuals and informal groups with benevolent aims. So the image of a person holding a donation box on a street corner is now complemented by the image of a mobile phone owner sending a donation by SMS. Most important, the willingness of people to donate is steadily increasing. According to USAID’s *2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, online donation platforms are increasingly popular among Slovak donors, who supported numerous projects and initiatives in 2015.³⁴⁷

Legislative framework

There is no single piece of legislation that regulates fundraising as such. Instead, several laws work together to shape the legal environment for fundraising. The most important legislation in this respect is the Civil Code.³⁴⁸ It defines gratuitous giving³⁴⁹ and the donor-recipient relationship without limiting its scope to charitable giving. Under the Civil Code, even a private person or an informal group of people may collect funds and receive donations.

The Income Tax Act³⁵⁰ provided a crucial impetus for fundraising by providing general income tax exemptions on donations. Through amendments adopted in 2001, the act also provides an opportunity for taxpayers to

allocate a percentage of their annual income tax to a registered CSO of their choice. Originally individuals only were allowed to allocate 1 percent of their income tax, but in 2004 this allocation increased to 2 percent and was extended to companies, which may allocate between 1.5 and 2 percent to one or more CSOs.³⁵¹ However, this positive reform also had the effect of canceling previous tax benefits. Today there are no tax benefits for the donor, who thus may be induced to donate solely by the good feeling that comes from the act of helping. The Income Tax Act also sets conditions on the use of funds collected in this manner. Money received from the tax designation mechanism may be used only for public benefit purposes and associated operational costs defined by the Income Tax Act.³⁵² Non-investment funds³⁵³ may apply a maximum of 15 percent of overall expenditures to operational costs,³⁵⁴ while other types of CSOs do not have thresholds for operational expenses, although their statutes or boards may set certain conditions. CSOs must use funds received from the tax-designation mechanism by the end of the following calendar year (usually about one and a half years from the time the money is received).³⁵⁵ Any non-utilized funds must be returned to the state budget.

Another significant law affecting fundraising in Slovakia is the 2014 Law on Public Collections, which regulates the “collection of voluntary financial gifts by CSOs from an unspecified group of people for a specific public benefit cause or humanitarian assistance to an individual or group.”³⁵⁶ This law replaced the Act on Public Collection and Lotteries and Similar Games

³⁴⁷ USAID, *2015 CSO Sustainability Index for Central and Eastern Europe and Eurasia* (2016), 229, https://www.usaid.gov/sites/default/files/documents/1861/Europe_Eurasia_CSOSIReport_2015_Update8-29-16.pdf.

³⁴⁸ Slovakia, Civil Code, No. 40/1964 Coll. (1964), <http://www.zakonypreludi.sk/zz/1964-40>.

³⁴⁹ Slovakia, Civil Code, art. 628, says that “With a donation deed, the donor leaves something gratuitously or promises something to the recipient and the recipient accepts the gift or promise.”

³⁵⁰ Slovakia, Income Tax Act, No. 595/2003 Coll., art. 3 (2003), <http://www.zakonypreludi.sk/zz/2003-595>.

³⁵¹ As of 2014, individuals may designate 2 percent (3 percent if volunteering for a charitable organization for more than 40 hours per year), and corporations 1.5-2 percent. However, the tax-designation scheme for companies changed and now requires firms to make an additional donation equivalent to 25 percent of the assignment if they want to assign the full 2 percent. This percentage is likely to change in the coming years.

³⁵² According to the Income Tax Act, art. 50 (5), public benefit purposes are: a) protection and promotion of health and prevention, treatment, reintegration of drug addicts in health and social services; b) promotion and development of sport; c) provision of social assistance; d) maintenance of cultural values; e) promotion of education; f) protection of human rights; g) protection of the environment; h) research; and i) organization and facilitation of volunteering.

³⁵³ One of the four primary CSO forms in Slovakia. Other CSO legal forms in Slovakia are civic associations, foundations, and non-profit organizations providing public benefit services.

³⁵⁴ Slovakia, Non-Investment Fund Act no. 147/1997, art. 21(4) (1997), <http://www.zakonypreludi.sk/zz/1997-147>.

³⁵⁵ Slovakia, Income Tax Act, art. 50a (2003), <http://rozhodni.sk/poukazatel/legislativa-2-z-dane/>.

³⁵⁶ Slovakia, Law on Public Collections, art. 1 (2), <http://www.zakonypreludi.sk/zz/2014-162>.

adopted in 1973. The obsolete and unclear regulations of the older law enabled a number of dubious organizations to conduct suspicious public collections, thereby undermining public confidence in philanthropic giving. Moreover, newer methods of fundraising were not explicitly recognized in the 1973 law. In April 2012 a group of CSOs³⁵⁷ sent an open letter to the Minister of Interior presenting their complaints about the law and offering to help draft new legislation. The ministry appointed a working group that included CSO representatives, and by late 2013 a new law was in draft form. Although not all of their proposals were included, the law was generally acceptable to the CSO community. The parliament voted

unanimously to approve the new law on May 27, 2014.

The new law introduced many significant improvements. First, it is generally more liberal than the old law. For example, collection organizers no longer need to request permission to conduct a collection but simply fulfill certain requirements and register their collection at the appropriate office. Second, the new law enhances transparency. CSOs must post reports about their collections on their websites, and basic information about the collections is publicly accessible on a state-run registry.³⁵⁸ Third, the new law promotes philanthropy.

1973 Act on Public Collection	2014 Law on Public Collections
<ul style="list-style-type: none"> • All legal entities may conduct public collections. • Organizations must request permission to conduct collections. • CSOs must announce public collections in nationwide newspapers. • CSOs may conduct street collections year round. • Public collections are forbidden in private premises, public transit, hospitals, and shops. • The law recognizes only cash donations and donations to bank accounts. • Funds must be spent within one month of the end of the collection. • Up to 50 percent of gross income may be used for legitimate administrative expenses. • A report must be submitted within one month of the end of the collection. • Reports are not publicly accessible. 	<ul style="list-style-type: none"> • Only CSOs may conduct public collections. • CSO collections are automatically registered if legal requirements are fulfilled. • CSOs must inform the public about collections on their web sites. • Every street collection may be conducted for fourteen consecutive days per year at most. • Public collections are allowed on private premises with permission of owners or venue managers. • In addition, the law recognizes SMS donations. • Funds must be spent twelve to twenty-four months after the end of the collection. • Up to 25 percent of gross income may be used for legitimate administrative expenses. • An interim report must be submitted with three months and a final report twelve to twenty-four months after the end of collection. • CSOs must publish interim and final reports on their websites. Basic data are published in the state online registry.

³⁵⁷ Signatory CSOs were Christian Children Communities Movement (eRko), Center for Philanthropy, Wild Poppies, Charitas Slovakia, UNICEF Slovensko, Integra Foundation, Children of Slovakia Foundation, People in Peril, Donors Forum, Association of Slovak Community Foundations, League Against Cancer, Smile is a Gift, Slovak Scouting, Pontis Foundation, Slovak Blind and Partially Sighted Union, Organization of Muscular Dystrophy in the Slovak Republic, Red Cross, Slovak Fundraising Center, Good Angel, and League for Mental Health.

³⁵⁸ See the Slovak registry of the public collections at <http://www.vs.sk/vz/>.

Now only CSOs may organize public collections, and other than street collections (which an organization may conduct only once a year), CSOs may run an unlimited number of parallel collections. The law also sets various limits on how funds raised under the law can be spent and resolves uncertainties related to the utilization of collected funds. CSOs may now use up to 25 percent of raised amounts on “justifiable expenses” related to the collection. Net funds may be spent only for the public benefit purpose described in the registration document (although the ministry of interior may permit exceptions upon request by the organizer); street collectors (who are assumed to be volunteers) may not be paid from the donations; and all collected funds must be used within one year from the end of the collection, although CSOs collecting money for international assistance enjoy an extended period of twenty-four months.

CSOs must officially register collections and comply with the law only if they raise funds for public benefit purposes. There are several advantages for CSOs that solicit contributions under this law. First, they acquire a reputable brand by registering their collections. Although there are still some instances of suspicious public collections, the new Law on Public Collections is expected to help resolve such problems. Second, they may employ a broader range of fundraising methods, such as street collections and VAT-free SMS donations, which may be pursued only under this law.

A number of other laws also affect the CSO sector in general and fundraising in particular. These include laws on data protection, advertising, consumer protection, and accounting. In 2015 stricter anti-money laundering regulation was introduced, which broadens the definition of “terrorism financing” to include the collection of not only financial but any type of property.³⁵⁹ This amendment derives

from EU Directive No. 2015/849 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering or Terrorist Financing.³⁶⁰

Fundraising methods

Traditional fundraising methods continue to be an important source of income for Slovak CSOs. Street collections are popular in Slovakia, and several annual campaigns with strong brand identities raise stable or even increasing amounts of money. Another traditional method of raising funds involves fixed donation boxes placed in public or private spaces, such as train stations or shopping malls. Like street collections, collections using donation boxes must be registered.

Income tax designations are also an extremely important source of income for many CSOs. A few months before the deadline for submitting income tax declarations, CSOs run advertising campaigns to attract potential donors. Until most recently, income tax designations were strictly anonymous, which meant that organizations were unable to build ongoing relationships with their donors. As of 2016, individual and corporate taxpayers may opt to disclose their identity to their beneficiaries by marking a box on their tax-return forms.

In recent years CSOs have also begun to use new fundraising tools, such as donations through SMS, bank transfers, and online giving. Some CSOs rely on public collections via SMS as their main source of income.³⁶¹ For many years they have had two options for collecting donations via SMS. Either a mobile phone service provider provides the recipient CSO with an SMS number that allows the organization to determine the amount of the donation, or the CSO uses a system operated by Donors Forum. The Donors Forum system uses one number (877) for all CSOs, followed by a unique key word for a

³⁵⁹ Slovakia, On the Legalization of Income from Criminal Activities and On Protection Against Terrorist Financing, no. 297/2008 Coll., art.3 (2008), <http://www.zakonypreludi.sk/zz/2008-297>. It defines all foundations, funds, and NGOs providing public benefit services as “clients” and obliges all “liable persons,” including banks, lawyers, auditors, and many other persons, to monitor and collect a broad range of information about such clients to verify any potential threat of terrorist financing. In addition, the law provides extensive powers to the Financial Intelligence Unit to oversee and conduct random investigations of CSOs’ premises to verify the utilization of their funds and other property.

³⁶⁰ European Parliament and Council of the European Union, On the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.

³⁶¹ SMS donations work especially well for public collections using direct response television (DRTV), a method of raising money through TV shows or advertisements. For example, of the €1.7 million (approximately \$1.85 million) raised in 2014 from the “Heart for Children” collection, 90 percent came from SMS.

specific cause, such as “earthquake,” “Africa,” or “charity.”³⁶² The usual value of an SMS donation is €2-5 (approximately \$2.20-5.50), while in the Donors Forum system the fixed price of a DMS is €2 (approximately \$2.20), with CSOs receiving €1.92 or 96 percent of every donation. Both mobile phone service providers and Donors Forum require CSOs to register their public collections in accordance with the Law on Public Collections. Since 2013 some CSOs have provided donors with the option of a recurring SMS, which allows them to donate a fixed amount monthly through their telephone bill until they recall such an instruction. Like all donations, text donations are VAT free. However, on the negative side, this form of giving is hampered by service providers’ conservative approach to data protection, which means that donations by SMS are strictly anonymous. Organizations employing recurring SMS are especially affected, as this limitation prevents them from reengaging with former donors.

Even though Slovakia is an EU member state, Slovak CSOs are unable to use a direct debit system, which would help create long-term donor relationships through “face-to-face” fundraising. Consequently, this fundraising method is not pursued in Slovakia, and direct debit is only partly replaced by other less convenient methods of recurring donation, such as standing transfer orders from donors’ bank accounts or recurring credit- or debit-card donations.

Online giving is popular with both donors and CSOs. There are three giving portals (LudiaLudom.sk,³⁶³ DobraKrajina.sk,³⁶⁴ and

Dakujeme.sk³⁶⁵), as well as the widely used Let’s Give (Darujeme.sk³⁶⁶) service created by the Center for Philanthropy. Darujeme.sk allows CSOs to build personalized donation sites, manage donor contact information, and track fundraising results, and donors may set up recurring donations using credit or debit cards. This system was launched in 2013 and is currently used by many reputable CSOs.

Some CSOs are replicating successful models from other countries. One example is the “Cent Donating” campaign, which the Good Angel charity used for the first time in Slovakia in cooperation with the website of the Martinus bookstore. When customers purchase a book on the website, they are able to round up the price and donate the difference to Good Angel. Thanks to the huge success of this initiative, the donation of change has been pursued in stores since October 2015.³⁶⁷ Other online shops offer similar arrangements on behalf of a growing number of charities. CSOs are also experimenting with QR codes³⁶⁸ and a service known as VIAMO,³⁶⁹ which was initially created to transfer money from one mobile phone to another. As with all donations, no VAT is applied to the donated portion of sums paid when these services are used.

Only a few CSOs can afford a fulltime fundraiser. The profession is generally not recognized and is often confused with public relations or sales. Only the biggest, usually international, CSOs hire professional fundraisers, and a few organizations use the services of independent agencies.³⁷⁰ There is no legal regulation of this profession, but the Slovak Fundraising Center has developed a self-regulating code of ethics.³⁷¹

³⁶² For more information, see the Donor’s Forum website at <http://www.donorsforum.sk/>.

³⁶³ See <http://www.ludialudom.sk/>.

³⁶⁴ See <http://www.dobrakrajina.sk/>.

³⁶⁵ See <http://www.dakujeme.sk/>.

³⁶⁶ See <http://www.darujme.sk/>.

³⁶⁷ In October 2015, the amount of donations exceeded €250,000 (approximately \$275,000). For more information, see Juraj Šlesar, “Anjelske drobne uz aj v kamennych knihkuectvach [Angels’ Change Already in Stone Bookstores],” Blog.Martinus.sk (October 14, 2015), <http://blog.martinus.sk/2015/10/anjelske-drobne-knihkupectva>.

³⁶⁸ QR Codes are machine-readable matrix barcodes containing information about the item to which it is attached. PAY by square is a mobile-phone application that encodes payment information on QR codes and is used for banking. Square’s website is at www.bysquare.com.

³⁶⁹ VIAMO is a mobile-phone application that enables the transfer of money from one mobile phone to another. See www.viamo.sk.

³⁷⁰ There are two specialized direct-marketing agencies for CSOs operating from out of the country. While Greenpeace, for example, runs a direct-mail program using only outdoor letter shops and boxes, others CSOs such as UNICEF and Clowndoctors cooperate with direct-mail agencies more closely. Many CSOs decided to stop their direct-mail programs because of bad returns on investment or high investment costs.

³⁷¹ Slovak Fundraising Center, “Code of Ethics for Organizations Working with Donors,” <http://www.fundraising.sk/en/club/code-of-ethics>

Cross-border donations

There is no separate regulation covering cross-border donations. As with any other transaction, government institutions may monitor cross-border donations for a variety of reasons, including anti-money-laundering efforts. The Slovak government treats foreign donations to Slovak CSOs in the same way that it treats domestic donations. Since there are no tax benefits for domestic donors, there are also none for foreign donors. Any applicable tax benefits under the law of the donor's country may of course be applied in that country.³⁷² A private initiative called Transnational Giving Europe (TGE)³⁷³ enables corporate and individual donors residing in participating countries to provide financial support to CSOs in other member states and benefit directly from tax benefits in their countries of residence. Slovak members include Habitat for Humanity and the Carpathian Foundation.

Transparency and self-regulation

Both legal requirements and "mild" self-regulation call for transparency in fundraising. However, no general obligation for transparency applies to all types of CSOs. Separate framework laws for varying types of CSOs prescribe different requirements, such as on the publication of annual reports.

CSOs that receive funds from the tax designation system must report their use of these funds and publish a report in the state commercial bulletin if they raise more than €3,319.39 (approximately \$3,700) in any given year. CSOs with tax designation income exceeding €33,193.92 (approximately \$37,300) must pass an obligatory audit. CSOs raising funds under the Law on Public Collections must report gross income from the collection within three months of its termination and file a full report, including the net sum and detailed expenditures, within twelve to twenty-four months, depending on the type of collection.

CSOs are monitored or audited by a variety of institutions. The Public Revenue Office is authorized to audit any type of CSO. The Supreme Audit Office audits CSOs receiving funds from the tax-designation mechanism. The Ministry of Interior or the Regional Authority Office may audit CSOs fundraising under the Law on Public Collections. The Ministry of the Interior is charged with verifying annual reports submitted under Law on Public Collections.

Recently the self-regulation of fundraising activities has become a more urgent topic. A growing number of CSOs, including many reputable civic associations, voluntarily publish annual reports on their websites to signal transparency. In 2011 fourteen Slovak CSOs established the Coalition for Promotion of Individual Giving,³⁷⁴ which aims to develop a favorable environment for individual giving, promote the common interests of its members, remove barriers in the giving process, and serve as a platform for cooperation and the sharing of experiences. One of the coalition's working groups addresses transparency and is developing a concept for self-regulation. The code of ethics for fundraisers developed by the Slovak Fundraising Center, a member of EFA, includes rules on fundraiser behavior and approaching donors to request a donation.³⁷⁵ The Slovak Platform of Non-Governmental Development Organizations has developed codes on ethics, images, messages, and development volunteering.³⁷⁶

Conclusion

The legal framework for fundraising in Slovakia has recently undergone a positive change with the adoption of the new Law on Public Collections. Most important, it abolishes the requirement that organizers obtain permission to fundraise and enhances transparency by obliging organizers to publish reports on their collections. The law also acknowledges technological advances by recognizing donations via SMS as a legitimate method of public collection. However, the rigid regulation of

³⁷² For more on this topic, see von Hippel, "Taxation of Cross-Border Philanthropy in Europe after Persche and Stauffer."

³⁷³ Transnational Giving Europe's website is at <http://www.transnationalgiving.eu/>.

³⁷⁴ See Slovak Fundraising Center, "Coalition for Giving," <http://www.fundraising.sk/en/about-us/coalition-for-giving>.

³⁷⁵ Slovak Fundraising Center, "Code of Ethics for Organizations Working with Donors."

³⁷⁶ Slovak Non-Governmental Development Organizations Platform, "Codes of Conduct on Images and Messages" (2014), <http://www.mvro.sk/en/codes>

street collections still limits CSOs to raising money with movable collection boxes to only fourteen consecutive days per year.

As a member of the EU and the euro zone, Slovakia is a promising fundraising market. Although one-off donations are still the most significant source of income for Slovak CSOs, recurring donations from long-lasting relationships have become the Holy Grail for most fundraising organizations. However, thanks to a conservative banking system, direct debit, which is used elsewhere as an effective tool for securing regular donations through long-term donor-CSO relationships, is still not possible using Slovak banks. But fundraising via online platforms is gaining in popularity among CSOs and donors alike.

Rules on transparency and accountability for CSOs are contained in both national laws and CSO self-regulation but are relatively fragmented. Separate CSO framework laws provide distinct rules on reporting for each legal form of CSO. In addition, CSOs are increasingly seeking to adhere to higher standards of transparency through several self-regulatory initiatives.

7.2. FUNDRAISING IN THE UNITED KINGDOM

The devolved nature of the UK government means that different legislation may be applicable depending on where the fundraising is taking place.³⁷⁷ Although charity legislation differs in England and Wales, Scotland, and Northern Ireland, the differences tend to be subtle, and fundraising practices are similar across the UK. Much of this case study focuses on the self-regulation of fundraising in England and Wales.

Charitable giving, fundraising, and philanthropy in general have long and successful traditions in the UK. One of the oldest surviving charitable organizations was established in the fifteenth century. English law began to recognize

charitable causes in 1601. The number of charities expanded significantly in the nineteenth century, when the charitable activities of philanthropists in Victorian England attracted public notice. The First World War saw significant charitable activity: for example, more than £2 million (approximately \$2.4 million) was donated within two weeks of the establishment of the National Relief Fund in 1914. Mass media, print advertisements, and letters enabled charities to expand their fundraising reach beyond one-on-one encounters to a “one-to-many” strategy.³⁷⁸

Voluntary income (i.e., grants and donations) for charities in England and Wales totaled more than £16.5 billion (approximately \$19.8 billion) in the financial year 2013-14. Of this amount, £9 billion (approximately \$10.8) came from individual donations and the rest from corporate donations, government grants, and charitable trusts.³⁷⁹

The regulation of fundraising: legal framework

The regulation of fundraising in the UK is tied to the wider regulatory system for charities. It is not necessary to be a registered charity to raise funds for a particular cause. So long as the rules and regulations are observed, any CSO can undertake any fundraising activity if it is in the best interests of that organization. However, only charities can raise money using the word “charity” or “charitable.” Charities in England and Wales must register with the Charity Commission, a non-ministerial government department whose role is to ensure that charities work effectively, fulfill their mission, and deliver public benefit. The Charity Commission can investigate a charity if it has concerns about its governance or suspects that it may not be complying with provisions of the governing Charities Acts or implementing regulations.³⁸⁰ However, the Charity Commission does not regulate fundraising activity per se.

The Charities Act does stipulate specific legal requirements for fundraising—concerning, for example, accounting and reporting

³⁷⁷ This case study was developed by Daniel Fluskey, Head of Policy and Research of the Institute of Fundraising.

³⁷⁸ See Adrian Sergeant and Elaine Jay, *Fundraising Management: Analysis, Planning and Practice* (Routledge, 2010), 15.

³⁷⁹ National Council for Voluntary Organizations (NCVO), *UK Civil Society Almanac 2016* (2106), <https://data.ncvo.org.uk/>.

³⁸⁰ UK, Charities Act 1992, Charities Act 2011, and Charities Act 2016.

requirements, terms for inclusion in written agreements with third parties, the use of solicitation statements, and the involvement of commercial participators (a commercial enterprise that takes part in a promotion venture where the public is informed that contributions will be given to or applied for the benefit of a charity).³⁸¹ Charities must also adhere to other laws and regulations in their fundraising activities, including those governing data protection (under the 1998 Data Protection Act) and gambling (which includes lotteries and raffles), as well as standards enforced by other bodies (such as the Advertising Standards Authority).³⁸² These are not specific rules or laws for charities but apply more broadly to every sector and organization. For example, charities must follow the legislative requirements for direct marketing as set out in the Data Protection Act and Privacy and Electronic Communications Regulations, which means that they must process data fairly and lawfully, respecting the individual's privacy rights and obtaining consent for marketing where it is needed.

Some forms of fundraising activity are governed by specific legislation. These include charitable collections carried out in a public place or door to door. The rules are set out in House to House Collections Act 1939,³⁸³ House to House Collections Regulations 1947,³⁸⁴ Charitable Collections (Transitional Provisions) Order 1974,³⁸⁵ and Police, Factories, etc. (Miscellaneous Provisions) Act 1916.³⁸⁶ (It should also be noted that there is separate legislation governing this activity in Northern Ireland and in Scotland). The basis of these laws is that, in the main, permission is needed from an authority—either a local government authority or the police—to fundraise in a public place.

The most recent changes to fundraising legislation occurred with the Charities (Protection and Social Investment) Act 2016.

This law includes new provisions requiring larger charities with gross incomes exceeding £1 million (approximately \$1.2 million) to include information about their fundraising practices with their annual reports submitted to the Charity Commission.³⁸⁷ The report must include details about the charity's use of commercial participators or professional fundraisers; how the charity monitored fundraising activities carried out on its behalf to ensure compliance; how many complaints they have received about fundraising activity; and what the charity does to protect people in vulnerable circumstances and others from unreasonable intrusion to their privacy, unreasonably persistent approaches, or undue pressure to donate to the charity. The Charities Act also requires that extra terms be included in a contract between a charity and any professional fundraiser, detailing whether the professional fundraiser is part of the regulatory system and how the fundraising practice will protect people in vulnerable circumstances and others from unreasonable intrusion to their privacy, unreasonably persistent approaches, or undue pressure to donate to the charity.

The regulation of fundraising: self-regulatory framework

While charities as a whole are regulated through the Charity Commission and charities must follow legislative requirements in specific areas of fundraising (as well as broader requirements that affect every sector), in the main fundraising activity is regulated through a self-regulatory system. The Fundraising Regulator is responsible for regulation in England and Wales and maintains the standards for charitable fundraising. The regulator ensures that fundraising is respectful, open, honest, and accountable to the public. It also has a Code of Fundraising Practice that outlines all relevant legislative requirements that apply to fundraising and sets rules and standards defined by its board. These standards cover areas in

³⁸¹ UK, Charities Act 1992, art. 60.

³⁸² UK, Data Protection Act 1998, c. 29, <http://www.legislation.gov.uk/ukpga/1998/29/contents>.

³⁸³ UK, House to House Collections Act 1939, c. 44 (1939), <http://www.legislation.gov.uk/ukpga/Geo6/2-3/44/contents>.

³⁸⁴ UK, House to House Collections Regulations 1947, no. 2662 (1947), <http://www.newforest.gov.uk/CHttpHandler.ashx?id=3060&p=0>.

³⁸⁵ See the model street-collection regulations contained in UK, Charitable Collections (Transitional Provisions) Order 1974, no. 140 (1974), http://www.legislation.gov.uk/uksi/1974/140/pdfs/uksi_19740140_en.pdf.

³⁸⁶ UK, Police, Factories, etc. (Miscellaneous Provisions) Act 1916, http://www.legislation.gov.uk/ukpga/1916/31/pdfs/ukpga_19160031_en.pdf.

³⁸⁷ UK, Charities (Protection and Social Investment) Act 2016, art. 13 (4).

which there is no legislative requirements or set rules. For example, the code says that charities must not exaggerate facts, denigrate other organizations, or encourage donors to change an existing charitable gift to benefit another organization. This approach is the essence of a self-regulatory system: charities pay for a regulator that sets standards for fundraising, investigates and adjudicates complaints, and sanctions charities if their fundraising is not compliant with set rules—all of which go above and beyond legal requirements and are enforced by a non-statutory regulator. Any member of the public can contact the Fundraising Regulator with a complaint about charity fundraising, and these complaints will go through a review process.

Fundraising self-regulation in Scotland is slightly different than in England and Wales. Fundraising by charities registered in Scotland only is subject to Scottish charity law and the Scottish system of self-regulating fundraising through an independent panel.³⁸⁸ These arrangements follow the lead regulator model used by the Charity Commission and the Office of the Scottish Charity Regulator with cross-border charities. The regulatory system used is determined by where the charity is primarily registered rather than where the fundraising takes place. In the future, Scotland's Fundraising Regulator and the independent panel in will work together closely to propose and consider amendments to the Code of Fundraising Practice.

Decisions regarding fundraising regulation in Northern Ireland are expected in autumn 2016.

Private businesses may undertake fundraising activities to raise money to donate to charities, but they must comply with the same fundraising rules as charities. Businesses established to provide fundraising services to charities must also comply with relevant rules. The Charities Act³⁸⁹ stipulates that if a business makes a solicitation for charitable or benevolent purposes—that is, if it asks for a donation on behalf of a charity—it must make clear to the donor that, as a professional fundraiser, it will receive a payment. This “solicitation statement”

may be in writing or orally (for example, over the telephone), and it is a criminal offence for the professional fundraiser to fail to make this statement.

Accountability measures

The underlying principles for accountability in fundraising are openness and transparency, so that donated money is used to support the cause that the donor intended it to serve. All donated money must be used to further a designated cause—that is, the cause that the charity was established to serve. Thus a charity established to provide care to the elderly may not spend money on providing support to children. Donated funds need not be used only to provide a particular charitable service, such as medical care. They can also be used on other costs associated with the charity's activities, such as salaries, rent, or printing. In addition, if money is raised for a specific purpose, such as emergency aid after a specific disaster, it is a legal requirement that all money raised be applied exclusively to that purpose.³⁹⁰ However, if the charity informs donors that the raised funds will be applied to support the charity's general objectives if they cannot be spent on the stated purpose, the charity is free to use the funds to support a different activity.

All charities must submit annual returns and financial accounts to the Charity Commission, which should include information on income received, money spent, funded activities, the number of employed staff, reserves, governance expenses, the cost of generating voluntary income (including fundraising trading costs, such as charity shops), and costs attributable to charitable activities. These accounts are available for public inspection on the Charity Commission website.

Fundraising and tax-effective giving

In accordance with a principle first established in the Income Tax Act of 1842, donations to charities and charities themselves should both be exempt from income tax. This principle is implemented primarily through a tax relief

³⁸⁸ Fundraising Regulator, Fundraising in Scotland and Northern Ireland.

³⁸⁹ The relevant law is set out in the Charities Act 1992. C41 and the Charitable Institutions (Fund-Raising) Regulations 1994. No. 3024.

³⁹⁰ Fundraising Regulator, “Code of Fundraising Practice,” 1.2 (a). <https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/code-of-fundraising-practice/>.

system called “gift aid,” under which a donor may provide a declaration to the recipient charity stating that the donor 1) pays income tax, and 2) agrees that the charity may claim the tax paid by the donor on the amount of the donation, which is equal to 25 percent of the donation. The charity then applies to the collection agency for the sum that the donor has remitted as tax. Gift aid brought more than £1.3 billion (approximately \$1.56 billion) to the UK charity sector in 2015-16. Charities in EU member states, Norway, and Iceland are eligible to claim gift aid on donations received from UK taxpayers.

Other examples of charitable tax relief include the payroll giving scheme, through which employees make income-tax-free donations to charities by withholdings from their regular pay; inheritance-tax-exempt legacy gifts to charities in donors’ wills; and refunds to companies of corporate taxes on profits (25 percent) paid on donations made to charities. Gifts of shares or property may also receive tax relief.

Conclusion

As more charities register and voluntary income from donations increase, it is clear that fundraising activity is growing in the UK. Once a charity is registered with the Charity Commission, it can start fundraising immediately through many activities that do not require further permission or licenses (public collections and lotteries being the exceptions to this rule).

While charities themselves are statutorily regulated via the Charity Commission, and there are some specific laws that focus on particular areas of fundraising activity as outlined above, charitable fundraising as a whole is regulated through a self-regulatory system. This creates a system with two levels of compliance: legislative requirements, and standards set forth in the Code of Fundraising Practice issued by the Fundraising Regulator.

The self-regulatory approach to fundraising contributes to the high standards of fundraising activity. The Fundraising Regulator is not constrained by the processes of statutory regulation and is therefore able to act efficiently

and flexibly to introduce new initiatives and ensure that standards strike an appropriate balance between protecting the needs and rights of the donors and creating an enabling environment in which charities can raise funds to support their activities. The key factors for a successful self-regulatory system include transparent rules and standards and a clear mechanism for investigating and resolving donors’ complaints.

Fundraising practice has become headline news over the last 18 months or so in the UK. It is important that regulation changes to respond to public concern and that the rules are reviewed to ensure that high standards are set for charities to follow. There has been change to regulation of charities over 2016: new legislation has been brought in, and the self-regulatory system has changed to create a stronger, more effective Fundraising Regulator – this is crucial in strengthening trust and confidence in charity fundraising for the future.

7.3. FUNDRAISING IN SPAIN

The Spanish CSO sector is younger than those of other countries in Western Europe.³⁹¹ Although CSOs began to emerge with the establishment of democracy in 1975, most CSOs were founded in the 1990s, when the third sector began to develop. This trend was made possible by Spain’s economic growth, incorporation into the EU, and favorable tax regime for both CSOs and donors. In the past fifteen years, fundraising has also been supported by the collaboration of corporations and CSOs in social responsibility strategies.

Since 1988 Spanish taxpayers have been able to assign 0.7 percent of their income tax to social purposes.³⁹² They may choose to direct these funds to the Catholic Church or to “other social purposes.” The allocation of funds is the responsibility of the government, and organizations and projects are chosen through calls for tenders by (depending on the field of activity) the Ministry of Health, Social Policy and Equality, the Spanish Agency for International

³⁹¹ This case study was developed by Patricia de Roda, Executive Director of Fundación Lealtad.

³⁹² That is, 0.7 percent of total tax liability for personal income tax.

Development Cooperation (AECID), or the Ministry of Agriculture, Food, and Environment. Most of these funds go to programs implemented by CSOs to assist the elderly, children and families, disabled, migrants, and other disadvantaged groups. The remaining funds are assigned to international development and environmental projects.

To promote this source of funding, CSOs have launched campaigns to make citizens aware that they have this choice to make when paying their taxes. Since 2000 the percentage of taxpayers who mark the social purposes box has increased from 44 to 52 percent, which has resulted in an increase in funds for social programs from €86.5 million to €262 million (approximately \$94 million to \$285 million) between 2000 and 2012. Currently, the CSO sector focuses its efforts on taxpayers who do not assign it a portion of their taxes, either because they are unfamiliar with this option or do not realize that they may do so while also marking the box to support the Catholic Church.

On the other hand, the percentage of donors among the total population remains low. In 2013 only 19.4 percent of citizens said that they had made a donation to a CSO in the past twelve months, 10.3 percent had made an occasional donation, and 9.1 percent had supported a CSO on a regular basis.³⁹³ Most donors target a small group of charities with extensive fundraising experience.

Although the existing legal framework has enabled fundraising to develop in Spain, organizations are still excessively dependent on public funds, especially if they work on social assistance and environmental issues. Three out of every ten organizations monitored by Fundación Lealtad receive more than 50 percent of their funds from public sources, usually local subsidies and service contracts.³⁹⁴ Public funding decreased during 2008 economic crisis

and is not expected to return to 2007 levels, so many CSOs must now meet increasing demands for their services with fewer resources. However, private funds have remained stable, and thus many CSOs are focusing their efforts on raising more private funds to ensure their sustainability. In fact, smaller organizations with budgets below EUR 1 million (approximately \$1.1 million) and larger organizations with budgets larger than EUR 25 million (approximately \$27 million) have shown themselves to be better prepared to weather the economic crisis than medium-sized organizations. The reason is that these organizations have invested more resources in fundraising, whereas medium-sized organizations experienced growth on the basis of public funds and therefore now are extremely vulnerable.

Legal framework

Spanish CSOs take the form of associations or foundations. Organic Law 1/2002 regulates the Right of Association³⁹⁵ and establishes special rights and requirements for public interest associations, including tax exemptions and duties based on accountability procedures. Foundations are regulated by Law 50/2002,³⁹⁶ which in some instances has been adapted to local legislation.³⁹⁷ There are two types of foundations: grant-giving foundations linked to corporations and private initiatives, which develop their own programs and support other organizations' projects (such as Fundación La Caixa); and fundraising foundations, such as Oxfam Intermón or UNICEF Spain.

Under the Law on the Taxation of Non-Profit Entities and Tax Incentives for Philanthropy (Law 49/2002),³⁹⁸ foundations and public interest associations that comply with the special fiscal regime are tax exempt, and their funds shall be entirely allocated to social

³⁹³ Asociación Española de Fundraising (AEF), *Donors' Profiles in Spain* (Salvetitti and Llombart, 2013). The study is available only to association members but its main conclusions are available at http://www.aefundraising.org/actualidad/v_estudio_la_colaboracion_de_los_espanoles_con_la_ong_y_el_perfil_del_donante/.

³⁹⁴ Fundación Lealtad, "How Spanish charities face the crisis (2007-2013) – Analysis of the evolution of NGO of the Guide of Transparency and Best Practices" (2013) available at <http://www.fundacionlealtad.org/>

³⁹⁵ Spain, Organic Law Regulating the Right of Association, no. 1/2002 (2002), <https://www.boe.es/buscar/doc.php?id=BOE-A-2002-5852>.

³⁹⁶ Spain, Foundation Law, no. 50/2002 (2002), <http://www.boe.es/buscar/doc.php?id=BOE-A-2002-25180>.

³⁹⁷ Spanish governmental responsibilities are divided between the central administration and the so-called *comunidades autónomas* (such as Cataluña, Andalucía, or Madrid), which may establish local legislation by adapting the national law.

³⁹⁸ Spain, Law on the Taxation of Non-Profit Entities and Tax Incentives for Philanthropy, no. 49/2002 (2002), http://noticias.juridicas.com/base_datos/Fiscal/49-2002.html

purposes. Individual donors may deduct 75 percent of the first €150 (approximately \$163) donated from their income tax base. For amounts above €150, 30 percent is deductible. Corporates may deduct 35 percent of the donation. There is an additional 5 percent deduction for both individuals and corporations if the contribution to the same CSO is maintained for at least three years. The ceiling for deduction is 10 percent of total taxable income. Donations to Spanish CSOs by foreign individuals and corporations are regulated by national and EU legislation.

Spanish law also requires CSOs to follow certain transparency and accountability rules based on its legal status and fiscal regime. Depending on their legal status, field of activity, or geographic location, CSOs must register with different registries, and all must submit annual reports, annual plans, and budgets. In addition, organizations subject to Law 49/2002 must submit annual economic reports to the Ministry of the Finance and Public Administrations. According to Law 19/2013, every private entity, including CSOs, receiving more than €100,000 (approximately \$110,000) from the state, local government, or other entity whose government income represents 40 percent or more of their total income (with a minimum of €5,000 (approximately \$5,500) are subject to the new regulation, and must publish certain institutional, economic, budgetary, and statistical information on their websites.³⁹⁹

Fundraising approaches

All CSOs may engage in fundraising activities in Spain, but only those subject to the Law on the Taxation of Non-Profit Entities and Tax Incentives for Philanthropy have special tax benefits. CSOs employ traditional fundraising methods as well as new methods made possible by emerging technologies. The most common methods of fundraising are charity events, such as concerts, dinners, and exhibitions; advertising campaigns, both offline and online, including on social networks; email and direct mail efforts; and second hand or donated stuff sales.

Another popular method is face-to-face fundraising. Traditionally associated with the largest organizations, it has recently been tested by small, locally based CSOs with differing results. Face-to-face campaigns are developed by the CSO itself or specialized providers. The Spanish Association of Fundraising (AEF) has developed a code of best practices that suggests incorporating a clause into contracts with fundraising agencies or professionals that calls for compliance with the code. Contracts are regulated by legislation covering, among other things, professional services, labor, and occupational risk prevention.

Telemarketing is seen as a complementary approach. Seven out of ten charities using email also still employ traditional direct-mail campaigns to reach donors. A smaller number of CSOs pursue matching gift programs with corporations. The use of text messages is at an early stage of development. Many organizations conduct campaigns at Christmas or use other traditional methods such as the sale of cards and lotteries.

Among the new methods of fundraising, the use of crowdfunding platforms is growing not only among public interest organizations but also for-profit startup companies and projects. Not all crowdfunding efforts have been successful, however, especially compared to the resources invested in managing the crowdfunding project and mobilizing the grassroots to take part. While crowdfunding by companies is regulated by Law 5/2015 on the promotion of business financing, this law does not apply to crowdfunding by CSOs because the donations they receive are non-refundable and do not imply the payment of an interest rate.

A significant legal restriction on fundraising methods concerns the use of personal data. The Law on Personal Data Protection of 1999 covers CSOs' obligations regarding the collection, management, security, and transfer to third parties of donors' personal data and the protection of donors' rights to cancel and modify their entry on databases managed by CSOs.⁴⁰⁰ Another important regulation is the Law on Anti-Money Laundering and Counter-Terrorist Financing, which establishes staff and

³⁹⁹ Spain, Law on Transparency, Access to Public Information, and Good Governance, no. 19/2003 (December 9, 2013), <http://transparencia.gob.es/transparencia/dam/jcr:2fcd5d26-cf51-4775-8d44-6683586f1ee9/ley-de-transparencia-ingles.pdf>.

⁴⁰⁰ Spain, Law on the Protection of Personal Data.

management responsibilities to ensure that funds are not used to launder capital and are not linked to terrorist organizations or groups.⁴⁰¹ According to this legislation, associations and foundations must retain records on individuals who provide funds or resources worth more than €100 (approximately \$110). In addition, they must take specific measures related to the governing board and its members, procedures for ensuring knowledge of their counterparts (that is, local partners who develop the projects in the developing countries), the control of activities and the use of funds, the retention of documentation, and the obligation to inform the authorities of any evidence of money laundering or the financing of terrorism. Sepblac, Spain's financial intelligence unit and the supervisory authority for anti-money laundering and counter-terrorist financing, has published a guide to ensure that CSOs comply with this law.⁴⁰²

Self-regulation

CSOs have developed several self-regulatory initiatives to govern fundraising. A code of conduct for CSOs working in international development establishes restraints and principles related to collaboration with corporations.⁴⁰³ The code specifies that partnerships with companies shall respect the values of independence, transparency, and efficiency, which should also characterize the work of the organizations. Requirements for selecting corporations to collaborate with include respect for human rights and compliance with international conventions and agreements on migrant workers and their families and against racism and xenophobia. Corporations must, among other requirements, meet the International Labor Organization's standards,⁴⁰⁴ respect the environment and the public health, comply with the legislation of the country of origin, and maintain the same standards wherever they work. CSOs working on

international development shall not establish relationships with companies that manufacture weapons or traffic in them. The code also sets requirements for communications and advertising campaigns for collaborating organizations, such as absolute respect for the dignity of persons and avoidance at all times of any catastrophic, discriminatory, stereotypical, or idyllic message or image that could violate such dignity. Messages and images that express hierarchical relationships between donors and recipients are to be avoided. Instead, they should highlight individuals, institutions, and organizational partners working together.

Furthermore, the Spanish Association of Fundraising (AEF) has developed a Code of Conduct for Fundraising in Spain, which incorporates ethical standards and values, including truthfulness in information, use of fundraising techniques that ensure efficiency and return on investment, and respect for a donor's will.⁴⁰⁵ AEF's Code of Best Practices in Face-to-Face Fundraising aims to help CSOs communicate effectively with active and potential supporters without causing them discomfort. It addresses such issues as planning, staff recruitment and training, materials, and the campaign's location and process. AEF's Code of Best Practices in Telemarketing provides guidance on using the telephone to request support for CSO as part of a structured fundraising campaign.

Since 2001 Fundación Lealtad has promoted transparency and best practices in organizations working on social assistance, international development, and environmental projects, so as to promote public confidence in these entities and increase donations and other types of collaboration. Its nine standards of transparency and best practices address governing board operations, the clarity of the organization's mission, planning and monitoring activities, communications and truthfulness, transparency about funding, control over spending, annual

⁴⁰¹ Spain, Law the Prevention of Money Laundering and Terrorist Financing.

⁴⁰² Sepblac, "Orientation Guide for Agencies that Must Ensure that Foundations and Associations are not used for Money Laundering or the Financing of Terrorism," June 2015, http://www.sepblac.es/espanol/informes_y_publicaciones/guia_pbcft_organismos_control_fundaciones_asociaciones.pdf

⁴⁰³ Coordinadora ONG para el Desarrollo España (CONGDE), "Code of Conduct" (1998, last modified in 2014), <http://coordinadoraongd.org/pagina-de-inicio/la-coordinadora/codigo-de-conducta/>.

⁴⁰⁴ International Labor Organization, "Labor Standards," <http://www.ilo.org/global/standards/lang--en/index.htm>.

⁴⁰⁵ Asociación Española de Fundraising, "Code of Conduct for Fundraising," http://www.aefundraising.org/upload/32/83/CodigoConducta_fundraising.pdf.

reporting and legal compliance, and the promotion of volunteering. Fundación Lealtad's own analysts carry out the monitoring process, which allows charities to identify areas in which they need to improve. Organizations that are regularly monitored show progress in developing their boards, communications, reports, and financial management tools.

In January 2015 Fundación Lealtad launched the Accredited NGO Seal, for use by monitored organizations that comply with the nine standards. The reports of accredited charities are published on Fundación Lealtad's website, and the organizations may use the seal on their communications and fundraising materials to help donors make informed choices about which organizations to support. Corporations also value the reports when they develop social action strategies in cooperation with charities. The seal is valid for two years and to maintain it an organization must maintain compliance with the nine principles. If a CSO does not comply with all of the standards, Fundación Lealtad helps the organization improve its accountability and management processes. The accredited CSOs gain free access to tools that facilitate collaboration with private institutions. These tools include a project database in which CSOs can post projects they need help with, an online donation tool, and an area where corporations and private institutions can post proposals open for collaboration. Every year the foundation supports more than 400 CSOs with information sessions, workshops, and access to best practice case studies.

Several of Fundación Lealtad's standards address issues related to fundraising. Although there are no restrictions on the utilization of collected funds, Spanish donors' are concerned about how CSOs spend their funds. One of Fundación Lealtad's standards calls on CSOs to publish their operating expenses, broken down into fundraising, program activities, and administrative expenses. Fundación Lealtad does not consider the absence of a cap on fundraising and administrative costs a weakness, as the average Spanish CSO spends 84.9 percent of its budget on program activities

and only 8.8 percent on administrative expenses and 6.3 percent on fundraising costs.⁴⁰⁶

Fundación Lealtad's standards also govern the use of restricted funds designated for specific purposes. Charities must ensure that funds are applied to the donor-designated purpose. All CSOs accredited by Fundación Lealtad comply with this standard. Although there is no legal requirement governing the use of restricted funds, the practices of some organizations in the past should be noted. Days after the Southeast Asia tsunami, Doctors Without Borders announced their decision to interrupt their fundraising effort once their financing needs for this emergency had been met. The CSO justified this decision on the basis of its commitment to transparency, and requested donors to give money for other projects with less media coverage. This initiative strengthened a good practice to be followed by the other organizations in following emergencies.

Other self-regulatory initiatives include the AEF's model code of good governance, which was drafted in 2011 to help foundations, especially the smaller ones, develop their own ways to regulate transparency and governance. CONGDE, the Spanish platform of CSOs working in international development, has also created a tool to promote transparency and good governance.⁴⁰⁷ Reports on sixty-eight member organizations have been already published, and 84 percent of them comply with all the sections of the tool. These initiatives aim to increase the trust of public and donors in CSOs so as to boost their involvement in philanthropy.

Conclusion

The legal framework in Spain is generally supportive of CSOs and allows them to engage in fundraising activities. The Law on the Taxation of Non-Profit Entities and Tax Incentives for Philanthropy provides tax-exempt status to foundations and public interest associations and sound tax incentives for their donors. CSOs apply variety of traditional fundraising methods, including charity events, concerts, and face-to-face fundraising, as well as new methods using modern technologies. However, some laws limit CSOs' use of certain fundraising methods. The

⁴⁰⁶ Fundación Lealtad. "Informe Situación actual de las ONG en España [Current Situation of Spanish NGOs]" (2015), 5, <http://www.fundacionlealtad.org/publicacion/informe-situacion-actual-las-ong-espana/>.

⁴⁰⁷ CONGDE, "Transparency and Good Governance Tool," http://webtransparencia.coordinadoraongd.org/?page_id=143

Law on Personal Data Protection restricts CSOs' ability to use donors' personal data and sets forth a list of obligations they must meet when processing personal data. The Law on Anti-Money Laundering and Counter-Terrorist Financing compels CSOs to abide by stricter rules on internal governance, the control of activities and the use of funds, and the retention of documentation on donors, and obliges them to inform authorities about potential money-laundering activities.

Spain has a rich variety of CSO self-regulatory initiatives. Several organizations, including CONGDE and AEF, have developed codes specifically targeting fundraising activities and cooperation with corporate donors. They provide rules of ethics for conducting fundraising or advice on how to communicate effectively with donors. Furthermore, Fundación Lealtad, the Spanish independent monitoring agency, launched the Accredited NGO Seal to promote transparency and accountability of fundraising organizations.

Greater participation by individuals in CSOs' activities and fundraising efforts is needed to consolidate civil society in Spain. Changes in legislation could boost fundraising in future years by promoting stable contributions with enhanced tax benefits. Stronger laws on transparency, access to public information, and good governance, along with better information about Spanish donors, will also help CSOs secure their future. Meanwhile, the involvement of small and medium-sized enterprises is developing the potential of business-CSO collaborations. The number of enterprises interested in supporting social projects in their local communities is increasing via sponsorships, corporate volunteering, promotion of the employment youth and people with disabilities, and so on. A leading group of CSOs has made progress on transparency and good governance issues, but Spanish society is now more demanding of all institutions and seeks more information than in previous years. To achieve results that they expect from their fundraising activities, CSOs must be prepared to meet new donor expectations.

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LINKS AND WEBSITES

Asociación Española de Fundraising: www.aefundraising.org

Charities Regulatory Authority:

<http://www.charitiesregulatoryauthority.ie>

Charity Times Awards: <http://www.charitytimes.com/awards/>

Comité de la Charte: <http://www.comitecharte.org>

CONGDE: www.congde.org

Credit Card Donations: <http://www.moneysupermarket.com/credit-cards/charity/>

Crowdfunding Regulation in France: <http://acpr.banque-france.fr/agrements-et-autorisations/le-financement-participatif-crowdfunding.html>

Crowdfunding: http://ec.europa.eu/internal_market/finances/crowdfunding/index_en.htm#ecsf

Direct-Marketing in the UK: <https://www.gov.uk/marketing-advertising-law/direct-marketing>

DMS Service Operated by Czech Donors Forum: <http://www.darcovskasms.cz/>

Dobrý anjel (Good Angel): <https://www.dobryanjel.sk/pomoc-v-cislach/>

European Fundraising Association: <http://www.efa-net.eu/>. EFA's list of most commonly included in national statements of ethics of its member countries: <http://www.efa-net.eu/ethics>

Fundraising Ireland: <http://www.fundraisingireland.ie/>

Financial Action Task Force (Nonprofit Platform on the FATF [Financial Action Task Force]): <http://fatfplatform.org>

Finnish Partnership Agreement Scheme:

<http://formin.finland.fi/public/default.aspx?nodeid=49328&contentlan=2&culture=en-US#instructions>

German Central Institute for Social Issues: <http://www.dzi.de/dzi-institut/german-central-institute-for-social-issues/>

International Committee on Fundraising Organizations (ICFO): <http://www.icfo.org>

Italian Donations' Institute: <http://www.istitutoitalianodonazione.it/it/it/attivita/iid-per-il-non-profit/diventare-socio-iid>

Matching Funding for Higher Education: Postgraduate Support Scheme, Higher Education Funding Council for England: <http://www.hefce.ac.uk/sas/pss/>

Mobile Credit Card Readers: <http://www.svt.se/nyheter/sverige/mobil-kortlasare-ska-ge-mer-till-radda-barnen>

MyWallet: <http://www.my-wallet.com/>

New Philanthropy Capital: <http://www.thinknpc.org/http://www.thinknpc.org/>

Public Collections in Slovakia: <http://www.darcovstvo.sk/news/aktualizovane-verejne-zbierky-nestracaju-popularitu/>

Slovak Code of Conduct on Images and Messages: <http://www.mvro.sk/en/codes>

Slovak Donors' Forum: <http://www.donorsforum.sk/index.php/dms-home-3/uvod/>

Slovak Donor Online Portal "darujme.sk": <https://www.darujme.sk/sk/pravidla/>

Square: <https://squareup.com/>

Telephone Preference Service: <http://www.tpsonline.org.uk/tps/index.html>

Tax designation mechanism in Moldova: <http://justice.gov.md/libview.php?l=ro&idc=4&id=3298>

Transnational Giving Europe: <http://www.transnationalgiving.eu/> .

UK Aid Match: <https://www.gov.uk/international-development-funding/uk-aid-match>