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NPO LEGISLATION IN CENTRAL AND EAST EUROPE

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I. Introduction

This paper surveys legislation in Central and Eastern Europe (CEE)² governing not-for-profit organizations. It provides a panoramic picture, painted with broad strokes. For additional detail,³ please see www.icnl.org.

As an initial matter, it is important to address terminology. The term “charitable organization” is not directly applicable in the CEE context. Rather, CEE countries recognize two traditional civil law forms: associations and foundations. In addition, some countries recognize additional forms, such as “public benefit companies” in Hungary and “private institutions” in Croatia.

All CEE countries recognize a class of organizations eligible for tax/fiscal benefits. Sometimes these benefits flow from registration as a particular legal form. For example, by definition, Czech foundations must serve the public benefit and are entitled to comprehensive tax/fiscal benefits. In other cases, organizations can be established for either private benefit or public benefit purposes. Separate legislation (typically the tax laws or legislation on “public benefit organizations”) determines which of these organizations are entitled to tax/fiscal privileges.

For purposes of this paper, associations, foundations and other similar entities are referred to as “not-for-profit organizations” or “NPOs.”⁴ The category of organizations that serve a public benefit or charitable purpose are referred to as “public benefit organizations” or “PBOs.” The narrative below analyzes both the laws governing NPOs and PBOs, recognizing that both are relevant to understand the not-for-profit legal framework in CEE.

II. Provisions of General Laws

A. Consistency and Clarity of the Laws

The legal frameworks governing NPOs in nearly all countries of Central and Eastern Europe have undergone dramatic and fairly comprehensive reform in the past 15 years.

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² Central and Eastern Europe (CEE) embraces 16 jurisdictions, including Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia and Montenegro, Slovakia and Slovenia.

³ In addition the legal landscape in CEE is rapidly evolving. Indeed, both Latvia and Lithuania have passed new NPO legislation. We are in the process of obtaining English translations of these laws, and these developments are not reflected in this report.

⁴ This paper does not address the legal framework for trade unions, political parties, or other similar organizational forms.

After the political transformation in the region, laws and regulations applicable to NPOs either did not exist, or were seriously outdated. Some countries relied on prior legislation, as in Romania, where associations and foundations registered under Law 21 of 1924. Other countries, like the Czech Republic, immediately enacted new laws governing associations. To date, all countries – but Serbia – have enacted new “framework” legislation governing the registration and basic lifecycle of NPOs.

The regulatory framework for NPOs consists not of a single “NPO law”, but of a series of different laws and regulations, including framework legislation, public benefit provisions, tax legislation, procurement laws, social service laws, and the legal framework for public participation, among others. Framework legislation in CEE countries is sometimes found in the civil code (Hungary), sometimes in separately enacted laws (Bulgaria, Croatia), and sometimes in both (Czech Republic). The clarity and consistency of the regulatory framework varies widely from country to country. Registration procedures may be a simple, one-step process (Kosovo) or a burdensome, two-step approval process (Romania), or a confusion of overlapping laws (Serbia). Tax laws may provide appropriate exemptions to NPOs and incentives to donors, or may not provide the tax benefits contemplated by framework laws. Government financing of NPOs may be reasonably transparent (Hungary) or remain a largely non-transparent process (Macedonia).

Thus, despite the tremendous law reform efforts over the past 15 years, gaps, contradictions, and burdensome provisions remain in the laws of the region. Efforts are ongoing in most countries to continue to improve the legal framework and the implementation of laws affecting NPOs.

B. General Constitutional and Legal Framework

Every country in Central and Eastern Europe guarantees the freedom of association. In most countries, the constitution explicitly permits the formation of organizations, such as clubs, societies and associations. Some countries also explicitly recognize the right to join an organization (Czech, Hungary, Kosovo, Macedonia), as well as the right not to be a member of an association (Macedonia, Serbia and Montenegro). Interestingly, Montenegro’s 1992 Constitution guarantees “national and ethnic groups the right to establish educational, cultural and religious associations, *with the financial support of the State*” (emphasis added) (Article 70, Constitution of Montenegro, 1992).

The constitutional protection of these freedoms extends in some countries to citizens only (Bulgaria, Macedonia, Romania), but more broadly in most countries to everyone (Bosnia, Croatia, Czech, Estonia, Hungary, Kosovo, Poland, Serbia and Montenegro, Slovakia). Constitutional frameworks often draw a distinction between the right to form associations (available to everyone) and the right to form political parties (extended to citizens only).

At the same time, every constitution articulates specific limitations on the freedom of association. These limitations include the following:

- Limitations justified by the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the rights and freedoms of others (Bosnia, Czech Republic, Kosovo, Serbia and Montenegro, Slovakia);

- Prohibitions of associations that aim to undermine a country's sovereignty, national integrity, constitutional order, or unity of the nation (Bulgaria, Croatia, Estonia, Macedonia, Romania, Serbia and Montenegro);
- Prohibitions against incitement of racial, national, ethnic or religious enmity (Bulgaria, Macedonia, Serbia and Montenegro);
- Prohibitions of associational goals and activities aimed against political pluralism or the principles of a State governed by the rule of law (Romania).
- Prohibitions against armed organizations with political objectives (Hungary), or paramilitary structures seeking to attain aims through violence (Bulgaria);
- Prohibitions of associations that seek to engage in political activity that is in the domain of political parties (Bulgaria).

In CEE, these constitutional rights and limitations must be applied against the background of international law, specifically Article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) (1953), a convention that has been adopted by over 40 members of the Council of Europe,⁵ and by all of the countries of the region. The ECHR provides, in relevant part, that:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interest.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Of great importance is the fact that the ECHR established an elaborate dispute resolution mechanism, including the European Court of Human Rights, the first international court dealing solely with human rights matters. Groundbreaking decisions of the European Court have now firmly established that there is a right under international law to form legally registered associations and that, once formed, these organizations are entitled to broad legal protections.⁶

Although there are grounds upon which the right to freedom of association may be limited or circumscribed, they are limited, and the state bears a heavy burden in seeking to impose them.

C. Types of Organizations

⁵ See <http://conventions.coe.int/>. The ECHR was ratified by the U.K. in 1953 and by Serbia and Montenegro in 2004.

⁶ See *United Communist Party of Turkey and Others v. Turkey*, European Court of Human Rights, (133/1996/752/951) (Grand Chamber decision, January 30, 1998); *Sidiropoulos and Others v. Greece*, European Court of Human Rights (57/1997/841/1047) (Chamber decision, July 10, 1998); *Freedom and Democracy Party (ÖZDEP) v. Turkey*, European Court of Human Rights, (93 1998/22/95/784) (Grand Chamber decision, December 8, 1999).

The countries of Central and Eastern Europe generally recognize a relatively small number of reasonably flexible organizational forms. The two most fundamental NPO legal forms are associations (*universitas personarum*) and foundations (*universitas rerum*). Associations are membership-based organizations whose members, or their elected representatives, constitute the highest governing body of the organization. They can be formed to serve the public benefit or the mutual interest of members. Foundations traditionally require property dedicated to a specific purpose and are governed by a self-perpetuating board of directors (e.g., each board nominates its successor). In some countries, they may serve private purposes, although in many they must serve the public benefit.

Both associations and foundations are implicitly or explicitly bound by the “non-distribution constraint.” In other words, associations, foundations, and other not-for-profit organizations are prohibited from distributing profits or net earnings as such to any person. This is the common attribute that distinguishes NPOs (sometimes more precisely called “not-for-profit organizations”) from commercial companies.

1. Associations

All countries in the region recognize associations, although the rules and procedures governing associations differ from country to country. For example, as the attached charts reveal, there is considerable diversity as to who may found an association. For example, Hungary and Slovenia require ten founders for an association, and Poland requires fifteen. By contrast, Estonia and Latvia require only two founders. In Bulgaria and Romania, legal entities may found an association; in Macedonia and Slovenia, they may not.⁷ In Albania and Hungary, foreigners can found an association; at the state level of Bosnia and Herzegovina, foreigners can only act as founders if they are residents of or registered in Bosnia;⁸ in Slovakia, foreigners may not form associations at all.

Interestingly, Lithuania and Poland have created multiple forms of membership organizations. In addition to traditional associations, Poland provides for “simple associations,” which lack legal personality but are easier to form than other associations. Similarly, Lithuania allows the formation of both associations and “community organizations,” which are similar to associations but limit membership to natural persons. In addition, some countries, such as Macedonia and Serbia, allow special “associations of foreigners” but limit the purposes they can pursue.⁹

⁷ Umbrella organizations – associations of NPOs – are implicitly permitted in countries allowing legal entities to act as founding members of associations. Some countries expressly permit the formation of umbrella organizations, such as Romania, which allows two or more associations or foundations to establish a “federation”.

⁸ The reader should note that there are three governmental entities within the constitutional framework of Bosnia and Herzegovina: the state and two distinct “entities”. The State of Bosnia and Herzegovina enacted a state-level Law on Associations and Foundations in 2001, regulating non-profits throughout Bosnia. Republika Srpska, a distinct entity within Bosnia, enacted a new Law on Associations and Foundations in October 2001. The second entity -- the Federation of Bosnia and Herzegovina -- enacted a new Law on Associations and Foundations in 2002. The three laws largely comply with regional best practices and international standards.

⁹ In 2002, the Federal Republic of Yugoslavia gave way to a loose Union of Serbia and Montenegro (Union). Following the enactment of the Constitutional Charter of the Union of Serbia and Montenegro, the regulation of associations primarily fell within the jurisdiction of each member of the Union. However, the 1990 Federal Law on Associations (Federal law) is still applicable in Serbia. Indeed, most associations have chosen to register under the Federal law, rather than the Serbian Law on Social Organizations and Citizens’ Associations of 1982 (Serbian law), because of less stringent registration requirements and practice. To add to the complexity of the current regulatory framework, registration under the Federal law is carried out

2. Foundations

Virtually all countries in the region have organizational forms called “foundations.” In several countries, the foundation form is fairly new. For example, Macedonia recognized the foundation form only in 1998. Others have recognized foundations for quite some time (for instance, in Bulgaria, the communist Law on Persons and Family of 1949 permitted foundations).

Countries generally take one of two approaches to the definition of a “foundation.” Some, such as the Czech Republic and Slovakia, essentially define foundations as endowed grant-making organizations. These countries then provide other forms to accommodate non-endowed, non-membership NPOs. Other countries, such as Bulgaria and Estonia, define foundations more broadly, encompassing both grant-making and operating foundations. In these countries, associations are essentially membership NPOs and foundations are non-membership NPOs, and there is little need for additional organizational forms.

There is considerable variation on the substantive and procedural requirements for creating a foundation. In some countries, such as the Czech Republic, foundations must serve the public benefit. In other countries, such as Estonia, foundations may serve private purposes.¹⁰ In nearly all countries, foundations may be established by a single natural or legal person.

In addition, some countries specify the minimum endowment required to register a foundation. For example, the Czech Republic requires that a foundation have a minimum endowment of 500,000 CZ (approximately 15,500 EUR), and Slovakia requires that a foundation have a minimum endowment of 200,000 SK (approximately 5000 EUR). Other countries have adopted a more flexible approach. For example, the laws in Slovenia and Serbia do not state minimum capitalization requirements. Rather, they state that a foundation’s assets be sufficient to carry out the purposes of the organization. Similarly, Hungarian law merely requires that capitalization be sufficient to initiate the operations of the foundation.

There is also variation in the required duration of a foundation. In some countries, such as Slovenia, the presumption is that a foundation will carry out its activities on a permanent basis. Others, like Estonia and Albania, allow foundations to be established for a limited duration.

3. Additional Organizational Forms

Approximately half the countries in the region have also added at least one new form in addition to associations and foundations. Three specific forms merit special mention.

by the Union’s Ministry for Human Rights and Minority Protection, although this practice does not seem to have support in the Constitutional Charter.

¹⁰ In other words, in Estonia a group of friends could organize a hiking club as a foundation, while in the Czech Republic they could not. Of course, in neither case could the foundation distribute profits or net earnings as such to any person.

First, some countries have distinguished between grant-making and service-providing organizations. They define foundations as primarily grant-making organizations, and create a separate form for non-membership NPOs that are predominantly dependent on grants or income from economic activities to carry out their mission. Often these NPOs are service-providing organizations, such as private hospitals, institutes, and training centers. This organizational form has a variety of names, ranging from “public benefit companies” in the Czech Republic to “centers” in Albania.

Second, several countries (including all countries that require that certain foundation assets be preserved to serve the foundation’s purposes in perpetuity) have provided for a second grant-making organizational form, namely the “fund.” Croatia, for example, defines a fund exactly as it defines a foundation, except that a fund must pursue its purposes on a temporary basis (i.e., for less than five years).¹¹ Similarly, the Czech Republic recognizes “funds,” which (unlike foundations) do not require an endowment.

Third, a few countries have created “open foundations,” organizations that have characteristics of both associations and foundations. Such organizations are like foundations in that they involve dedicating property to a particular (usually public-benefit) purpose. However, they share some important traits of membership organizations (although they are not always considered to be such organizations). The key trait is that later contributors may “join” an open foundation, becoming co-founders with the original founders. The organization may also be able to “expel” other founders who do not perform their duties. Lithuanian charity and sponsorship funds fall into this general category of organization. The founders of open foundations usually have substantial ongoing power in determining the organization’s activities; in Lithuania, for example, they constitute its highest governing body. This type of hybrid organization is fairly uncommon in the region, particularly where the association and foundation organizational forms are broadly defined under national legislation.¹²

4. “Public Benefit Status”¹³

In many countries, various organizational forms are eligible to receive the functional equivalent of public benefit status. It is important to highlight that this is not a distinct ‘organizational form’, but rather a distinct ‘status’ that is usually available to multiple organizational forms. For example, in Bulgaria, both associations and foundations – the two underlying NPO forms – may be registered separately as public benefit organizations, assuming they meet qualifying criteria.

Public benefit status can be explicitly conferred on NPOs either through provisions included in framework legislation or in separate public benefit legislation. In some countries, specific provisions defining public benefit status are contained in the NPO framework legislation; such is the case in Bosnia, Bulgaria and Romania, for example. Other countries have adopted specific “public benefit” legislation. Hungary adopted

¹¹ The Ministry of Justice in Croatia has commissioned a working group to prepare a new Law on Foundations, which may well broaden the purposes a foundation can pursue, allow the founders to determine the duration of existence, and eliminate the fund as a separate organizational form.

¹² Some countries also recognize public law foundations, which are beyond the scope of this paper (which is limited to private law entities).

¹³ For an in-depth examination of the regulatory treatment of public benefit status organizations, please see ICNL’s *Model Provisions for Laws Affecting Public Benefit Organizations* (2002), and ICNL’s *White Paper on Public Benefit Organizations* (July 2004).

public benefit legislation in 1997, Lithuania adopted a Law on Charity and Sponsorship in 2002, and Poland enacted a Law on Public Benefit Activities and Volunteerism most recently, in 2003. And, of course, in some countries, certain organizational forms (such as foundations in the Czech Republic) must, by definition, serve the public benefit and are entitled to comprehensive tax/fiscal benefits.

D. Purposes

As described above, associations can generally pursue activities directed to the public benefit or to the mutual interest of members. In most countries of Central and Eastern Europe, foundations must be dedicated to the public benefit; in a minority of CEE countries, however, foundations may serve private purposes as well. Other organizational forms usually have a more narrow range of permissible purposes. For example, public benefit companies in the Czech Republic must “provide to the general public commonly beneficial services under objective and equal conditions”.

To qualify as a “public benefit status” organization, an association or foundation (or other NPO legal form) must be principally dedicated to public benefit purposes and activities. The list of public benefit purposes will necessarily vary from country to country to reflect the needs, values, and traditions of the particular country. The following list contains virtually all of the public benefit activities recognized in one or more countries in Europe (although the list may be too extensive for any particular country):

- A. Amateur athletics;
- B. Arts;
- C. Assistance to, or protection of, physically or mentally handicapped people;
- D. Assistance to refugees;
- E. Charity;
- F. Civil or human rights;
- G. Consumer protection;
- H. Culture;
- I. Democracy;
- J. Ecology or the protection of environment;
- K. Education, training and enlightenment;
- L. Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination;
- M. Elimination of poverty;
- N. Health or physical well-being;
- O. Historical preservation;
- P. Humanitarian or disaster relief;
- Q. Medical care;
- R. Protection of children, youth, and disadvantaged individuals;
- S. Protection or care of injured or vulnerable animals;
- T. Relieving burdens of government;
- U. Religion;
- V. Science;
- W. Social cohesion;
- X. Social or economic development;
- Y. Social welfare;
- Z. Any other activity that is determined to support or promote public benefit.

E. Registration or Incorporation Requirements

All of the countries in Central and Eastern Europe require NPOs to register before they can become legal persons. The challenge confronting countries after transition was to develop a registration process that encouraged the development of NPOs and complied with international law, while at the same time ensuring that formal requirements for establishing an NPO were met. The following subsections discuss various issues arising in the registration process.

1. Responsible State Organ

A key issue was whether to entrust registration to the judiciary, to a ministry, or to other administrative bodies. About half vest registration authority in a ministry or other administrative body. The concern with this approach is that these entities are often subject to political influences. In addition, in certain countries, for example, Macedonia prior to 1998, registration was conducted by the Ministry of Interior, which because of its prior connotations had a chilling effect on associational activity. As a result, the general albeit not universal trend is to vest registration authority in the courts. However, some countries, such as the Czech Republic, initially found this approach problematic, noting that judicial interpretations were sometimes inconsistent and novel. As a result of these and other registration issues, there is a movement in some countries to develop other specialized, apolitical bodies that will in essence serve as an administrative body for registering organizations.

The second issue is whether registration should take place at the local or national level. Local-level registration eases registration burdens for community-based groups seeking to register an NPO. Recognizing these and other benefits, a number of countries including Bulgaria and Estonia allow organizations to register with district courts. Of course, the advantages of decentralized registration can be had without resort to the courts; Slovenian associations, Lithuanian associations and public institutions, and Croatian associations can register with regional administrative bodies. The disadvantage of decentralized registration is that it makes it harder to develop a cadre of professionals applying the law in a consistent manner. Interestingly, based on this concern, Albania transferred registration authority from district courts to the Tirana district court in May 2001. This has proved burdensome, however, for NPOs outside of the capital city, and efforts are underway to see if it is possible to arrange for intermediary organizations to serve as collection and distribution points for registration documents at the local level. Several governments have also been more hesitant to localize registration in the case of foundations than in the case of associations.

While many countries have separate registration processes for different NPO organizational forms, most place a single body in charge of registering all NPOs of a particular form, whatever their purposes. A few countries, however—especially in the case of foundations—involve the ministry over the NPO's area of activity in the registration process. Slovenia, for example, vests registration authority in the ministry with subject matter competence over the activity of the foundation, while in Croatia, the Ministry of Justice is in charge of registering foundations but requires the consent of the activity-area ministry. Not only does this division of registration authority create confusion and delays when an organization does not fall neatly under one ministry's supervision, but local experts state that this approach increases the risk that the government will exercise inappropriate direct or indirect control over NPOs.

In short, CEE countries are almost evenly divided between vesting registration authority in the courts or in ministries. The trend, however, is to place registration body in the courts. CEE countries differ significantly in how much they centralize the registration process. While some countries have a single entity competent to register NPOs, the trend is to delegate registration authority to the local level to ease registration burdens and to promote NPO activity.

2. Registration Procedures

Registration procedures of course vary widely, depending on the country and the organizational form. Typically, however, NPOs applying for registration must submit the following documents to the registration authority: the act of establishment, the governing statutes and the registration application. The documentation must of course contain the basic information (name, address, goals and activities, founders, internal governance procedures, etc.) required by law. In some countries, further documentation is required for at least certain organizational forms. For example, in Romania, both associations and foundations must also secure and submit the approval of the ministry or of the specialized central administrative body with competence over the activity of the association. In Hungary, courts require public benefit companies (a specialized NPO form) to submit a public benefit contract with a government agency.

Associations do not generally require capitalization. Romania is the one exception to this rule; Ordinance #26 (2000) requires organizations to list the “initial patrimony of the association”. Foundations, by contrast, often require initial founding capital, though the amount varies widely from specific minimum thresholds (Czech Republic, Slovakia) to an undesignated amount that is sufficient or appropriate to carry out the foundation purposes (Slovenia, Serbia) or sufficient to initiate the foundation’s activity (Hungary). Indeed, the trend is to make the required initial capital a nominal amount or to require that the assets merely be sufficient for foundation purposes.

Registration fees, if required at all, are generally nominal fees and are not set to discourage or prevent NPOs from seeking registration. For example, in Croatia, both associations and foundations must pay registration fees of approximately 10 EUR. In Serbia, registration at the federal level costs approximately 8 EUR; registration in Serbia requires fees of approximately 69 EUR for foundations and 42 EUR for associations. Hungary requires no registration fee at all for foundations, but requires the equivalent of 100 EUR for public benefit companies.

3. Grounds for Refusal

In many countries, the registration organ may refuse to register an NPO only if the registration documents are materially complete, basic requirements of the law are not satisfied, or if the purpose is illegal. However, a few still require a deeper inquiry into the desirability or feasibility of the potential NPO. For instance, some countries’ legislation prohibits an NPO from registering if its activities are “immoral” (see, for example, the Croatian Law on Foundations and Funds). Little guidance is provided as to what counts as immoral, and as a result, registration officials have broad discretion to determine what purposes are immoral in their view. Croatian law adds to this another ground for refusal: officials have authority to deny registration “if there is no serious reason for the establishment of a foundation, particularly if the purpose of the foundation is obviously

lacking seriousness.”¹⁴ These sorts of subjective provisions have proved problematic, and law reform initiatives are underway in these countries to define more narrowly the grounds upon which registration can be denied.

4. Procedural Safeguards

Most countries in the region have taken steps (on paper, at least) to ensure that registration decisions are quick and in harmony with law. Generally, registration bodies are required to decide on an NPO’s registration within a fixed time period, varying from ten days to three months.¹⁵ To enforce these deadlines, some countries have further specified that after a certain time period expires, the organization be considered registered by default.¹⁶ In addition, as noted on the attached charts, many countries allow founders to appeal adverse decisions in court or through an administrative proceeding.

5. Registration of Public Benefit Organizations

In determining the registration (or certification) procedures for a public benefit status organization, countries have adopted a variety of different approaches. In some countries, this authority is vested in the tax authorities. In other countries, the courts or a governmental entity, such as the Ministry of Justice, confers public benefit status.

Generally, NPOs applying for public benefit status must submit documentation indicating (1) the qualifying public benefit activities; (2) compliance with internal governance requirements, including safeguards against conflict of interest and self-dealing; and (3) compliance with activity requirements (extent of public benefit activity) and limitations on activity (for-profit, political, etc.). For example, Hungary and Poland both list the specific provisions that must be included in the organization’s founding instrument to attain public benefit status. In addition, as with initial registration as an NPO, PBO certification procedures typically include procedural safeguards to protect applicants, such as time limits for the registration decision and the right to appeal an adverse decision to an independent arbiter.

F. Public Registries

Many countries are now creating public registries, containing basic information on all registered NPOs. This helps third parties seeking to contract with NPOs, promotes organizational transparency, and provides valuable information to potential donors and other interested parties.

¹⁴ Article 6 of the Croatian Act on Foundations and Funds (1995).

¹⁵ If an NPO fails to gain approval because of some technical flaw in its registration request or statute, several countries explicitly stipulate that the registering body must make the NPO aware of the problem and allow it to resubmit documents within a fixed time period (typically a month).

¹⁶ It should also be noted that the implications of default registration are unclear. Unless the registration authority is required to issue a certificate of registration, then an organization registered through default may still have difficulties opening a bank account, obtaining a seal, or proving its legal entity status. Moreover, it may not be possible for an organization to seek redress for the registration organ’s failure to register since it is technically (though perhaps not practically) registered. Interestingly, Serbia takes the opposite approach: if no registration decision has been given within 30 days of application, Serbian law considers the registration application *rejected*. At first glance this approach seems more draconian, but in practical terms it makes it easier for an NPO to appeal the failure to register.

In several countries, the public registry is housed at the national level. For example, the Albanian registry is located at the District Court of Tirana and the Croatian registry of foundations is found at the Central Administrative Office. The Bosnian state-level registry of associations and foundations is located at the Ministry of Justice, as is the Montenegrin registry of associations and foundations. Romania has established a national registry of not-for-profit entities in Bucharest. In Slovakia, foundations and non-profit organizations providing public benefit services are included in a Central Register maintained at the Ministry of Interior.

In other countries, the public registry is housed at the local level. The Croatian registry of associations is housed at the local level. Estonia maintains registries at county and city courts. Romania, in addition to having a national registry, also has special local registries housed at the clerks' office of the court in whose jurisdiction the NPO is operating. Macedonia also has public registries at both the national level (Primary Court Skopje I) and the local level (every primary court).

Among those countries recognizing public benefit status organizations, some have created a separate registry of public benefit organizations, including Bosnia, at the state level (BiH Ministry of Justice), Bulgaria (Central Registry at the Ministry of Justice) and Poland (State Court Register). Others, like Romania, have set up no separate registry for PBOs, but PBOs must be included in the national registry. Hungary, lacking a public registry for NPOs generally and PBOs specifically, is an exception to this trend.

Wherever the public registry is housed, it is critical that it be publicly accessible and easily searchable. In Albania, for example, while the registry must be accessible by law, in practice it is only accessible at the discretion of the court clerk; moreover, the information is filed chronologically, making it difficult to locate a file by name. One innovative way to ensure accessibility is via the Internet; several countries, including Bulgaria, Croatia, the Czech Republic, Estonia and Macedonia, have made their registries available on the Internet.

G. General Powers

Registered NPOs (including public benefit organizations) generally have full rights and powers to act as other legal entities, including the right and power to rent, lease and buy real property and to conclude contracts. Depending on the organizational form, the law may limit NPOs from engaging in political activities and/or limit the extent to which NPOs can engage in economic activities. These limitations are likely to be broader in the case of public benefit organizations. Furthermore, NPOs must confine their activities to those listed in its governing documents and may require prior authorization or licenses to carry out certain activities, such as providing public services.

Failures to comply with such limitations may be challenged by two categories of complainants: persons with a legal interest or the regulatory authority. First, persons with a legal interest may file a petition to the court (Albania, Bulgaria, Czech Republic) or file a complaint with the public prosecutor. If an NPO engages in unlawful action, a member of the governing body (or of the association) has the right to petition the court to seek action against the NPO (Hungary, Slovakia) or to annul the NPO decision (Romania); any interested person may request the court to dissolve the organization (Romania) or notify the public attorney about the illegal activities (Bosnia, Croatia, Serbia

and Montenegro). Moreover, Czech citizens are obligated to inform police of any observed crime against the Constitution, the security or welfare of the state, or property.

Second, the regulatory authority – whether ministry, court, or public prosecutor – usually has express authority to address compliance with the law. In Poland, for example, the relevant minister or *voivode* may designate a suitable time limit for a foundation to eliminate shortcomings in the actions of the governing board; if the foundation’s governing board persists in violating the law or the foundation’s statute, then the minister or *voivode* may request the court to suspend the foundation’s governing board or appoint a government administrator. Similarly, the regulatory body for associations, once it has concluded that an association is violating the law or its statutes, may demand a correction, give a warning, or file a suit. In Bosnia and Croatia, the public attorney can exercise his *ex officio* duty to commence such proceedings.

Potential or intended beneficiaries of the NPO may sue an organization if their rights are violated or they suffered harm (Hungary), or if they can prove their legal interest in the proceedings (Bosnia, Bulgaria, Croatia, Czech Republic, Serbia and Montenegro). According to the Estonian Law on Foundations, “A beneficiary or other person with a legitimate interest” can demand information from a foundation about the fulfillment of its objectives, and may examine the annual accounts and activity report, the conclusion of the auditor, accounting documents, the foundation resolution, and the articles of association. If the foundation fails to comply with a demand, then the entitled person may demand exercise of his or her rights by a court proceeding.

III. Governance

The laws in Central and Eastern Europe vary greatly in the amount of detail with which they address NPO internal governance issues. Some do no more than require that the organization’s statute outline the structure of the organization. Others spend pages laying out voting procedures and quorum requirements, providing for management failures of various kinds, etc. In some cases, these detailed regulations can be modified by an organization’s statute or bylaws, in others not.

A. Structures

1. Associations

An association’s highest governing body is the general assembly of its members (or for certain large associations, their duly elected representatives). Several countries require associations to have a management body in addition to the general assembly to deal with the day-to-day affairs of the association. In addition, many countries require the association to designate a person to have the general power to represent the organization in dealing with third parties (Bosnia, Croatia, Hungary and Serbia). Most countries guarantee the right to withdraw from an association, and several allow members to contest association decisions contrary to law or statute. Countries may also specify (or require the organization’s statute to specify) a variety of other features of associations, such as the criteria for accepting/expelling members, members’ rights and duties, authority to represent the NPO, and other issues of internal governance.

It is common for legislation in the region to reserve decisions of particular importance to the general assembly. Acts commonly reserved to the general assembly include

termination of the association; its transformation, division, or merger with another association; amendments to the association's statutory purpose; the election or recall of officers of its organs; and the amount of membership dues. Often the decisions to do these things require more than a standard majority vote. Estonia requires two-thirds of all members to approve changes in the statute and allows changes in the association's purpose only with the consent of nine-tenths of the members. Several other countries have similar "super-majority" voting requirements for one decision or another.

Some countries legislate more precisely the way associations should operate. The precise arrangements vary from country to country; in general their provisions fall into a few broad categories. First, several specify how meetings of the general assembly are called. Usually this happens according to procedures set forth in the statute, but several laws also state that a certain fraction of the members (ranging from one-tenth in Estonia to one-third in Hungary) can request a special meeting of the general assembly. A few also legally require that notice be given about what will be decided at the meeting; in Estonia, for example, departures from the announced agenda are legally binding on the association only if all members are present. Laws that discuss calling the general assembly usually also determine how many members must be present to constitute a quorum. Some also determine a procedure by which members can get redress if the association operates improperly. In Albania, Hungary, Romania, and Estonia, laws give members the explicit right to go before a court to contest decisions they take to be contrary to law or to an association's statute. Such an objection must be filed within a fixed time period (typically, 10 days to three months).

2. Foundations and Other Non-Membership Organizations

In general, non-membership organizations are governed by a board of directors. They may also have a separate management to conduct routine business of the organization and a separate supervisory board (or at least an auditor) to oversee the operation of the organization (making sure it does not act illegally or misuse its funds, etc.). A few organizations do allow founders to play a continuing role in the governance of the organization.

As the attached charts illustrate, there is varied practice among countries. Slovenia requires foundations and funds to have a single managing body. In contrast, Romanian foundations and Hungarian and Slovak public benefit companies are required to have a supervisory board. Others require supervisory boards only in certain cases most likely to require supervision. For example, Hungarian organizations wishing to attain public benefit status must have a supervisory board if their annual income is larger than HUF 5,000,000; the Czech Republic uses a similar size distinction to determine whether a foundation must have a full supervisory board or just an auditor. A Czech public benefit company must have a supervisory board if it performs supplemental economic activities, if it receives certain kinds of contributions from the state, or if it received more than 3 million Czech crowns in income the past year. Slovak foundations must have a Supervisory Board if their property exceeds 5,000,000 SK; otherwise they must have an "inspector."

In short, the trend is to provide a few basic provisions dealing with NPO internal governance structures. Typically, these provisions identify the highest governing body (or bodies in the case of some foundations) and their respective responsibilities. At the same time, legislation typically gives the founders or the highest governing body broad

discretion to set and change the governance structures of the organization within the limits set forth by law.

B. Accountability

1. Duties and Responsibilities of Governing Bodies

As noted above, the highest governing body of the NPO – whatever the organizational form – is ultimately responsible for ensuring that the NPO is accountable to the community (including government, beneficiaries, and the general public). The highest governing body therefore has the authority and duty to review and approve the annual budget, the annual financial report, and the annual activity report (if applicable). In addition, the highest governing body is empowered to set policy, to elect or appoint officers, to decide on transformation, termination and dissolution, and to decide on changes to the organization's governing documents. While the highest governing body may delegate certain powers to management – including, for example, signing powers (Hungary) – there are usually limitations on what powers may be delegated – such as the power to amend the statute or approve the budget (Bulgaria).

Members of governing bodies may be personally liable for harm to the NPO or to third parties. In many countries (Bosnia, Croatia, Serbia and Montenegro), any person that has a legal interest may sue for damages incurred as a result of the board member's breach of duties. In some countries, such as the Czech Republic, the liability to third parties lies with the organization, and not with the individual members of the board. However, the organization may recover damages from a responsible member of the board before a civil court. In other countries, such as Albania and Macedonia, the responsible board members may be held directly responsible for injuries to third parties, where the responsible member acted, in the exercise of duty, willfully or by serious negligence. Estonia imposes joint liability on board members for damages wrongfully caused to the NPO or to creditors of the NPO for failures to perform their duties in the manner required.

Legal rules designed to prevent conflict of interest and self-dealing are increasingly common. In Albania, as in many countries, conflicts of interest are not permitted and must be prevented by (1) disclosure of the conflict of interest between the individual and organization, (2) recusal of that individual from the decision-making process, (3) approval of any transaction by the highest decision-making body, and (4) conclusion of the transaction at fair market value or on terms more favorable to the organization. Countries with conflict of interest rules generally extend their application to all organizational forms. In Hungary, however, such rules apply to foundations and to PBOs, but not to other organizational forms.

Enforcement of conflict of interest rules may be based on a declaration of compliance with these rules submitted by the organization at the time of registration (Hungary). In Romania, if a member of an association violates the conflict of interest rule – and the required majority could not have been obtained without the member's vote – he or she is responsible for the damages caused to the association.

In practice, few countries evidence a history of governing body members being held liable for violations of duties, such as the duty of care, duty of loyalty, the duty of good

faith, etc. For those found liable of improper conduct, there is generally a right to appeal, according to general civil procedure rules.

2. Self-regulation

Generally speaking, sector-wide self-regulatory mechanisms, such as codes of conduct, have not enjoyed widespread use in the countries of Central and East Europe. This can be attributed to a number of factors: NPO sectors have tended, in the relatively short time since the transition, to prioritize reform of the laws governing their activities, the benefits of self-regulation have not been well-understood by NPOs, and in many countries, there has been a lack of effective “umbrella” or other organizations with broad representation with the sector that can lead efforts to develop a code. This has begun to change, however, as NPOs have come to appreciate the need to project a good public image as a sector.

Countries that developed codes of conduct on a sector-wide basis early on included Bulgaria (led by the Union of Bulgarian Foundations and Associations), and Poland (led by the Forum of Non-Governmental Initiatives (FIP)). These codes include relatively short statements of key principles relating to organizational accountability. More recently, in conjunction with the adoption of a “compact” between the NPO sector and government, Estonian NPOs developed a more extensive code addressing a wide range of governance and accountability issues.

In some countries, organizations have found it easier to develop and agree to ethical principles governing their activities on a sub-sectoral level, as in Macedonia. The Roma NPO “Mesecina” from the town of Gostivar established a code of conduct for organizations that address issues of inter-ethnic conflict; this initiative was seen as contributing to the prevention of larger disputes among ethnic groups in a time of civil war. Thirty-two children’s welfare organizations adopted the “Code of the Association of Children’s Organizations in the Republic of Macedonia” to standardize norms with respect to the implementation of the Children’s Rights Convention in Macedonia. And in Kosovo, the Kosovo Women’s Initiative adopted a code to establish principles for the governance of local women’s councils.

Other mechanisms, such as accreditation systems and watchdog organizations, are rare in the region.

IV. Dissolution, Winding Up, and Liquidation of Assets

NPOs can usually be dissolved voluntarily or involuntarily. In many cases, the highest governing body has broad discretion in determining when to dissolve an organization voluntarily. The one notable exception is for service-providing public benefit organizations, on which some countries impose restrictions in order to avoid the immediate cessation of services which might adversely affect beneficiaries. As for involuntary termination, the trend has been to decrease discretion, bringing these provisions more in line with Article 11 of the European Convention on the Protection of Human Rights and Freedoms (1953).¹⁷

¹⁷ The European Court on Human Rights explicitly extended Article 11 protections to the termination of an organization in the ÖZDEP case.

It should also be noted that in many countries, specific events trigger termination as a matter of course, for instance if the time period for which a foundation or fund was established ends. The relevant governing organ of an NPO should move to dissolve the organization in such cases. In many countries, if the organization does not dissolve itself when one of these “automatic” conditions for termination arises, the registration authority may dissolve it involuntarily.

A. Voluntary Termination

As a general rule, associations and their equivalents can choose to dissolve at any time by a resolution of the general assembly (this resolution may require more than a simple majority to pass). Whenever an organization dissolves voluntarily, it generally must inform the registration body of the decision to dissolve. Some countries, for example Macedonia, Latvia, and Serbia (Federal law), require a particular officer to inform the registration body of such decisions within a fixed time period (between three and fifteen days). They allow the imposition of significant penalties on the officer who does not report such decisions promptly.

Some countries allow founders to dissolve a foundation if certain conditions described in the organization’s statute are met (Estonia and Macedonia). Interestingly, the founder of a Czech public benefit company actually has the right to veto the organization’s voluntary termination, on condition that the founder makes more resources available for its operation.

B. Involuntary Termination

Almost all laws allow involuntary termination if an organization has violated the law or its statute (although some require the violation to be egregious or give the organization a warning before dissolving it). Estonia also allows termination if the purpose becomes impossible, illegal, or contrary to the constitutional order or to public policy. Slovenia even allows the responsible ministry to dissolve a foundation if, in its judgment, changed circumstances make the continuation of the foundation unnecessary. This provision is problematic, however, as it gives registration officials a great deal of discretion as to whether to dissolve an organization.

Organizations might also be dissolved if they fail to serve their statutory purposes or engage in excessive economic activities. Czech public benefit companies can be dissolved after six months not only if they have not provided their public service, but also if they have seriously compromised its quality or interrupted it because of their supplemental economic activities. Estonia also provides explicitly for termination in case the organization’s main activity becomes economic activity.

Many countries also cause an organization to be dissolved if it stops functioning, although they use differing criteria to determine when an organization is defunct. Slovenia and Serbia has no other criterion; they leave it to the registration body to determine if a given association has “ceased to operate.” Hungary uses a more objective criterion, setting a fixed time period (one or two years) that an organization must have been dormant before it can be dissolved; this approach is also reflected in the Federal Law that is still operational in Serbia. Slovakia and the Czech Republic take a different approach, dissolving organizations whose management boards fail to meet or have unfilled vacancies for a fixed period of time.

In most CEE countries, a court must decide whether to dissolve an NPO involuntarily. Typically the public prosecutor or administrative body responsible for supervising NPOs requests the termination. In several countries, other interested parties (notably founders and organization officers) can also move that an NPO be dissolved. Usually termination decisions can be appealed according to normal administrative or judicial procedure.

C. Liquidation

Upon termination, an NPO goes into liquidation. A few countries (Croatia and Estonia, for example) have legislated relatively well-defined liquidation procedures for NPOs, while others specify that NPOs follow the same liquidation procedures as commercial enterprises. In some countries, though, the liquidation procedures for NPOs remain ambiguous, and the resulting legal uncertainty makes it much harder for NPOs to enter into business relationships with third parties.¹⁸ Generally, on liquidation the powers of the normal governing bodies to represent the NPO cease, and a liquidator is appointed to exercise these powers. (In cases of voluntary termination, the NPO can select a liquidator itself, while in other cases the court or administrative body typically appoints the liquidator.) The liquidator is responsible to find and satisfy the claims of any creditors, and to disburse any remaining assets in accordance with law. After liquidation is complete, the liquidator reports to the registration body, which deletes the organization from the register. A few countries have legal requirements that the records of the dissolved organization be archived, or at least kept available for a few years after the termination.

Assets remaining after liquidation are generally disbursed according to an organization's statute, subject to certain important caveats. Assets of a public benefit foundation must generally remain dedicated to their public benefit goals and may not be distributed to founders after termination. Czech and Lithuanian laws explicitly require that assets of foundations/funds go to other such organizations. Slovak law requires that the assets be distributed to another foundation or to the municipality; however, the endowment property may only be transferred to another foundation registered under the law. Hungary, however, allows the founder to dissolve the foundation and repossess the assets (or in an open foundation, his/her contribution) if certain conditions specified in the founding act are realized. Associations have fewer restrictions placed on the distribution of remaining property; they may well be able to distribute it to the members. In Estonia, this is explicitly allowed if the association was founded essentially as a mutual benefit organization, presumably on the assumption that such organizations receive no tax benefits or public contributions. Lithuania follows a slightly modified rule, allowing members to receive no more than their initial contributions to an association. In contrast, Slovenia prohibits all associations – whether mutual benefit or public benefit – from distributing remaining assets to members, requiring instead that they be distributed to another association.

Several countries distribute assets of an NPO differently if termination is involuntary, giving the government more control over the liquidation process than in cases of voluntary dissolution. Estonian law even provides that if an organization is dissolved for violating the law, the constitutional order, or good morals, its property passes to the state, regardless of any provisions to the contrary in the organization's statute.

¹⁸ Hungary reportedly has had this problem. See *Select Legislative Texts and Commentaries* (on file with ICNL).

However, the clear trend in the region is away from this kind of direct state appropriation of NPO assets.

In short, the trend in the region is to allow the highest governing body of an NPO (particularly associations) broad discretion to terminate the existence of the organization. While many countries provide broad, discretionary grounds for the involuntary termination of an NPO, a number of countries are more strictly limiting these grounds to comply with the requirements of international law. Virtually all countries require that the assets of a public benefit organization (or other organization receiving substantial tax/fiscal benefits or public donations) be transferred to another public benefit organization. Some also allow mutual benefit organizations to distribute at least a portion of remaining assets to members.

V. Regulation

A. Regulatory Authorities

The principal regulatory authority over NPOs varies widely from country to country in the CEE region. In Bulgaria and Hungary, for example, it is the public prosecutor of the district where the NPO is registered that is responsible for NPOs' compliance with the law. In Poland, it is the line ministry that supervises NPOs in its field of competence. In Estonia and Slovakia, the Ministry of Interior regulates the activities of associations and foundations; in the Czech Republic, the Ministry of Interior oversees associations, and the court of registry oversees the activities of foundations, funds and public benefit companies.

In addition, the tax authorities typically ensure compliance with tax regulations. Other regulatory bodies may focus on compliance with labor law regulations and money laundering provisions. For example, in Bulgaria, the Agency for Financial Investigation in Bulgaria is tasked with monitoring money laundering and the financing of terrorism and the National Social Security Institute ensures the payment of social security under labor contracts.

Governments exercise broader control over PBOs. In Bulgaria, the Central Registry within the Ministry of Justice has the right to inspect and monitor the activity of PBOs. In Hungary, where a PBO has received funding from the state budget, the State Audit agency may monitor the use of these funds. In Romania, a special governmental department monitors the activity of associations and foundations with public utility status.

B. Licensing and Governmental Approvals

In most CEE countries, government licenses are generally required for NPOs pursuing certain designated activities. In Hungary, for example, associations and foundations must be licensed to provide rural custody, food services, home care, family care, and special basic social service, as well as day care and residential services. In Bulgaria, to provide social services, an organization need not be licensed, but needs to register in a special Registry; only services to children require a special license. The trend in the region is to provide the same treatment to NPOs engaged in special services as to other entities (from private businesses to public institutions) engaged in special services.

Where special licenses are required, the licensing organ may require special reports about the activity. The extent of the reporting will vary depending on the nature of the activities, their duration, and their impact on the public.

C. Reporting

Many NPOs, like other organizations, must produce annual reports of their finances (for tax purposes, if nothing else, assuming they meet the threshold amount for filing). Some are required to submit more detailed information about their activities to a body (or multiple bodies) other than the tax authority, often the body responsible for registering NPOs or the ministry with responsibility over the area of the organization's activities. However, in several countries associations are exempt from these reporting requirements. For example, Hungarian and Polish associations do not have to produce any reports, at least as long as their income is below a certain level. However, they may be audited and therefore need to keep records. In both countries, reporting is also tied to having the status of a public benefit organization, which demands a higher level of accountability from both foundations and associations.

Some countries require certain NPO organizational forms to file more substantive reports about their activities. Slovakia, for example, requires summaries of activities and an explanation of how they relate to the organization's purpose and a separate accounting for expenses related to business activity; for foundations, it also requires a division of expenses into administrative and purpose-related expenses. Public benefit organizations in Hungary are also required to produce fairly detailed programmatic reports. Foundations are also often required to report specifically on their management of their endowments, as in Slovenia and Croatia. Moreover, independent audits are required in certain cases, as for foundations in Estonia and Slovakia.

In addition to reporting obligations, authorities often employ other monitoring tools, such as government audits and inspections, especially to monitor PBOs. In Bulgaria, PBOs are subject to financial audits for the use of state or municipal subsidies or grants under European programs. The responsible auditing body must have cause to justify the audit, but there is no requirement of prior notification. Hungarian PBOs are also subject to supervision by the State Audit Office for the use of budgetary subsidies. In Poland, the Ministry of Social Security has the right to access an organization's property, documents and other carriers of information, as well as to demand written and oral explanations. Such an inspection must be performed in the presence of a representative of the PBO or other witness. The inspecting officials must prepare a written report; the head of the PBO then has the opportunity to submit a written explanation or objections to the content of the report, within 14 days.

In short, the challenge is to ensure that reporting requirements are narrowly tailored to meet legitimate interests and are not unduly burdensome or intrusive. NPOs are typically required to file tax reports under the terms and conditions of the tax laws. Sometimes these reports must be audited, but small organizations are often exempted from this requirement, which is consistent with regional good practice. As for programmatic reporting, the trend is to require public benefit organizations receiving tax/fiscal benefits to submit reports, although small organizations are sometimes exempt from these requirements or required to submit simplified reports. It should also be noted that NPOs are often subject to a variety of other reporting requirements, including reports to management bodies, reports to licensing authorities if the NPO engages in an

activity subject to licensing, reports to state funding bodies, and reports to private donors.

D. State Enforcement and Sanctions

Fines are often imposed in the case of the failure to file reports. Such is the case in Bulgaria, where the state may penalize NPOs from 50-500 EUR. In Poland, an association that does not comply with requests for documentation is subject to a one-time fine not to exceed 50,000 zlotys (approximately 11,300 EUR), which may be waived if the association complies immediately after the fine is imposed. In Slovakia, a foundation failing to file a report may be fined from SKK 10,000 to 100,000 (approximately 250-2500 EUR). In many countries (Bosnia, Croatia, Serbia and Montenegro), fines may be levied against both the organization and against the responsible representative of the organization.

The continued failure to file reports can lead to termination and dissolution in most countries. Termination should only follow, however, following notice to the organization and an opportunity to remedy the deficiency. Where fines are imposed or termination is ordered, the NPO usually has the opportunity to file an appeal.

Sanctions against public benefit organizations may include the loss of tax benefits or the termination of PBO status. In Bulgaria, for example, no fines may be levied against PBOs; instead, a PBO can be terminated in case of systematic non-compliance with reporting requirements. In Kosovo and Romania, PBOs that fail to file reports may also lose their public benefit status. Somewhat similarly, public benefit companies in the Czech Republic may lose comprehensive tax benefits in the year of breach and other more limited tax benefits in the following year.

VI. Foreign Organizations

A. Registration

The trend in Central and Eastern Europe is to provide a level playing field for both foreign and domestic organizations. With this in mind, laws in most countries specifically address the registration of a branch office of a foreign organization. To register a branch office, foreign organizations are generally required to submit the following documents:

- Proof that the organization is registered in another country;
- Governing documents showing the goals and activities of the foreign organization and its branch office;
- Decision to establish a branch office in a given country;
- Address of the branch office and name of representative.

Some countries place additional requirements on foreign organizations. For example, in Romania, foreign organizations may only be recognized on the condition of reciprocity and on the basis of prior approval from the Government. This, however, has proved to be a problematic provision in other countries in the region.

Interestingly, in Hungary, there is no legal basis for a foreign organization to register a branch office. In practice, however, foreign organizations are permitted to register as the branch office of a commercial company.

Once registered, foreign organizations are generally subject to the same regulatory treatment (regarding operations and termination) as domestic organizations.

B. Foreign Funding

No country in Central and Eastern Europe currently has special rules for domestic organizations to receive foreign grants (such as, for example, ministry permission or grant registration). The legal frameworks throughout the CEE region seek to facilitate, rather than burden, the grant-making process. This is not surprising, given the important role foreign donors have played in contributing to the development of the region.

VII. Miscellaneous

A. Transformation

The merger and split-up of NPOs is often regarded as an internal issue and dealt with in the governing documents of the organization. In recognition of this principle, some countries, such as Bosnia, prescribe that the issue must be addressed in the statute of the organization. Confirmation of the transformation is subject to the approval of the regulatory body, be it the court or ministry (or administrative body).

Laws in many countries do, however, provide certain limitations on transformation. For example, while associations may be free to split into either associations or foundations, foundations may merge with or split into only another foundation (due to the concern over protecting the foundation property and the concern that foundations in some countries are by definition PBOs, while associations may be organized for either mutual benefit or public benefit purposes). Albania and Estonia forbid the transformation and merger of foundations (and centers) into associations and of associations into a foundation. More importantly, public benefit organizations are generally restricted from transforming into mutual benefit organizations or for-profit organizations, for public benefit organizations must use their assets (including public support) to address public benefit goals.

Following transformation, the newly formed NPOs are considered jointly liable for the obligations undertaken prior to their transformation.

B. Endowments / Investments

In most countries in the CEE region, there are no special rules relating to endowments or investing, including investments abroad. As legal entities, NPOs are subject to the general regulatory framework for investments in the given country. In Hungary, for example, any investment is permitted, but only investments in government bonds may be tax exempt.

Exceptions to the rule include the Czech Republic and Slovakia. In the Czech Republic, there are specific limitations on the investment of the endowment by a foundation. In Slovakia, the Law on Foundations also sets specific limitations on investment to protect the foundation endowment. The endowment of a foundation may not be donated, invested as a deposit into a commercial company, pledged, or otherwise used to secure any obligations of the foundation or of third parties. The foundation must keep all of the

monetary assets forming part of the endowment at a bank or foreign branch bank. These monetary assets may only be used to purchase public securities and governmental treasury vouchers; securities accepted on the market of listed securities and shares of open investment funds; mortgage bonds; bank deposits, savings certificates and deposit certificates; and real estate.

C. Public Policy Activities

NPOs are allowed to engage in a variety of public policy activities, including a broad range of advocacy efforts. At the same time, with a few notable exceptions, countries generally prohibit NPOs from nominating candidates for political office. Others, like Macedonia and Bosnia, also prohibit NPOs from direct participation in a campaign and from financing candidates or parties. Hungary places few limits on NPOs' ability to engage in political activity, but makes tax benefits contingent on their refraining from nominating candidates in national elections. Some laws are less clear, either because they do not explicitly mention political activities, or because they do not explain which political activities are illegal. This is the case for the Lithuanian law on charity and sponsorship funds. These prohibitions have generally been construed narrowly, so that in practice Lithuanian NPOs can conduct (and have conducted) a variety of public policy activities. Most liberally, Poland places almost no restrictions on associations' political activities—it even lets them take part in elections through special elective committees

In Hungary, the restriction on political activities is tied to government aid. Hungarian law allows foundations to finance political parties unless they are receiving state funds. It gives similar freedom to other NPO forms, but denies tax benefits to all NPOs that fund political parties, that are not independent of those parties, or that nominate candidates for national elections.

In short, legislation in the region generally recognizes that NPOs are key participants in framing and debating issues of public policy, and just like individuals, they should have the right to speak freely on all matters of public significance, including existing or proposed legislation, state actions, and policies. Likewise, consistent with international good practice, NPOs generally have the rights to criticize or endorse state officials and candidates for political office. They also generally have the right to carry out public policy activities, such as education, research, advocacy, and the publication of position papers. At the same time, they are generally prohibited from engaging in “party political” activities, such as nominating candidates for office, campaigning, or funding parties or political candidates.

VIII. Tax Laws

In the transition from a socialist economy, the first step toward developing a viable nonprofit sector for many countries in Central and Eastern Europe was to modify, supplement, and clarify the basic framework legislation establishing NPOs and setting forth their essential characteristics. As more and more charitable organizations have formed under those laws, the need to help those organizations (and their charitable activities) become sustainable has brought the issue of tax benefits to the fore. But in many countries, this second stage of reform has not progressed as far as the first. Thus, it must be noted that for several countries in the region, the current tax regime is only the latest step in an ongoing process of reform and adjustment.

A. Tax Advantages for Charitable Institutions

1. National Income/Profits Tax

All of the countries in the region provide some relief from the profits/income tax for charitable organizations.¹⁹ In some cases, this is because the profits tax leaves NPOs as a whole outside its scope. This is the case in Bosnia and Herzegovina and in Lithuania. More commonly, however, tax regimes apply to NPOs, but provide more or less nuanced exemptions based on an organization's type, purposes, and source of income.

The most common exemption is for membership dues and other donations. It appears that all countries in the region exempt such funds from the income of charitable organizations (in fact, many of them exempt all NPOs from taxation on these sources). A few countries consider not only whether the recipient organization is charitable in nature, but also whether the donated funds will be used for charitable purposes (even if the recipient is not inherently a charitable organization). For instance, the Czech Republic exempts all donations to foundations, funds, and public benefit companies (which are, by their very nature, charitable). It also exempts donations to other legal persons if they are used for certain designated charitable purposes. Poland and Albania have similar systems.

There is much more variety in the treatment of income from business activities and passive income earned on investments such as stock dividends, bond interest, rent, or royalties. These are discussed below, in sections VIII.C and VIII.D.

The qualification requirements for exemption depend in large part on the scope of the exemption. Since most of the countries exempt all NPOs' income from donations, there is no need for a separate process to certify eligibility for tax exemption—successful registration as a nonprofit is itself enough to qualify for the exemption. Thus, in many countries, the registering authority's decision is the source of both legal entity status and tax benefits. This may also be the case for some tax benefits extended only to charitable organizations. For instance, donations to Czech foundations (which are by definition charitable organizations) are generally tax deductible.

Estonia, Bulgaria, Hungary, Latvia, Poland, and Kosovo have developed a more elaborate system, under which a charitable organization seeking certain tax benefits must specifically apply for exempt status. Only once its application is approved, and its name added to a list of exempt organizations, does the organization become eligible for those tax benefits. This approach allows a legal system to differentiate between the standards for organization as a nonprofit and the higher standards for various tax preferences. Thus, while all five jurisdictions allow formation of NPOs besides charitable organizations, Bulgaria, Estonia, Hungary, Poland, and Kosovo allow only charitable, public benefit organizations on the list of organizations eligible for the highest tax benefits. Lithuania is in the process of adopting a similar approach.

In jurisdictions requiring separate application for tax benefits, there is some variation in who has responsibility for the master list of exempt organizations. In Latvia, the list is

¹⁹ In Estonia, there is no tax on legal entities profits *per se*. Rather, the tax applies only to certain distributions made by those entities. Distributions made to charitable organizations recognized as eligible for tax benefits are not subject to the tax. This applies to some distributions (like dividends) that would normally be taxed.

kept by the Minister of Finance, who is presumably also responsible for taxation more generally. In Bulgaria, the list is kept by the Minister of Justice; in Hungary, by the courts; in Kosovo, by the NPO Registration Office.

2. State and Local Income/Profits Taxes

Some of the jurisdictions in Central and Eastern Europe do impose local taxes. While it is difficult to gather precise information about all local taxes in each of these countries, available information indicates that local tax exemptions or preferences are sometimes available on terms similar to those governing the general Profits Tax. For instance, in Hungary, civil society organizations are exempt from local tourism and business taxes if they did not have to pay corporate income tax in the previous calendar year. In addition, the law governing public benefit organizations states that they are entitled to “local tax preference.”

3. VAT

Most of the countries in the CEE region impose a value-added tax (VAT), although a few (Bosnia and Herzegovina and Serbia) impose a turnover (sales or other transfer) tax instead. There are several ways in which VAT may be applied to charitable organizations. One option is simply to exempt them from the VAT system. This ensures that they do not have to collect and pay over VAT on goods and services that they provide, but does not allow them to recover VAT paid on purchased goods and services. A more favorable option is to “zero-rate” their goods and services, allowing charitable organizations to avoid collecting VAT and also seek rebates for amounts paid. Alternatively, instead of making the VAT treatment depend on the status of the organization, some regimes exempt certain types of goods or services or lower the rates charged on them.

A few countries have across-the-board exemptions for NPOs in general (Romania) or charitable organizations specifically (Bosnia & Herzegovina, Montenegro, Croatia). These exemptions frequently do not apply when the goods or services are part of an organization’s economic activities (Romania), when they are unrelated to an organization’s statutory purposes (Czech Republic), or when a tax preference would distort market competition (Montenegro). Macedonia has a more narrow exemption that applies to cultural institutions, botanical gardens, zoos, parks, archives, and documentation centers. Several countries also have created incentives for foreign aid by providing special VAT exemptions for international organizations, internationally donated supplies, or local NPOs funded by international donors.

Even in countries without an explicit exemption for charitable organizations, many charitable organizations are exempt under general rules limiting VAT collections to taxpayers with more than a certain amount of turnover. Although the threshold for VAT registration varies from country to country, most of the countries in the region set the threshold somewhere between EUR 10,000 and EUR 30,000, although Romania has a higher threshold of approximately EUR 50,000. In Kosovo, an organization must register for VAT if it has imports or exports from or to other parts of the Former Republic of Yugoslavia (FRY), or if its turnover is above EUR 100,000 annually. Organizations with public benefit status are entitled to a rebate of VAT attributable to intra-FRY imports/exports.

In addition to any exemptions granted to charitable organizations in general, many countries either exempt certain goods or services entirely or tax them at preferential rates. Many of these goods and services are of a sort typically provided by charitable organizations. Examples of such zero-rated or preferentially rated goods and services include educational and scientific publications and materials, health care, religious items and services, cultural events, care for the elderly, and social welfare services. Interestingly, Albania exempts many such goods and services, but only if NPOs provide them at a price clearly below the price at which they would be supplied on a for-profit basis.

4. Customs and other Import/Export Taxes

As noted above, several countries in the region exempt donated humanitarian goods or other donations to public benefit organizations from customs or import VAT. Kosovo allows public benefit organizations to claim rebates of VAT paid on intra-FRY inflows, upon proof that they are used for their public benefit purposes. Jurisdictions with such exceptions sometimes exclude from the exemption certain classes of goods that are especially prone to abuse, such as alcohol, gasoline and other fuels, and tobacco products.

B. Donor Benefits

All of the countries in the region grant at least some benefits to donors for contributions that they make to certain NPOs. In addition, several (Hungary, Slovakia, Lithuania, and Poland) have enacted unique laws that allow taxpayers to designate 1-2% of their taxes paid to be distributed to public benefit NPOs of their choice. One advantage of these laws is that they provide a source of funding for NPOs not controlled directly by the government or foreign donors, helping to sustain the independence of the nonprofit sector. Furthermore, this regime allows charitable organizations to compete for these designated funds, presumably giving organizations an incentive to manage their funds efficiently, provide appropriate public disclosures about their management and activities, and choose activities that meet pressing needs in the eyes of the public.

1. Benefits for Business Donors

Businesses in every CEE jurisdiction receive some tax benefits for charitable giving. In jurisdictions where organizations can obtain a special public benefit status, generally the recipient of a donation must have public benefit status; in other countries, the donations must generally be for one of a number of listed charitable purposes. Within those constraints, however, businesses have broad discretion to choose who will receive their contributions. The only exception to this rule is Macedonia, where only public organizations funded by the state and the Macedonian Red Cross are eligible for tax-deductible contributions.

Generally, the benefit is in the form of a deduction, which decreases the tax base in the amount of the contribution. However, a few countries have departed from this practice. Lithuania allows businesses to deduct double the amount of their contribution, for a deduction of up to 40% of their taxable income; Hungary allows a deduction of 150% of contributions made to organizations that have been accorded the status of a "prominently public organization," but only up to 20% of taxable income. Latvia allows a tax credit (decreasing the amount of the tax, not the tax base) in the amount of 85% of the contribution (up to 20% of the company's tax liability) to most organizations on the

government's list, and 90% of the contribution to certain specially favored organizations (the Latvian Olympic Committee, the Children's Fund, and the Culture Fund).

All of the countries limit the amount of deduction or credit that a company may claim. A few set the limit as a percentage of gross income or revenue. They are: Bosnia (0.5%), Macedonia (3%); Serbia (3.5%, or 1.5% for donations for cultural purposes), and Slovenia (3%). Estonia allows up to 3% of the base for the social tax (employee compensation) as a deduction. The more common approach, however, is to limit the deduction to a percentage of taxable income. The limits range from 1% (Albania²⁰) to 40% (Lithuania), but 5% (Czech Republic, Kosovo, and Romania) or 10% (Bulgaria, Slovakia, and Poland) are most common.

Some countries have higher allowances for particularly favored activities. For instance, Albania generally allows only 4% of taxable income to be deducted, but allows up to 10% for publication activities; Poland has a list of purposes, including scientific research, for which a 15% cap applies. And Croatia allows the competent ministry to increase the generally applicable 2% cap for particular projects it approves.

2. Benefits for Individual Donors

Seven jurisdictions in the region do not generally permit individuals to deduct their charitable contributions: Albania,²¹ Bosnia and Herzegovina, Kosovo, Lithuania, Macedonia, Romania, and Serbia. The remaining countries generally give individual contributions the same sort of preferences that they give business contributions, except that the limits on contributing may be different (and usually larger). For instance, the Czech Republic allows businesses to deduct up to 5% of their income, but allows individuals to deduct up to 10%. Hungary gives individuals a tax credit for charitable contributions, which cannot exceed 30% of the tax liability up to HUF 50,000 (approximately EUR 200), or up to HUF 100,000 for "prominently" public organizations.

3. Tax Advantages for Testamentary Bequests

In many of the CEE countries, neither NPOs nor their donors pay taxes on gifts or bequests, either because they have no estate or gift tax (Albania, Estonia, Romania, and Kosovo), or because the taxes apply only to natural persons, or because transfers to NPOs are generally exempt from these taxes (Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, and Slovakia). In Montenegro, even bequests to mutual-benefit NPOs are exempt, but in most of the other countries with specific exemptions, the exemption applies only to organizations with public benefit status, or to bequests used for public benefit purposes. Latvia apparently has no exemption for any bequests made to NPOs, charitable or otherwise.

C. Endowment Issues

The term "endowment" may refer to a specially designated portion of the assets of an NPO (usually, a foundation) that are to be maintained permanently and used to support the organization's purposes on an ongoing basis. In this narrow sense, only a few

²⁰ Albania has a 1% limit applicable to entities that pay small business taxes. Entities paying regular profits tax may deduct up to 4% of otherwise taxable profits.

²¹ Albania allows its deduction for "traders," whether they are legal or physical persons. Thus, some individuals are eligible to deduct contributions on the same basis as businesses do.

countries in the region have special regulations treating endowments. However, many NPOs derive some part of their income from the investment or other use of their property. Such property can be loosely termed part of an organization's "endowment," and so, in a broad sense, all of an organization's passive investment can be termed investment of the organization's endowment.

1. Taxability of Investments

Generally, NPOs in the CEE region are allowed to hold a variety of income-generating investments, including bonds, deposit accounts, securities, intellectual property, and real estate. The precise tax rate that applies to such investments varies from country to country and across types of investment. In a few countries (including Bosnia & Herzegovina, Croatia, and Romania), such investments are not considered taxable income for legal persons in general. Also, as noted above, Lithuania and Bosnia & Herzegovina do not apply profits tax to NPOs at all. Thus, in all these jurisdictions, charitable organizations' investment income is exempt from tax. Other rules nonspecific to NPOs may impact whether particular investments are taxable. For instance, in Macedonia, rules for avoiding double taxation ensure that a company's taxed income will not be taxed again when it is distributed to shareholders, whether charitable or otherwise.

Some jurisdictions provide special exemptions for passive income earned by charitable organizations. Examples of this approach include Kosovo, Poland, and perhaps Estonia.²² The Czech Republic and Serbia provide that the yield from a foundation's endowment is not taxable; since foundations in these jurisdictions must have a public benefit purpose, they effectively also limit the tax deduction for passive income to public benefit organizations.

Other countries provide more limited tax benefits for passive income. In Montenegro, for example, passive investment income up to EUR 4,000 is exempt. In Hungary, investment income is generally taxable, but if some portion of their total income is produced by their targeted activities, they may exempt a proportional amount of their investment income. In addition, public benefit organizations not conducting economic activities may exclude all of the yields from deposits or credit-type securities related to their public benefit purposes.

Finally, six countries—Albania, Bulgaria, Latvia, Macedonia,²³ Slovakia, and Slovenia—provide no exemption for passive income generally, or for charitable organizations' passive income in particular. Refusing to exempt investment income in this way can lead to incongruous results. Since many of these countries would allow a third party to make the same investment and contribute the resulting income to charity without taxing either the donor or the recipient, it is not clear why the investment should be less favored just because the invested property belongs to the charity, not the third party.

2. Restrictions on Investing

²² In Estonia, there is no corporate income tax, but only a tax on distributions. However, dividends paid to an organization on the government's list of public-benefit organizations are not subject to the normal tax on distributions. Other forms of passive income are, of course, not taxable as income *per se*, but expenses incurred in generating those forms of income may be considered taxable distributions if the income-generating activity is not related to the organization's purposes.

²³ As noted above, Macedonia does prevent double taxation on dividends.

Countries in the region have imposed relatively few restrictions on how property may generally be invested. As noted above, foundations are sometimes required to maintain a minimum amount of assets, where the minimum is either a fixed amount or an amount sufficient for accomplishing the foundation's purposes. These restrictions may require foundations to invest conservatively to avoid falling below the relevant threshold. Hungary specifically provides that economic activities (including passive investment) must not jeopardize a foundation's purposes, and requires public benefit organizations to adopt an investment policy. Slovakia and the Czech Republic have imposed more specific limits on the investment of a foundation's endowment (in the narrow, technical sense), restricting investment to certain relatively safe investments. In Slovakia, the endowment may be invested only in state bonds and obligations, securities traded on main markets, mortgage bonds, deposit receipts, deposit certificates, participation certificates, and real estate. The Czech Republic allows investment in bank deposit accounts, state-issued or guaranteed securities, real estate, income-producing art, certain intellectual property, and certain investment instruments from OECD countries. In addition, Czech foundations cannot put more than 20% of their assets into publicly traded stocks, and cannot own more than 20% of the stock of a stock holding company.

D. Commercial/Business/Economic Activities

Given the fragile state of some of the economies in the region, the scarcity of large endowments, and the lack of longstanding traditions of private philanthropy, the reality is that many organizations in the CEE region can survive only by conducting some economic activities to supplement income from donations and investment. Rules regarding the permissibility and taxation of such activities therefore have a significant impact on the growth and sustainability of the sector. Nevertheless, regimes in the region have taken various approaches to ensuring that NGOs conducting economic activities are not merely for-profit concerns in disguise. The principal safeguard against this, of course, is the nondistribution constraint, which prevents any NGO from distributing profits as such to owners, members, or other insiders in the organization. However, CEE jurisdictions have supplemented this basic requirement with a variety of other restrictions on economic activities' permissibility or eligibility for tax benefits.

Part of the difficulty with economic activities is crafting a definition that captures potentially problematic activities without sweeping a large amount of innocent activity within its scope. For instance, certain traditional fundraising activities, such as benefit concerts or fundraising raffles, could conceivably fall within an undifferentiating definition of economic activity. As a general rule, economic activities can be defined as "regularly pursued trade or business involving the sale of goods or services and not involving activities excluded under some distinct tradition."²⁴ Generally, this definition should be understood to exclude the receipt of gifts and donations (see above), certain passive investment income, occasional activities such as fundraising events, activities carried out using volunteer labor, and fees that are "intrinsically connected to the public benefit purposes of the organization" [*i.e.*, tuition for an educational organization].²⁵ Several countries—for instance, the Czech Republic—explicitly provide that certain cultural

²⁴ International Center for Not-for-Profit Law, "Economic Activities of Not-for-Profit Organizations," in *Regulating Civil Society*, conference report, (Budapest: May 1996), pp. 6-7 [reprinted at www.icnl.org]; ("Economic Activities"); Lee Davis and Nicole Etchart, *Profits for Nonprofits: An Assessment of the Challenges in NGO Self-financing*, (Santiago, Chile: NESsT 1999), pp. 72-73.

²⁵ *Ibid.*

events, fundraising lotteries, etc., fall outside the scope of any restrictions on economic activity.

1. Permissibility of Economic Activities

Virtually all countries in the region allow at least some forms of NGO to engage in economic activities directly (that is, without creating a separate for-profit company to do so). In addition to imposing the nondistribution constraint on any income earned thereby, many countries impose the additional requirement that the income be used to support the organization's statutory purposes. Some countries impose additional requirements. For instance, they may require any economic activities to be explicitly listed in the organization's governing documents (Albania and Croatia), so that registering authorities can consider their legitimacy in advance. Or they may impose a purpose test, under which an organization's primary purpose cannot be to conduct economic activity (Hungary, Albania, and Slovenia). Some require that economic activity be incidental and not comprise a regular part of the organization's activities (Romania and Latvia), or that it be carried out only to the extent necessary to support the organization's purposes (Hungary, Slovenia, and Croatia).

There is particularly broad consensus that NGOs should be permitted to engage in economic activities that support the organization's statutory purposes. Otherwise, for instance, sale of clothing to the poor at or below cost might be considered impermissible economic activity. Whether NGOs should be allowed to engage in completely unrelated moneymaking ventures is less well-established. Bosnia, Bulgaria, Romania, and Slovenia all have laws that explicitly allow NGOs to engage in *related* economic activity (leaving their ability to engage in unrelated activity more questionable). In Albania, the new Law on Non-Profit Organizations provides that a not-for-profit organization may conduct economic activities in order to realize its purposes. The economic activity must "conform" to the purposes of the organization, which may allow activities that are consistent with, although not related to, the statutory purposes. Poland permits economic activities by NGOs if they are primarily for a *public benefit* purpose.

Some countries distinguish between foundations and other types of NGOs with respect to the permissibility of business activities. In the Czech Republic, foundations and funds are generally prohibited from engaging in business activities,²⁶ but such activities are allowed for all other types of NGOs. Similarly, in Slovakia, foundations and non-investment funds are prohibited from engaging in business activities.

There are limited exceptions to the general trend in favor of permitting NGOs to engage directly in economic activities. In Macedonia, foundations and associations generally may not engage in economic activities directly. In order to engage in income-generating activities to support their not-for-profit purposes, they must found separate joint stock or limited liability companies. These separate subsidiaries are subject to the same tax rules as other commercial enterprises. Similarly, in Lithuania, associations and charity and sponsorship foundations are generally precluded from engaging directly in a trade or business -- any business activities must be conducted through a separate company.

²⁶ There is a limited exception for investments in joint stock companies. In addition, foundations may organize cultural, social, sporting and educational events, as well as lotteries and public collections to raise funds.

2. Tax Treatment of Economic Activities

As with other types of income, charitable organizations in Lithuania and the Federation of Bosnia and Herzegovina are not taxed on economic activities because they are not subject to the profits tax at all.²⁷ At the other extreme, Albania, Bulgaria, Slovenia, and Republic Srpska all tax income from any economic activities, related or unrelated – which is a restrictive approach inconsistent with regional good practice and currently the subject of revision in many of these countries. Between these two poles, other countries have adopted various intermediate approaches. One intermediate approach, employed by Latvia and Estonia, is to tax income from economic activities only when it is unrelated to an organization’s statutory purposes.²⁸ Another approach is to apply a destination-of-funds test, exempting any income from economic activities that is used to further the organization’s purposes (perhaps requiring proof that the funds have been so used within a certain amount of time after they are received). Poland and Kosovo apply this approach. Another approach is to employ a mechanical test, exempting income from economic activities below a set threshold, and taxing the rest. The majority of countries do not apply any one of these approaches, but instead combine various aspects of them. For example, in the Czech Republic and in Serbia and Montenegro, the destination-of-income test is combined with income thresholds below which all income from business activities is exempt. In Slovakia, income from related activities up to a threshold of SKK 300,000 (EUR 7,300) is exempt.

In Hungary, the amount of tax-free economic activity that an organization can carry out depends on its public benefit status. Non-public benefit organizations are entitled to exemption for business income that does not exceed 10% of total income or HUF 10 million; the threshold for public benefit organizations is HUF 20 million. “Prominent” public benefit organizations can have tax-free business income up to 15% of total income.

A few countries have also added the stipulation that business income will not be exempt if giving a preference to the business activity in question would allow unfair market competition against for-profit companies. For example, Croatia’s law does not allow exemption when doing so would give the NGO an “unjustified privileged position in the market.”

E. Reporting

Organizations typically have to file regular tax reports, for instance annually. In addition, as noted above, organizations that obtain public benefit status often have to adhere to the more strict reporting requirements associated with that status.

F. Miscellaneous

1. Administrative Expenses

Generally, countries in Central and Eastern Europe place no legal limits on administrative expenses or salaries.

²⁷ In 2003, there were legislative proposals in Lithuania to subject NGOs’ economic activities to the profit tax.

²⁸ In Estonia, business income is not directly subject to tax. Instead, expenses connected with the production of unrelated business income are treated as taxable distributions from the NGO. Thus, Latvia exempts related but not unrelated income from economic activities, while Estonia exempts related but not unrelated expenditures.

Slovakia offers one of the few exceptions to this rule. The administrative expenses of non-investment funds, one of Slovakia's specialized NPO forms, may not exceed 15% of the fund's total expenditures, not including expenses for registration, fundraising, auditing, and verification of the proper use of grants. This has proved to be an extremely problematic provision and is inconsistent with regional good practices.

Also, according to the Czech Law on Foundations and Funds, the administrative and operational expenditures of a foundation or a fund are limited by a rule, which may not be changed for at least 5 consecutive years. In the case of a foundation, this rule may be expressed as a percentage of the yield from the endowment, a percentage of the registered endowment's total value, or a percentage of the total yearly value of the grants made by the foundation to third persons. In the case of a fund, this rule may be expressed as a percentage of the yield from the property of the fund, a percentage of the total assets of the fund at the end of the year, or a percentage of the total yearly value of the grants made by the fund to third persons.

Until 1995, salaries in Czech NPOs were required to be in reasonable proportion to those paid by the government sector, regulated by a special law on wages. In July 1995, the government decided to eliminate these salary restrictions. However, in order to sustain the competition with the private sector, some NPOs, mostly those with some foreign funds, pay their employees better salaries than the average salaries paid to Czech workers in those organizations.

2. Accounting

In most countries throughout the CEE region, there are special accounting rules for NPOs. For example, NPOs typically must account separately for their statutory not-for-profit activities and for their economic activities (Hungary, Bulgaria). They must indicate support received from the state budget (Hungary) and comply with accounting rules prescribed for budgetary spending (Croatia).

In addition, accounting requirements often vary depending on the size of the organization. Croatia, for example, has developed simpler accounting rules for NPOs with an annual turnover not exceeding \$3000. Romania allows NPOs may be subject to simplified accounting rules, if they are not public benefit organizations, if they have the assent of public finance authorities, and if their annual revenue does not exceed 30,000 EUR. Small NPOs in Hungary use single-entry accounting, based on general accounting rules, rather than the specialized accounting rules.

IX. Compliance

A. General Compliance

The degree to which rules applicable to charitable organizations are understood and complied with – and fairly and effectively enforced – varies widely from country to country in the CEE region. The degree of compliance will of course depend on the clarity of the legal and fiscal framework. In Albania and Kosovo, for example, the registration process seems to work effectively (despite some complaints of petty bribes required for registration), but the tax laws are less understood and poorly complied with. Even in countries with relatively clear regulations, there may be only modest compliance. In Hungary, for example, a study completed by the Civil Society Development

Foundation revealed that NPOs take a minimalist approach to transparency rules (e.g., 81% of NPOs prepares an annual report, but only 32% distribute the report effectively).

B. Specific Compliance

There is a widespread perception in many countries, such as Bosnia, Kosovo and Montenegro, that NPOs are being used as a shelter to avoid taxation that ought to be paid on commercial profits. In Romania, a media campaign in 1998-1999 exposed “fake NPOs” engaged in financial abuse, thus tarnishing the image of the entire sector. Since that time, however, NPOs have sought to raise awareness of the positive contributions they make; their success in doing so is reflected in a 2002 survey showing that Romanian citizens have more faith in NPOs than in other institutions (including trade unions and government). In Hungary, the perception of financial abuse by NPOs was pervasive during the early 1990s, but has faded since the enactment of stricter regulations.

In addition, the actual and perceived political affiliation of NPOs in Hungary is the source of ongoing debate. The problem is aggravated where, as in Bosnia, government officials play a dual role, first as members of the government, and simultaneously as leaders of NPOs. Similarly, in Bulgaria, certain foundations are closely linked to political parties and believed to be channeling funds to political parties, in violation of the law. In many countries, NPOs associated with politicians or established by the government prompt complaints of unfair competition in the area of government funding. In such cases, the image of the entire NPO sector is tarnished.

At the same time, however, a recent OSCE study of public perception of NPOs in Bosnia revealed that a majority of citizens have a positive attitude toward NPOs, both domestic and foreign, and their role in society.

C. Sanctions

Supervisory authorities are generally empowered to impose sanctions for non-compliance, including monetary fines (which may be self-executing, though the interested party has the right to contest the decision of the financial authority), and in cases of serious abuse, the suspension of activities, the appointment of officers or directors to act for the organization, and sometime termination. In such exceptional cases, the laws typically provide for procedural safeguards, including notice to the NPO with an opportunity to correct the problem, and the right to appeal in case of an adverse decision.

Supervisory authorities are often empowered to revoke public benefit status, but only under exceptional circumstances. For example, in Hungary, the court can revoke an organization’s public benefit status at the request of the public prosecutor, if the organization violates the law or its founding charter, but only after notifying the organization and giving it the opportunity to remedy the situation. In Poland, if the PBO fails to eradicate problems identified during the inspection process within a given time period, the Minister of Social Security may file for removal of the organization from the State Court Register. Note that, in both cases: (1) the government must first notify the

organization of the violation and provide an opportunity for the organization to eliminate the problem and (2) the decision for revocation is made by the court.²⁹

X. Government Funding

In most countries, NPOs are permitted to compete for government funds. Often, this is made explicit. In Bulgaria and Estonia, the Law on Procurement specifically allows all legal persons to compete for government funds in tenders. In Poland, the Law on Public Benefit Activities encourages NPOs to cooperate with government, including through the “commissioning of public tasks”, and sets rules for tenders. The Slovak Public Procurement Act runs counter to this trend by expressly excluding NPOs from public service tenders.

Where NPO participation in public procurement is permitted, the rules on bidding vary dramatically. In Bosnia and Serbia, for example, the ministries have great discretion in determining the rules for government funding, but these rules are far from clear and transparent. Similarly, in Macedonia, there are no clear procedures in place for the selection of grant recipients. In the Czech Republic, while some ministries have been accused of making grants in a manner that is not open and transparent, there are clear, published grant application rules in the fields of science, research and development, education, and care for children and ecology. Also, in Hungary, government funds are distributed following free and open competitions with set bidding rules; moreover, NPOs can gain access to government funds through unsolicited proposals for grants and contracts. In Croatia, a code of good practices is being developed, which is designed to ensure transparency of government grant making through open competitions and objective criteria. Similarly, in Montenegro, a cross-sectoral commission is empowered to distribute public grants.

XI. Privatization

Several countries have created special legal forms to permit or facilitate the privatization of state assets to the not-for-profit sector. Indeed, in the Czech Republic, public benefit companies were specifically designed to be vehicles through which the government could privatize services currently funded through state-run institutions, including hospitals, schools, and museums; because of insufficient incentives to assume state responsibilities, however, privatization through public benefit companies has only had modest success. In Hungary, the public benefit company was also created to facilitate privatization. In practice, state agencies, ministries, and local governments in Hungary have established public benefit companies and concluded contracts with these companies to provide public service formerly provided by the state. This mechanism is of course distinct from outsourcing service delivery to independent NPOs.

In Bulgaria, recent legal changes permit NPOs to compete for contracts with local governments to deliver social services, but the implementation of this procedure has

²⁹ Similarly, in Bulgaria, the Minister of Justice is authorized to revoke PBO status – upon the request of the public prosecutor for bodies of the State Financial Control – where a PBO routinely fails to submit information required for entry into the register; where a PBO pursues activities contrary to the provisions of law; where a PBO routinely fails to pay public amounts receivable; where a PBO has fewer members than required by law for more than 6 months. Revocation of PBO status is subject to appeal within 14 days following notification.

been slow to take root. Draft legislation which would allow NPOs to establish and operate new healthcare institutions is pending before the Bulgarian Parliament.

In some countries, especially in Southeastern Europe, the privatization of the public sector has barely begun, so there are no effective mechanisms yet in place to include NPOs in the process. In other countries, such as Hungary, NPOs may be permitted to bid to become recipients of certain assets (museum or health clinic), but in practice are rarely awarded such assets. More commonly, government assets and funding are distributed to quasi-NPOs or government organized NPOs.

XII. Conclusions

NPO legislation in CEE is quickly evolving. Trends include the following:

- *Organizational Forms.* Most countries now recognize both associations and foundations. The trend is to define these forms flexibly, which limits the need for additional organizational forms. Countries also recognize the right to organize unregistered associations (which are not legal entities).
- *Founders.* Most countries require 2-5 founders for an association, and one or more founders for a foundation. Most countries also allow legal entities and foreigners to found NPOs.
- *Capitalization.* Associations do not require capitalization. Foundations do typically require initial property, but the trend is to make this a nominal amount or to require that the assets merely be sufficient to accomplish organizational purposes.
- *Registration Authority.* The trend is to divest line ministries and the Ministry of Interior of registration authority for NPOs. Countries are transferring this authority to courts or to other ostensibly less political bodies. The trend is also to allow registration at the local level.
- *Grounds for Refusal.* The trend is to define more precisely and narrowly the bases upon which registration may be refused. At least for associations, these tend to be based on Article 11 of the European Convention.
- *Procedural Safeguards.* Most countries provide time limits for the registration process and allow redress (at least for the founders) for adverse decisions.
- *Public Registries.* Countries are increasingly creating public registries of NPOs to promote transparency. Some countries, like the Czech Republic, Croatia and Macedonia, have also placed these registries on the Internet.
- *Governance Structures.* Associations are typically governed by a General Assembly of Members. Foundations are typically governed by a Board of Directors; some also have Supervisory Boards and other structures. Additional structures, such as an Audit Committee, may also be required for organizations receiving tax/fiscal benefits. Laws typically identify these structures and their responsibilities, but otherwise grant the founders broad discretion to determine internal governance issues.

- *Economic Activities.* The trend is to allow NPOs to engage in a broad range of income-generating activities, treating economic activities as a tax issue and not as an NPO status issue.
- *Political Activities.* Most countries prohibit NPOs from engaging in “party political” activities, such as nominating candidates for elective office and fundraising for parties or candidates. NPOs are, however, allowed to engage in a broad range of public policy and advocacy activities.
- *Reporting.* NPOs are generally required to file tax reports in accordance with the tax laws. Organizations receiving tax/fiscal benefits or significant public donations are typically required to prepare programmatic reports. The trend is to narrowly tailor reporting requirements to meet legitimate interests while not unduly burdening NPOs. Toward that end, small NPOs are often exempt from reporting requirements or required to submit simplified reports.
- *Taxation.* In all countries, NPOs receive some degree of exemption from taxation; in nearly all countries, there are incentives in place to encourage giving by individuals and corporations. The trend is to link tax treatment to the activities of the NPO and the challenge to ensure proper implementation.
- *Government Funding.* Increasingly, governments are providing direct funding to NPOs and seeking to facilitate privatization of state resources to private actors, including NPOs. The trend is to facilitate this process and ensure that the shift of government resources to the NPO sector is performed in a transparent manner.
- *Termination.* The trend is to grant the highest governing body of an organization (particularly an association) broad discretion to terminate the NPO and to precisely and narrowly define the bases upon which an NPO may be involuntarily terminated.
- *Liquidation.* The trend is to require an NPO receiving substantial tax/fiscal benefits or public contributions to transfer its assets remaining upon dissolution to another organization pursuing the same or similar purposes. Other organizations, particularly mutual benefit associations, are often allowed to distribute remaining assets to members and, if applicable, founders.

Law reform challenges continue to face the NPO sector in Central and Eastern Europe. Primary among them are (1) revising the basic framework legislation to ensure more streamlined registration and higher standards of accountability; (2) improving the regulatory framework for public benefit organizations to encourage their activities; (3) improving the tax treatment of NPOs and donors to support the sustainability of NPOs; (5) improving the system of government funding to provide more effectively deliver public services.

This concludes the survey of CEE legislation governing general framework laws (including organizational forms and registration procedures), governance and accountability, termination and liquidation, supervisory regulation, taxation and other regulatory practices affecting NPOs. Additional information is available at www.icnl.org.

NPO Organization Forms in Fifteen Countries of Central and Eastern Europe ³⁰						
Country	Association	Foundation (Permanent)	Fund (Temporary)	Open Foundation	Public Benefit Company	Other
Albania	Association	Foundation			Center ³¹	
Bosnia and Herzegovina (State level)	Association	Foundation				
Bosnia and Herzegovina (Federation)	Association	Foundation				
Bosnia and Herzegovina (RS)	Association	Foundation				
Bulgaria	Association	Foundation				Chitalista
Croatia	Association	Foundation	Fund			Private Institutions
Czech Republic	Civil Association	Foundation	Fund		Public Benefit Company	Public Institution, ³² Charitable Establishment ³³
Estonia	Non-Profit Association	Foundation				Non-Profit Partnership
Hungary	Society	Foundation		Open Foundation ³⁴	Public Benefit Company	Public Foundation, Public Society
Kosovo	Association	Foundation			Foundations and associations may obtain public benefit status	
Latvia	Association	Foundation			Non-Profit Organization	
Lithuania	Association,	Foundation		Charity and Sponsorship Fund	Public Institution	Many diverse
Macedonia	Citizens Association, Association of Foreigners	Foundation				
Poland	Association, Simple Association	Foundation				
Romania	Association	Foundation				
Slovakia	Civil Association	Foundation			Non-Profit Org. that Provides Public Services Non-Investment Funds	
Slovenia	Association	Foundation				
Serbia)	Association ³⁵	Foundation				
Montenegro	Association	Foundation				

³⁰ In 2002, both Latvia and Lithuania passed NGO legislation. We are in the process of obtaining English translations of these laws, and these recent developments are not reflected in this report.

³¹ Albanian centers are much like foundations, except that they are intended to operate with grants from other sources, not to provide grants themselves.

³² A form used for semi-autonomous state-funded institutions like universities.

³³ Used by the Catholic church, this form gives the founder more control over the organization's governance, but makes the founder liable for the organization's activities as well.

³⁴ Although a special legal type, this is the most common foundation form.

³⁵ Under the Serbia law, associations are divided into social organizations or citizens' associations, and associations of foreigners.

Founding Requirements for CEE Membership Organizations							
Country	Minimum Members	Permitted to found and join?					Special umbrella organization form? If so, how many organizations needed to found?
		Citizens	Permanent residents	Foreigners	Legal persons	Minors	
Albania	2/5 ³⁶	Yes	Yes	Yes	Yes		No
Bosnia and Herzegovina (State level)	3	Yes	Yes	Yes, if foreigner is resident or registered in BiH	Yes	Yes	Not addressed
(Federation)	3	Yes	Yes ³⁷	Yes	Yes	Yes	Not addressed
(RS)	3	Yes	Yes	Yes	Yes	Yes ³⁸	Not addressed
Bulgaria	3 ³⁹	Yes	Yes	Yes	Yes		No
Croatia	3	Yes	Yes ⁴⁰	Yes	Yes ⁴¹	No	Yes; 2 or more associations
Czech Republic	3	Yes	Join Only	Join Only	Join Only	Yes ⁴²	Yes; 2 or more associations
Estonia	2	Yes	Yes	Yes	Yes		
Hungary	10	Yes	Yes	Yes	Yes		
Latvia	2	Yes	Yes	Yes	Yes	Yes ⁴³	Yes; 2 or more
⁴⁴ Kosovo Associations Foundations	3 1	Yes	Yes	Yes	Yes		New pending draft law specifically permits umbrella organizations; current law does not prohibit them
Lithuania (Associations)	3	Yes	Yes	Yes	Yes		Yes (can include enterprises) ⁴⁵
(Community Organizations)	15	Yes	No ⁴⁶	No ⁵	No	Join Only ⁴⁷	Yes; 2 or more
Macedonia	5	Yes	Join Only	Join Only ⁴⁸	No	No	Yes; associations and foundations
Poland (Associations)	15	Yes	Join Only	Join Only ⁴⁹	No	Join Only (16+)	Yes; 3 or more
(Simple Associations)	3	Yes	Yes	Yes	No		No
Romania	3	Yes	Yes	Yes	Yes		Yes; 2 or more associations or foundations
Slovakia	3	Yes	Join Only	Yes ⁵⁰	Join Only	Yes	Yes; 2 or more associations

³⁶ At least two juridical persons or five natural persons must be members of the association.

³⁷ Permanent residents must stay longer than one year to be able to found associations in Bosnia and Herzegovina.

³⁸ Although the three laws in Bosnia and Herzegovina (the state level, the Federation and the RS law) do not specifically address the issue of minors as founders of an association, under general rules of civil law, a minor at the age of 14 may be a founder of an association with the consent of his parents or legal trustee. In addition, minors may participate as members in the association's activities in a manner prescribed by the statute.

³⁹ Public benefit associations must have at least 7 natural persons or 3 legal persons as members.

⁴¹ Local legal persons can found associations, as can foreign legal persons. Foreign legal persons can join associations whose statutes so specify.

⁴² At least one founder must be 18 years old.

⁴³ Minors can found Latvian public organizations if at least sixteen years old or with their parents' consent.

⁴⁴ At least one founder must have residence or seat in Kosovo.

⁴⁵ No minimum number of organizations for creating an umbrella organization is specified. Legal persons whose activities are income-oriented may only be "supporting members" of such organizations.

⁴⁶ Technically, only citizens over 18 may be members of community organizations; other persons may be able to become "associate members," though conditions for associate membership are not well-defined.

⁴⁷ Children under 18 may be members of an organization active in the field of children's or youth activities.

⁴⁸ An association's statute must explicitly state that foreigners are allowed to join; otherwise, they are prohibited.

However, foreigners can form special "associations of foreigners."

⁴⁹ Foreigners who are not permanent residents may join a Polish association if the association's statute explicitly so provides.

⁵⁰ In practice, however, it is recommended that foreigners found associations with local citizens.

Slovenia	10	Yes	Join Only	Join Only ⁵¹	No		
Serbia	10	Yes	No	No ⁵²	No	No ⁵³	
Montenegro	5	Yes	Yes	Yes ⁵⁴	Yes	Yes ⁵⁵	Yes; 2 or more juridical persons

Founding Requirements for Foundations and Funds in the CEE Region			
Country	Organization Form	Duration	Minimum Assets
Albania	Foundation		(Appropriate for purposes. ⁵⁶)
Bosnia and Herzegovina (State level)	Foundation	Not addressed	Assets required, but no minimum amount specified
Bosnia and Herzegovina (Federation)	Foundation	Unlimited, if not otherwise specified	2,000 Konvertible Mark (\$ 1,200)
Bosnia and Herzegovina (RS)	Foundation	Unlimited, if not otherwise specified	Assets required, but no minimum amount specified
Bulgaria	Foundation	Statute must specify.	None
Croatia	Foundation	Permanent	Enough to serve purposes permanently; income must exceed amount necessary to maintain property
	Fund	No longer than 5 years	Appropriate for purposes
Czech Republic	Foundation	Permanent ⁵⁷	500,000 CZK
	Fund		
Estonia	Foundation	Statute must specify if for a limited term	Can be dissolved if assets are clearly insufficient and no acquisition is likely in the immediate future.
Hungary	Foundation	Permanent ⁵⁸	Appropriate for purposes
	Open Foundation		Enough to <i>begin</i> serving its purposes
Kosovo	Foundation	Not addressed	None
Latvia	Open Foundation	No restrictions	
Lithuania	Fund	Statute must specify	None
Macedonia	Foundation	Statute must specify if for a limited term	10,000 DM
Poland	Foundation		Must have 1000 PZL set aside if conducting business activities
Romania	Foundation	Permanent	At least 100 times minimum gross salary (or 20 times, if the foundation's exclusive goal is fundraising for other associations or foundations)
Slovakia	Foundation	Specified by the statute	SK 200,000
Slovenia	Foundation	As a rule, permanent	Appropriate for purposes
Serbia	Foundation	No restrictions	Appropriate for purposes
Montenegro	Foundation	No restrictions	None

⁵¹ Permanent residents and foreigners may join if the statute explicitly so specifies.

⁵² Foreigners (including, presumably, permanent residents) may establish special "associations of foreigners" in Serbia.

⁵³ As a general rule, a minor is anyone who cannot vote, which means in Serbia anyone under 18.

⁵⁴ Must have a residence or place of business in Montenegro.

⁵⁵ This issue is not specifically addressed in the law, however, it appears that under general rules of civil law a minor at the age of 14 may be a founder of an association with consent of his parents or legal trustee.

⁵⁶ The law does not explicitly state this, but foundations in Albania are required to list in their founding document the property that is sufficient for the foundation's purposes.

⁵⁷ The law does not say that foundations must be permanent, but it forces them to conserve their endowment in such a way as to ensure permanency.

⁵⁸ Technically, the Hungarian law only requires that foundations or open foundations serve a permanent purpose, not that they themselves are of permanent duration.

NPO Registration Procedures in Central and Eastern Europe					
Country	Entity Type	Body	Time	Default	Special Refusal
Albania	Association	District Court of Tirana	15 days		
	Foundation				
	Center				
Bosnia and Herzegovina (State level)	Association	Ministry of Justice of Bosnia and Herzegovina	30 days	Considered rejected	If organization program or activities contravene the constitutional order of BiH, or are directed at its violent destruction, stirring of ethnic, racial or religious hatred, or any discrimination prohibited by law
	Foundation				
Bosnia and Herzegovina (Federation)	Association	Single canton: cantonal ministry; larger: Ministry of Justice	30 days		If organization program or activities contravene the constitutional order of BiH or the Federation, or are directed at its violent destruction, stirring of ethnic, racial or religious hatred, or any discrimination prohibited by law, or if they include electioneering, fundraising for candidates, or financing of candidates or political parties.
	Foundation	Ministry of Justice and government			
Bosnia and Herzegovina (RS)	Association	District Court	15 days	Considered registered	If organization program or activities contravene the constitutional order, or are directed at its violent destruction, stirring of ethnic, racial or religious hatred, or any discrimination prohibited by law, or if they include electioneering, fundraising for candidates, or financing of candidates or political parties, or if generating profit is the primary purpose of the organization program.
	Foundation				
Bulgaria	Association	Local District Court; public benefit organizations must also register with the Ministry of Justice	14 days for Ministry of Justice	Ministry of Justice: Considered rejected	
	Foundation				
Croatia	Association	County offices	30 days	Considered Registered	If organization program or activities contravene the Constitution or law.
	Foundation	Ministry of Administration (with required permission from activity-area ministry)	30 days for area ministry; 60 total	Considered Registered	If purpose is not feasible or immoral, or if there is "no serious reason" or purpose is "obviously lacking in seriousness"
	Fund				
Czech Republic	Association	Department for Civic Affairs (Ministry of Interior)	40 days	Considered Registered	If it is not really an NPO but a political party, religious society, or enterprise
	Foundation	District Court	No limit		
	Fund				
	Public Benefit Company	District Court keeping the register of PBCs and the commercial register			
Estonia	Association	Registration departments of county and city courts			Military organizations must have prior government approval
	Foundation				
Hungary	Association	District Courts	Expedited procedure	Will be introduced from January 1, 2003(considered registered)	
	Foundation				
	Public Benefit Company	District Commercial Court	Expedited Procedure		
Kosovo	Association, Foundation, Public Benefit	NGO Registration and Liaison Department, Ministry of Public	60 business days		Denial if (a) registration documents do not comply with requirements of regulation; (b) statutes would violate provisions of

NPO Registration Procedures in Central and Eastern Europe					
Country	Entity Type	Body	Time	Default	Special Refusal
	Organization	Administration			UNSC Resolution 1244 or any UNMIK regulation; (c) organization has same name as registered organization or one so similar confusion will result.
Latvia	Non-Profit Organization	Chief Public Notary (the commercial registrar)	30 days		
	Public Organization	Ministry of Justice	1 month		If NPO uses communist symbols or symbols of USSR or LSSR
Lithuania	Association	Municipal offices			
	Public Institution				
	Fund	National: Ministry of Justice; local: municipal offices			
	Community Organization	National: Ministry of Justice; local: municipal offices	1 month		
Macedonia	Association Foundation	Primary court of the territory in which NPO is are seated	30 days		If statute, program or activities of NPO are directed towards violent overthrow of the constitutional system, instigate military aggression or national, religious, or racial hatred and intolerance, and intolerance, or violate the provision regarding prohibition of political activities.
Poland	Association	Local court where NPO has seat	3 months		(Administrative authorities informed, and can object)
	Foundation	Territorial court (Warsaw)			
	Simple Association	Court where NPO has its seat	30 days	Considered registered	
Romania	Association Foundation	Primary court	3 days		
Slovakia	Association	Ministry of Interior	10 days	Considered registered after 40 days	If NPO's goals are incompatible with being non-compulsory, or if it's a church, party, or firm
	Foundation	Ministry of Interior			If it's not a gathering of property or not publicly beneficial (advisory ministry's report is used to determine this)
	Non-Profit Organization	Regional office			If it is not really an NPO, or not providing generally beneficial services
	Non-Investment Fund	Regional Office	Date set in proposal, or by decree		
Slovenia	Association	Local state administrative bodies			
	Foundation	Ministry over the foundation's area of activity			
Serbia)	Association	Union: : Ministry for Human Rights and Minority Protection ⁵⁹ ; Serbia: municipal administrative organ over internal affairs	Union: 15 days; Serbia: 30 days	Union: Considered registered; Serbia: Considered rejected	Union: If organization program or activities are directed at its violent destruction of the constitutional order, or territorial integrity and independence of the country, or violation of the rights and freedoms protected by the Constitution, or at stirring of ethnic, racial or religious hatred.
	Foundation (Serbia Only)	Ministry of Culture			If foundation is judged unnecessary; no redress procedure
Montenegro	Association	Ministry of Justice	10 days	Considered registered	
	Foundation				

⁵⁹ See *supra*, footnote no. 6, which describes the complexity of the current registration practice in Serbia.

Mandatory Governing Organs of NPOs in Central and Eastern Europe					
Country	Entity Type	General Assembly	Board	Management	Other Required Body
Albania	Association	Yes		Single person or committee	
	Foundation		At least 3 members		
Bosnia and Herzegovina (State level)	Association	Yes	Founder or authorized person appoints a management board of at least 3 members.	Board or person representing the association appointed by the assembly. .	
	Foundation				
Bosnia and Herzegovina (Federation)	Association	Yes		Board or person representing the association appointed by the assembly	
	Foundation		Founder or authorized person appoints a management board of at least 3 members.		
Bosnia and Herzegovina (RS)	Foundation		Founder or authorized person appoints a management board of at least 3 members		
	Association	Yes	Board or person representing the association appointed by the assembly		
Bulgaria	Foundation		Self-perpetuating	Elected by board	Public benefit organizations must have two bodies: one collective supreme body and one management body.
	Association	Yes		3- or 1-person; usually 3	
Croatia	Association	Yes			
	Foundation		General provision for "foundation bodies," which are representative and managing. Chosen for the first time by a ministry; nominated by director. ⁶⁰		
	Fund				
Czech Republic	Association	Yes			
	Foundation		At least 3 members		Auditor or 3-member Supervisory Board ⁶¹
	Fund				
	Public Benefit Company		3, 6, 9, 12, or 15 members ⁶²	Managing Director	3-7 member Supervisory Board
Estonia	Association	Yes		1- or several-member	
	Foundation		Yes		Auditor
Hungary	Association	Yes		Yes	Public benefit status requires a supervisory body if annual income exceeds five million HUF. Supervisory Board and Auditor
	Foundation		Yes		
	Public Benefit Company	Yes		Yes, as in the limited liability company	
Kosovo	Association	Yes			
	Foundation		At least 3 members		
Latvia	Nonprofit Organization	Investors in a nonprofit organization have the right to manage it.			
	Public Organization			Yes	Yes
Lithuania	Association	Yes	Yes	President and financial officer	
	Community Organization	Yes			
	Fund	Founders' Meeting	Yes	President and financial officer	Auditor
	Public Institution	Yes			
Macedonia	Association	Yes		Yes	
	Foundation			Yes	

⁶⁰ In Croatia, a "director" is a special temporary officer, nominated by the founder, who starts the organization.

⁶¹ Organizations with less than CZK 5,000,000 can have only a single auditor.

⁶² Czech public benefit company boards are generally not self-perpetuating unless the founder becomes unable to appoint them. The founder may specify that a certain number of directorships are controlled by a particular constituency.

Mandatory Governing Organs of NPOs in Central and Eastern Europe					
Country	Entity Type	General Assembly	Board	Management	Other Required Body
Poland	Association	Yes	Yes		Internal auditing organ
	Foundation			Yes	
Romania	Association	Yes	Yes		Auditor or committee of auditors ⁶³
	Foundation		At least 3 members		Odd number of auditors ⁶⁴
Slovakia	Association	Yes			
	Foundation		At least 3 members	Single administrator; appointed by board of directors	Supervisory Board (property above 5,000,000 SK) or a single auditor
	Nonprofit Organization		At least 3 members	Executive manager	Supervisory Board (property above 5,000,000 SK) or a single auditor. At least 3 members ⁶⁵
	Non-Investment Fund		As set forth in statutes	Administrator, appointed by Board of Directors	By statute
Slovenia	Association	(Must have some supreme body)			
	Foundation	(Optional body of founders)	At least 3 members		
Serbia	Association	Yes			
	Foundation			Yes	
Montenegro	Association	Yes ⁶⁶		Unless less than 10 members	
	Foundation		Yes ⁶⁷	Yes	

Restrictions on NPO Governing Organ Membership in Central and Eastern Europe		
Country	Organization Type	Leadership Restrictions
Bosnia and Herzegovina (Federation)	Foundation	Minors, employees, members of other organs, and supervisors may not be members of the management board.
Bosnia and Herzegovina (RS)	Foundation	Employees, members of other organs, and supervisors may not be members of the management board.
Croatia	Foundation	Leaders must be trustworthy and capable, not ministry officials or Foundation Council members.
	Fund	
Czech Republic	Foundation	Leaders should be capable and have integrity; cannot be convicted of a crime.
	Fund	
	Public Benefit Company	Board of Directors and Supervisory Board members must not be convicted of a crime; each board must be composed of at least 2/3 Czech citizens.
Estonia	Association	Managing board members must not be in bankruptcy; 50% must reside in Estonia.
	Foundation	
Hungary	Association	Management must be Hungarian nationals or settled non-nationals with a residence permit. ⁶⁸

⁶³ A committee of auditors is required for associations with over 100 members.

⁶⁴ The statute states that the same provisions governing associations apply here. This is confusing, as literal application would mean that multiple auditors are required only if the foundation has over 100 members, and that a majority of auditors must be members of the foundation. However, foundations do not have members.

⁶⁵ Although not clearly stated, the statute also appears to allow for substituting this committee with a single auditor.

⁶⁶ However, if there are more than 10 members, it appears that not all of them would have to be members of the General Assembly.

⁶⁷ The Montenegrin law gives so little detail it is difficult to tell whether the two required bodies are the board and the management, or the board and a supervisory body. Most likely, the board supervises the management.

⁶⁸ This restriction does not apply to organizations of an "international character." In such organizations, the only restriction is that the officers not have lost their civil rights (by being convicted or being judged incompetent). It is unclear (at least in translation) whether this further requirement also applies to organizations not of an international character.

Restrictions on NPO Governing Organ Membership in Central and Eastern Europe		
Country	Organization Type	Leadership Restrictions
Macedonia	Association	Majority of management must be Macedonian citizens.
	Foundation	
Slovakia	Foundation	Administrator and directors must be only natural persons of irreproachable character (must not have been convicted of a criminal offense). A person may not hold position in the two bodies. The administrator may also be a permanent or long-term resident.
	Nonprofit Organization	
	Non-Investment Fund	Administrator and directors must be only natural persons capable of legal acts and of irreproachable character (must not have been convicted of a criminal offense). A person receiving benefits from the fund may not be a member of the Board of Directors. The Administrator can be a member of the Board of Directors only if so provided in the statutes.
Slovenia	Foundation	Board cannot contain persons who are underage or without legal capacity, employees, or those supervising the foundation.

Founders' Ongoing Powers over NPOs in Central and Eastern Europe.		
Country	Organization Type	Founders' Special Powers ⁶⁹
Bulgaria	Foundation	Rights may be reserved to founders; they pass to the foundation after the founders die or otherwise become incapable of acting.
Croatia	Foundation	Statute can't contradict the founding act without founder consent (if living); founder can contest initial selection of officers.
	Fund	
Czech Republic	Foundation	Founders can request dissolution under certain conditions (as can other interested parties).
	Fund	
	Public Benefit Company	Founders can veto dissolution if they are willing to take over responsibility for continuing the activities of the public benefit company..
Estonia	Foundation	Founders can dissolve foundation if articles allow; they may modify articles in changed circumstances.
Hungary	Foundation	Founders, and founders only can replace board members if it endangers the foundation's aim, and can amend the deed of foundation (but not name, purpose, or assets). ⁷⁰
Macedonia	Foundation	Statute can allow founders to dissolve foundation in certain circumstances.
Slovakia	Foundation	Charter can specify parts of the bylaws changeable only by founder; founders can decide to dissolve.
		Founders can dissolve/merge; board of directors appointed/dismissed by founders unless statute determines otherwise.
	Nonprofit Organization	Founders can reserve rights to make certain changes in by-laws.
	Non-Investment Fund	Founder retains the right to appoint and dismiss directors, unless otherwise provided by statute, and to appoint and dismiss the Board Chair. Founder further may issue decisions to abolish the fund, or to merge or fuse the fund.
Slovenia	Foundation	Founders and donors can request removal from office for failure to fulfill obligations or acts contrary to interests of foundation.

⁶⁹ This chart summarizes a few countries' laws that reserve special powers for founders even when primary of control of the organization has passed to separate governing organs. It does not include membership or quasi-membership organizations in which founders actually act as a governing body of the organization.

⁷⁰ Subject to the same approval procedures as the initial foundation registration.

Restrictions on NPO Involvement in Political Activities		
Country	Organization Type	Restrictions
Albania	Association	Political parties are not subject to the Law on Non-Profit Organizations.
	Center	
	Foundation	
Bosnia and Herzegovina (State level and the Federation)	Association and Foundation	The goals and activities of a registered association or foundation shall not include electioneering, fundraising for candidates, or financing of candidates or political parties.
Bosnia and Herzegovina (RS)	Foundation Association	Goals and activities shall not include engagement in political campaigns and fundraising for political parties and political candidates, or financing of political parties and political candidates.
Bulgaria	Association	Organizations pursuing political activities are governed by a separate act.
	Foundation	
Croatia	Association	Political parties are governed by separate act.
	Foundation	
	Fund	
Czech Republic	Association	Cannot be founded for political activities (association law does not apply to political parties or movements) but can lobby, endorse candidates, provide information, and advocate.
	Foundation	Cannot provide financial support to political parties or political movements but can lobby, endorse candidates, provide information, and advocate.
	Fund	Can lobby, endorse candidates, provide information, and advocate.
Estonia	Association	Only political parties can run candidates for election, but NPOs are free to lobby. Some general restrictions on funding political parties may apply.
	Foundation	
Hungary	Association	Hungarian organizations with public benefit status can't engage in direct political activity (political party activity and nomination of candidates for national elections) or fund political parties; they must also be independent of political parties. Anyone with state funds can't use them for political activities without express permission.
	Foundation	
	Public Benefit Company	
Kosovo	Association	NGOs may not engage in fundraising or campaigning to support political parties or candidates for political office, nor may they propose, register or in any way endorse candidates for public office.
	Foundation	
Latvia	Non-Profit Organization	Government may not finance political activities of public organizations. A public organization can disseminate information on activities, have its own press, organize public meetings or demonstrations, and maintain contacts with foreign public organizations.
	Public Organization	
Lithuania	Association	Lithuanian NPOs may not participate in election campaigns, but all other political, legislative and lobbying activities are permitted.
	Fund	
	Community Organization	
	Public Institution	
Macedonia	Association	Can't perform political activities (direct participation in campaign or financing parties).
	Foundation	
Poland	Association	Polish law explicitly gives associations the right to public expression; they can engage in almost any political activity, even participation in electoral campaigns.
	Foundation	Depends on purposes of foundation; political purposes may not qualify as public benefit.
Romania	Association	Political parties are not governed by the law on associations and foundations. In general, at least previous to the new law, lobbying and endorsing candidates were permitted.
Slovakia	Foundation	Political parties and political movements are governed by separate law. Apparently NPOs can endorse candidates, lobby, and even contribute to campaigns.
	Non-Profit Organization	Cannot finance activities of political parties/movements nor benefit candidates for elected posts..
	Foundation	Cannot finance activities of political parties/movements or contribute to a candidate.
Slovenia	Association	Groups founded exclusively for political aims are governed by special law on political parties.
	Foundation	Law doesn't explicitly prohibit foundations with political aims.
Serbia	Association	Not specifically addressed; in practice, almost unrestricted. Political parties are governed by separate law.
	Foundation	

Montenegro	Association	Not specifically addressed; in practice, almost unrestricted. Political parties are governed by separate law.
	Foundation	