

The Legal Framework for Not-for-Profit Organizations in Central and Eastern Europe

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Introduction

The legal framework for not-for-profit organizations (NPOs) in Central and Eastern Europe (CEE)² has undergone dramatic reform since 1989. Upon transition, the NPO legal framework was either incomplete or out of date. For example, Bulgaria relied on a 1949 law, while Romania awoke “Sleeping Beauty” – a 1924 law that the communists had neglected to repeal.

Others countries swiftly enacted new NPO legislation. Then-Czechoslovakia enacted a new associations law just four months after the Velvet Revolution. Macedonia enacted a new law on “social organizations and associations” even before holding multi-party elections.

By the mid-1990s, the region had witnessed a renewed effort to reform NPO legislation. Countries found that existing legislation failed to support the “renaissance of civil society”³ arising in the region. In some cases, countries found that the swiftly enacted legal framework was incomplete. For example, the Albanian Civil Code contained just ten general provisions on foundations. Pyramid schemes exploited the vagaries of the law, contributing to civil chaos that plagued Albania in the mid-1990s.

In contrast, the laws in other countries were overly burdensome. Romanian law required 20 founders for an association, while legislation in the Federation of Bosnia-Herzegovina (BiH) required 30 founders. Moreover, the Federation required that founders be “citizens,” which disenfranchised refugees and internally displaced persons seeking to exercise their associational rights.

Tax and fiscal frameworks were similarly constraining. In some countries, NPOs were taxed as businesses, and there were few incentives for philanthropy. At the same time, some countries restricted the ability of NPOs to engage in income-generating activities, and government funding was often based more on patronage than public service. Without tax benefits, incentives for philanthropy, opportunities for income-generation, or government funding, prospects for NPO financial sustainability were limited.

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² For purposes of this paper, CEE encompasses Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Montenegro, Poland, Slovakia, Slovenia, and Serbia.

³ Douglas Rutzen, “The Renaissance of Civil Society,” *Select Legislative Texts and Commentaries on Central and East European Not-for-Profit Law (ICNL and EFC, 1994)*, p. vii.

But soon, in country after country, working groups formed to revise laws, policies, and practices. With the benefit of remarkable leaders and fresh perspectives, the NPO legal environment improved and achieved global acclaim. As Lester Salamon and Helmut Anheier wrote in 1999, “in many ways, the new legal frameworks emerging in the region appear to be superior to those in the West, which developed in a far more haphazard fashion.”⁴

This survey is dedicated to those remarkable women and men who have done so much to improve the legal environment for civil society in the region. Their dedication, skills, and integrity are an inspiration as we continue to address challenges confronting civil society in the region and around the world.

I. Provisions of General Laws

A. Consistency and Clarity of the Laws

The regulatory framework for NPOs consists not of a single “NPO law,” but of a series of different laws and regulations, including framework legislation, tax legislation, procurement laws, legislation governing social service delivery, and the legal framework for public participation, among others.⁵

The clarity and consistency of the regulatory framework varies widely from country to country. Registration procedures may consist of a simple, one-step process (Kosovo); a two-step approval process (Romania); or a quagmire of overlapping laws (Serbia). In some countries, tax laws may provide appropriate exemptions to NPOs and incentives to donors, but in others, NPOs are taxed like businesses. Government financing of NPOs may be reasonably transparent (Hungary) or remain a largely non-transparent process.

Thus, despite the tremendous law reform efforts since 1989, 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, associations, and, as in Poland, foundations. Some countries also explicitly recognize the right to join an organization (Czech Republic, Hungary, Kosovo, Macedonia), as well as the right not to be a member of an association (Czech Republic, Macedonia, and Montenegro). Interestingly, Montenegro’s 2007 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 79, Constitution of Montenegro, 2007). In some countries, the freedom of association extends solely to citizens (Article 20, Constitution of Macedonia; Article 40, Constitution of Romania), but in others this right is explicitly granted to “all persons” (Article 2(3)(g), Constitution of Bosnia and Herzegovina; Article 43, Constitution of Croatia; Article 48, Constitution of Estonia; Article 63, Constitution of Hungary; Article 58, Constitution of Poland; Article 29, Constitution of Slovakia). Constitutional frameworks often draw a

⁴ Lester Salamon, Helmut Anheier and Assoc., “Civil Society in Comparative Perspective,” in *Global Civil Society: Dimensions of the Nonprofit Sector* (Baltimore, MD: The Johns Hopkins Center for Civil Society Studies, 1999), p. 34.

⁵ This paper does not address the legal framework for trade unions, political parties, or other similar organizational forms.

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, or the protection of the rights and freedoms of others (Bosnia, Czech Republic, Kosovo, Montenegro, Poland, Serbia, and Slovakia);
- Prohibitions of associations that aim to undermine a country's sovereignty, national integrity, constitutional order, or national unity (Bulgaria, Croatia, Estonia, Macedonia, Montenegro, Poland, Romania, and Serbia);
- Prohibitions against incitement of racial, national, ethnic, or religious enmity (Bulgaria, Czech Republic, Macedonia, Montenegro, Poland, Serbia, and Slovakia);
- Prohibitions against propagating Nazism, fascism, or communism (Poland);
- 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); and
- Prohibition of associations pursuing the goals of political parties, churches, and religious congregations, or being operated as such (Czech Republic, Slovakia).

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 47 members of the Council of Europe⁶ 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.

⁶ See <http://conventions.coe.int/>. The ECHR was ratified by the U.K. in 1953 and by Montenegro in 2007.

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.⁷

C. Types of Organizations

In CEE, the two 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., the board itself nominates successive members). 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 some jurisdictions, a “positive formulation” is used: in Albania, for example, the law states that NPOs must use their income and property for the purposes specified in the organization’s charter. In others, a “negative formulation” is employed: in Kosovo, an NPO “shall not distribute any net earnings or profits as such to any person.” Regardless of the precise formulation, the non-distribution constraint 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: Hungary and Slovenia require ten founders, and Poland requires fifteen⁸; Estonia and Latvia require only two. In Bulgaria and Romania, legal entities may found an association; in Macedonia and Slovenia, they may not. In Albania, the Czech Republic, and Hungary, foreigners can be founders of an association; but in Bosnia and Herzegovina, except for the Republic of Srpska, foreigners can only act as founders if they are residents of or are registered in Bosnia.⁹ Poland provides a second association form, the “simple association”

⁷ See, e.g., *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). For more on this topic, see Zvonimir Mataga, *Handbook on Freedom of Association under the European Convention for Human Rights and Fundamental Freedoms* (2007, on file with ICNL).

⁸ Poland also provides an alternate membership structure, the “Simple Association,” which only requires 2 members. Lithuania also had two membership forms until 2004, when it chose to simplify and consolidate the two forms into a single flexible association form.

⁹ 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

Most countries allow foreigners to form associations. In Slovakia, foreigners may not be the founders of an association. Some countries, such as Macedonia and Serbia, allow special “associations of foreigners” but limit the purposes they can pursue.¹⁰

Associations do not generally require capitalization. Romania is the one exception to this rule; the Law on Associations and Foundations requires associations to state the “initial endowment” of the association.

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, and the Polish Law on Foundations was adopted in 1984.

Countries generally take one of two approaches to the definition of a “foundation.” Some, such as the Czech Republic and Slovakia, require significant endowments, conceptualizing foundations as essentially endowed grant-making organizations (although they may also carry out other activities). These countries generally provide other forms to accommodate non-endowed, non-membership NPOs. Similarly, some countries specify that a foundation must serve its purposes in perpetuity, preserving its assets in order to do so. Other countries, such as Bulgaria and Estonia, define foundations more broadly, encompassing operating and grant-making foundations, whether temporary or permanent. 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 and Slovakia, foundations must serve the public benefit. In other countries, such as Estonia, foundations may serve private purposes.¹¹ 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, and Slovakia requires that a foundation have a minimum endowment of 200,000 SK. Other countries have adopted a more flexible approach. For example, the laws in

distinct entity within Bosnia, enacted a Law on Associations and Foundations in October 2001. The Federation of Bosnia and Herzegovina enacted a Law on Associations and Foundations in 2002. The three laws largely comply with regional best practices and international standards.

¹⁰ In May 2006, Montenegro held a referendum on independence. Following the referendum, the Union of Serbia and Montenegro has given way to two fully independent states. 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.

¹¹ In other words, in Estonia a group of friends could organize a hiking club as a foundation. However, 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.

Slovenia, Croatia, and Serbia do not state minimum capitalization requirements.¹² Rather, they state that a foundation's assets must 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 the Czech Republic, Slovakia, and 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.

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). Similarly, the Czech Republic recognizes "funds" and Slovakia recognizes "investment funds" that (unlike foundations) do not require an endowment. However, these forms are given fewer fiscal and tax benefits than foundations, in exchange for fewer limitations on the use of assets.

Third, a few countries have created "open foundations," which are 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.¹³

¹² A new draft Law on Endowments and Foundations in Serbia requires the minimum endowment of €50,000 for an organization that pursues public benefit purposes, and €100,000 for an organization that pursues mutual benefit purposes.

¹³ Some countries also recognize public law foundations, which are beyond the scope of this article (which is limited to private law entities).

4. “Public Benefit Status”¹⁴

In many countries, various organizational forms are eligible to receive the functional equivalent of public benefit status.

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. In other situations, benefits do not derive from a distinct “organizational form,” but rather a distinct “status” 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. In Poland both NPOs and private companies founded under the Commercial Law Code can qualify for public benefit status.

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. Other countries have adopted specific “public benefit” legislation. Hungary adopted public benefit legislation in 1997, and Poland enacted a Law on Public Benefit Activities and Volunteerism in 2003.¹⁵

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 in the region, 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 many of the public benefit activities recognized in one or more countries in Europe:

- A. Amateur athletics;
- B. Arts;
- C. Assistance to, or protection of, physically or mentally handicapped people;
- D. Assistance to refugees;
- E. Charity;

¹⁴ For an in-depth examination of the regulatory treatment of public benefit status organizations, see ICNL’s *Model Provisions for Laws Affecting Public Benefit Organizations* (2002), ICNL’s White Paper on Public Benefit Organizations (July 2004), and an issue of the *International Journal for Not-for-Profit Law* dedicated to this topic: <http://www.icnl.org/knowledge/ijnl/vol8iss2/>.

¹⁵ This law also defines the terms “non-governmental organization,” which includes corporate and non-corporate entities outside the public finance sector as described in the Public Finances Act, not operating for profit, and formed under relevant legislative provisions.

- 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 designed to support or promote a 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 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 another administrative body. About half of CEE countries 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 association with the security apparatus had a chilling effect on associational activity.

A general, albeit not universal, trend is to transfer registration authority away from ministries. In some countries there is also a movement to develop specialized, apolitical bodies to register organizations. For example, in early 2007 the Macedonian Government amended the law

to transfer the registration of associations and foundations from the courts to the Central Register.

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. Accordingly, a number of countries, including Bulgaria, the Czech Republic, and Estonia, allow at least some types of organizations to register with district courts. Of course, the advantages of decentralized registration can be had without resort to the courts; Slovenian and Croatian associations can register with regional administrative bodies. The disadvantage of decentralized registration is that it makes it more difficult to have consistent decision-making.

Interestingly, Albania transferred registration authority from various local district courts to the single district court for Tirana in May 2001. This has proved burdensome, however, for NPOs outside of the capital city.

Most countries place a single body in charge of registering all NPOs of a particular form, whatever their purposes. Some, however, have separate registration processes for different NPO organizational forms. For example, in the Czech Republic, associations are registered by the Ministry of Internal Affairs, but courts register foundations, funds, and public benefit companies. A few countries—especially in the case of foundations—involve the ministry working in 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 Central Administrative Office 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 also state that this approach increases the risk that the government will exercise inappropriate direct or indirect control over NPOs.

2. *Registration Procedures*

Registration procedures 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 some 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 required public benefit companies (a specialized NPO form¹⁶) to submit a public benefit contract with a government agency. In Poland, separate procedures are in place for registration, permission to perform economic activities, and conferral of public benefit status.

Registration fees, if required at all, are generally nominal 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. In Serbia, registration costs

¹⁶ The legal form of the public benefit company was discontinued after July 1, 2007, and is replaced with the “nonprofit company,” which may also apply for the public benefit status. It is likely that to apply, the nonprofit company will also have to include a contract with a government agency.

approximately €8. Hungary requires no registration fee at all for foundations or associations, but requires the equivalent of €100 for registration of nonprofit companies.

3. *Grounds for Refusal*

In many countries, the registration organ may refuse to register an NPO only if the registration documents are materially incomplete, basic requirements of the law are not satisfied, or 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."¹⁷ Similarly, in Serbia officials may deny registration if they do not find the establishment of a foundation "opportune."¹⁸ These sorts of subjective provisions have proven to be 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 (at least on paper) to ensure that registration decisions are quick and in harmony with the 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.¹⁹ To enforce these deadlines, some countries have further specified that after a certain time period expires, the organization be considered registered by default.²⁰ 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 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

¹⁷ Article 6 of the Croatian Act on Foundations and Funds (1995).

¹⁸ Article 24 of the Serbian Act on Endowments, Funds and Foundations (1989).

¹⁹ 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).

²⁰ 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 by 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 since there is now an adverse decision to appeal.

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 registration/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.

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 the Czech Republic, the central register of foundations and funds as well as the register of public benefit companies is maintained by the Ministry of Justice and available on Internet (additionally, the Ministry of Interior maintains a list of associations, but it is rarely updated).

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 an NPO is operating. Macedonia also has public registries at both the national level and the local level.

Among those countries recognizing public benefit status organizations, some have created a separate registry of public benefit organizations at the state level (Bosnia and Herzegovina—Ministry of Justice; Bulgaria—Central Registry at the Ministry of Justice; Poland—State Court Register). Hungary, lacking a public registry for NPOs generally and PBOs specifically, is an exception to this trend, although an initiative is under way to introduce an Internet-based public registry in 2009.

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, and Estonia, have made their registries available online in this way.

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, for example, and limitations are likely to be broader

in the case of public benefit organizations. Furthermore, NPOs must confine their activities to those listed in their governing documents and may be required to obtain licenses to carry out certain activities (such as running a daycare center for young children).

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 that the court dissolve the organization (Romania) or notify the public attorney about the illegal activities (Bosnia, Croatia, Montenegro, and Serbia). 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. 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 suffer harm (Hungary) or if they can prove their legal interest in the proceedings (Bosnia, Bulgaria, Croatia, Czech Republic, Montenegro, and Serbia). 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.

II. Governance

The laws in Central and Eastern Europe vary greatly in the amount of detail with which they address NPO internal governance issues. Some simply require that the organization’s statute outline the structure of the organization. Others spend pages of legislative text laying out voting procedures and quorum requirements, providing for management failures of various kinds, etc. In some cases, these detailed rules 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 envision 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; and setting 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 key organizational decisions.

Countries differ on the procedure to call a meeting of the general assembly of members. Many allow the procedure to be governed by the organization's statutes. Some also regulate additional issues, for example, the fraction of the members (ranging from one-tenth in Estonia to one-third in Hungary) required to call a special meeting of the general assembly. A few also 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 address the procedure to convene 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 obtain redress if the association operates improperly. In Albania, Hungary, Romania, Bulgaria, 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 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. In Slovenia, there is a single management 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. 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 three 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 a general rule, the highest governing body 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, Montenegro, and Serbia), any person with 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 with 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, conflicts of interest are addressed through (1) required disclosure of the conflict of interest between the individual and organization, (2) recusal of that individual from the decision-making process, (3) mandatory approval of any associated transaction by the highest decision-making body of the organization, and (4) a requirement that the transaction be 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 and subsequent changes in membership of the governing body (Hungary). In Romania, if a member of an association violates the conflict of interest rule—and the required majority approval 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.

III. 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).²¹

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 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 provides additional resources for the organization’s continued operation.

In some countries, such as the Czech Republic, some organizations with public benefit status may be terminated only upon the condition that their remaining property is transferred to another organization of the same legal form. More specifically, termination of a foundation is possible only when its endowment and other remaining property are transferred to another foundation with a similar purpose. If no such foundation exists or is willing to take over the property, it must be transferred to the community where the foundation had its registered headquarters and must be used for a public benefit purpose.

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 allows the responsible

²¹ The European Court on Human Rights explicitly extended Article 11 protections to the termination of an organization in the *ÓZDEP* case.

ministry to dissolve a foundation if, in its judgment, changed circumstances make the continuation of the foundation unnecessary. This provision has been criticized, 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 fulfilled their public service, but also if they have seriously compromised the service's quality or interrupted it because of the organization's 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 have 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 (five years) that an association must be dormant before it can be dissolved; this approach is also reflected in the Federal Law that is still operational in Serbia.²² Slovakia takes a different approach, dissolving organizations whose management boards fail to meet or have unfilled vacancies for a fixed period of time, while the Czech Republic requires a community self-government to fill a vacancy in the board, if the founders or other relevant body of the organization fail to do so within 60 days.

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 seek to have an NPO 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.²³ In some countries, 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.²⁴ Generally, upon 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

²² Article 47 of a Serbian draft Law on Associations, which has recently been reintroduced to Parliament, also stipulates that an association shall be deemed dormant if it does not engage in any statutory activities for two successive years, or if the general assembly does not convene during a period which is twice as long as the one prescribed by the statute for the general assembly to convene.

²³ A Serbian draft Law on Associations also contains detailed provisions on liquidation procedures.

²⁴ Hungary reportedly has had this problem. See *Select Legislative Texts and Commentaries* (on file with ICNL).

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 be transferred 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. Latvian organizations that qualify for public benefit status are subject to a similar rule. 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. In practice, however, public benefit status will not be granted to a foundation unless it is specified in its founding document that any remaining assets will be given to a foundation with a similar purpose.

Associations generally have fewer restrictions placed on the distribution of remaining property; they may well be able to distribute it to their members. This is the default rule for Lithuanian associations (although Lithuanian associations qualifying to receive donative sponsorship could not apply this rule). In Estonia, distribution to members 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. In contrast, Slovenia and Latvia prohibit all associations—whether mutual benefit or public benefit—from distributing remaining assets to members, requiring instead that they be distributed to another association or public organization. Latvian Non-Profit Organizations are subject to an intermediate rule: they can return their participants' capital contributions, but not any profits.

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, for example, 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. Latvia has a similar provision, which also applies if the organization's primary purpose becomes economic activity. 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.

IV. Regulation

A. Regulatory Authorities

The principal regulatory authority over NPOs varies widely from country to country in the CEE region. For example, in Bulgaria and Hungary, the responsible authority is the public prosecutor of the district where the NPO is registered. In Estonia and Slovakia, the Ministry of the Interior regulates the activities of associations and foundations; in the Czech Republic, the Ministry of the 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 State Agency ‘National Security’ is tasked with monitoring money laundering and the financing of terrorism, and the National Revenue Agency ensures the payment of social security under labor contracts and the payment of taxes (e.g., income tax, tax on profits from economic activity, etc.), while the local authorities are responsible for collecting local taxes and fees (e.g., tax on real estate, tax on some property transactions, etc.).

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 food services, home care, family care, and special basic social services, as well as day care and residential services. In Bulgaria, to provide social services, an organization need not be licensed, but it must be registered 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, associations in several countries are exempt from these reporting requirements. For example, Czech and Slovak

associations do not have to produce any reports so long as their income is below a certain level. However, they may be audited and therefore need to keep records. In these 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 and Poland are 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, such 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 Minister responsible for social security issues 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, and in Poland members of the Public Benefit Work Council have the right to participate in control activities. 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 fourteen 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 to €500. In Poland, an association that does not comply with requests for documentation is subject to a one-time fine not to exceed 5,000 zlotys, 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 SKK 100,000. In many countries (Bosnia, Croatia, Montenegro, and Serbia), fines may be levied against both the organization and against the responsible representative of the organization.

Continued failure to file reports can lead to termination and dissolution in most countries. Termination should only follow, however, after 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, a PBO can be terminated in case of systematic noncompliance 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.

V. Foreign Organizations

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:

1. Proof that the organization is registered in another country;
2. Governing documents showing the goals and activities of the foreign organization and its branch office;
3. An official decision to establish a branch office in a given country; and,
4. The 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. The situation is similar in Serbia, where foreign organizations' branch offices operate based on a certificate issued by the Ministry of Foreign Affairs—although such a practice does not have support in currently governing legislation.²⁵

VI. 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).

²⁵ A draft Law on Associations, however, governs the registration of foreign organizations in some detail.

Laws in many countries, however, provide 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 other foundations (due to concern over protecting the foundation's property and the concern that in some countries foundations are, by definition, PBOs, while associations may be organized for either mutual-benefit or public-benefit purposes). Albania, the Czech Republic, Estonia, and Slovakia forbid the transformation and merger of foundations (as well as centers and public benefit companies) into associations and vice-versa. 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 usually 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 these countries there are specific limitations on the investment of the endowment by a foundation. In Slovakia, the Law on Foundations also sets specific limitations on investments to protect against the diminishment of a foundation's 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 local 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. Some, 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—even allowing associations to take part in elections through special elective committees. That said, Polish NPOs active in the legislative process risk being treated as lobbyists and fined as a result of the broad definition of lobbying in the law. Lithuania explicitly excludes associations' uncompensated legislative advocacy on behalf of their members from the application of its lobbying laws.

In Hungary, the restriction on political activities is tied to the public benefit status. Hungarian law generally allows foundations and associations to finance political parties but denies a PBO status to all NPOs that fund political parties, that are not independent of those parties, or that nominate candidates for national elections (nominations for local elections are allowed). Hungary also adopted a law on political party foundations—similar to the German model—whereby separate budget support is given to party foundations, which are also allowed to fundraise for and finance the party with which they are affiliated.

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 right 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.

VII. Tax Laws

In the transition from socialism, the first step toward developing a viable NGO 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 forefront of discussions. 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 public benefit organizations.²⁶ In some cases, this is because the profits tax leaves NPOs as a whole outside its scope. More commonly, however, tax laws 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, publicly beneficial. It also exempts donations to other legal persons if they are used for certain designated public benefit purposes. Poland and Albania have similar systems. In Lithuania, an organization must qualify as eligible

²⁶ 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.

to receive sponsorship in order to avoid taxation on its donations (which requires it to spend those donations on public benefit activities). However, Lithuanian NGOs do not pay profits tax unless their annual profit exceeds one million Lithuanian litas (approximately 300,000 euros).²⁷

There is 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.

The qualification requirements for exemption depend in large part on the scope of the exemption. In some countries, registration as a particular NPO form is itself sufficient to qualify the organization for tax benefits. Thus, the registering authority's decision is the source of both legal entity status and tax benefits.

Estonia, Bulgaria, Hungary, Latvia, and Poland 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.

In jurisdictions requiring separate application for tax benefits, there is some variation in who has responsibility for the master list of exempt organizations. In Bulgaria, the list is kept by the Minister of Justice; in Kosovo, by the NPO Registration Office. In Latvia there is not a separate list of tax-exempt organizations; rather, a public benefit commission determines which organizations are accorded public benefit status in the register of legal entities, and the tax authorities must provide tax benefits to the organizations receiving that status.

2. VAT

There are several ways in which VAT may be applied to public benefit organizations. One option is simply to exempt them from the VAT system. This means that they do not charge VAT on goods and services that they provide, but it 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. The European Union imposes a different system which has now been introduced in all of the new member states. Under this system, the VAT treatment does not depend on the status of the organization, but the type of goods or services provided. Within the limitations provided by the 6th Directive,²⁸ member states may choose to exempt certain types of goods or services or lower the rates charged on them.

A few countries have had across-the-board exemptions for NPOs in general or charitable organizations specifically (Montenegro). These exemptions frequently do not apply when the goods or services are part of an organization's economic activities (Romania), or when a tax preference would distort market competition (Montenegro). Macedonia has a narrower exemption that applies to cultural institutions, botanical gardens, zoos, parks, archives, and documentation centers. Several countries also have created incentives for foreign aid by

²⁷ Martinas Zaltauskas & Viktorija Daujotyte, European Foundation Center, *Country Profile December 2008: Lithuania* (updated by Vaidotas Ilgius), at 7, available at <http://www.efc.be/ftp/public/eu/CountryProfiles/lithuania.pdf>.

²⁸ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31977L0388:EN:HTML>

providing special VAT exemptions for international organizations, internationally donated supplies, or local NPOs funded by international donors. However, such exemptions are being discontinued in the EU accession process, as under EU rules, the VAT treatment may not consider the source of the income.

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 €10,000 and €30,000, although Romania has a higher threshold of approximately €50,000. In Kosovo, an organization must register for VAT if it has imports from or exports to other parts of the Former Republic of Yugoslavia (FRY), or if its turnover is above €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, and in line with the EU regulations, 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.

B. Donor Benefits

Virtually all of the countries in the region grant at least some benefits to donors for contributions that they make to certain NPOs. An exception is Slovakia.

At the same time, several countries (Hungary, Lithuania, Poland, Romania, and Slovakia) have enacted innovative laws that allow taxpayers to designate 1-2% of their paid taxes to be distributed to qualifying 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, except Slovakia, 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.

Generally, the benefit is in the form of a deduction, which decreases the tax base (i.e., the amount of taxable income upon which the tax is computed) 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 profit; 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 (such as 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 (5%), 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/profit, for example: 1% (Albania²⁹), 5% (Czech Republic, Kosovo, and Romania) or 10% (Bulgaria, Poland, and Slovakia).

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. Croatia allows the applicable 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,³⁰ Bosnia and Herzegovina, Kosovo, Lithuania, 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 €200), or up to HUF 100,000 for "prominently" public organizations. However, higher income individuals (those in the highest bracket) may not take advantage of this possibility, as they are denied tax benefits altogether.

In Macedonia, individuals are entitled to a personal income tax reduction amounting to 20% of the total amount of the annual tax liability of the provider, but not exceeding 24,000 MKD (€390), if the donation is given to citizens' associations and foundations of public interest, public institutions, local self-government units, and other legal entities enumerated in the law. In Poland, individuals can deduct 6% of their donation when they donate to an "ordinary NGO" and 100% of their contribution when they donate to a religious organization.

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 countries in the region have special regulations treating endowments. However, many NPOs derive some part of

²⁹ 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.

³⁰ 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.

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 categorized as an 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 and Herzegovina, Croatia, and Romania), such investments are not considered taxable income for legal persons in general. In these jurisdictions, charitable organizations’ investment income is exempt from tax. Other rules nonspecific to NPOs may impact whether particular investments are taxable.

Some jurisdictions provide special exemptions for passive income earned by charitable organizations. Examples of this approach include Kosovo and Poland.³¹ 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 €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, four countries—Albania, Bulgaria,³² Slovakia, and Slovenia—generally provide no exemption for passive income, or for charitable organizations’ passive income in particular. Failing 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*

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. Hungarian law specifically states that economic activities (including passive investment) must not jeopardize a foundation’s

³¹ 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.

³² Bulgaria does not tax income from interest on bank deposits for funds that have been received as part of the non-profit activity of the NPO. In addition, there are certain general exemptions for income from investments in publicly traded shares on the Bulgarian stock market.

purposes. Further, Hungary 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. Lithuania requires charity and sponsorship funds to hold their funds in banking institutions.

D. Commercial/Business/Economic Activities

Given 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 entities in disguise. The principal safeguard against this, of course, is the non-distribution 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.”³³ 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” (for example, tuition for an educational organization).³⁴ Several countries—for instance, the Czech Republic—explicitly provide that certain cultural 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 NGOs to engage in economic activities directly; that is, without creating a separate for-profit company to do so. In

³³ 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 (available online at <http://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.

³⁴ *Ibid.*

addition to imposing the non-distribution constraint on any income earned from these activities, many countries impose a 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 (Albania, Hungary, Latvia, and Slovenia). Some require that economic activity be incidental and not comprise a regular part of the organization's activities (Romania), or that it be carried out only to the extent necessary to support the organization's purposes (Croatia, Hungary, Lithuania, and Slovenia).

There is a 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 established. Bosnia, Bulgaria, Latvia, Romania, and Slovenia all have laws that explicitly allow NGOs to engage in *related* economic activity, which leaves their ability to engage in unrelated activity more questionable. Latvia allows other economic activity only so long as it is "complementary" and "pertains to the maintenance and utilization" of the NGO's own property—suggesting that such activities should remain an incidental accessory to the NGO's other activities. Similarly, in Albania, the 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 only to the extent necessary for fulfillment of the NPOs' statutory tasks, and only under certain specific conditions. Poland also recognizes a category "paid public benefit activities" subject to special conditions and regulation. Montenegro takes a different approach; instead of differentiating between related and unrelated economic activities, it establishes a percentage/monetary threshold for income generated from those activities, beyond which an organization must engage in economic activities only through an independent commercial entity.

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,³⁵ 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.

2. *Tax Treatment of Economic Activities*

³⁵ 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.

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.³⁶ At the other extreme, Albania, Bulgaria, Slovenia, Romania, and Republika 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 Estonia, is to tax income from economic activities only when it is unrelated to an organization’s statutory purposes.³⁷

Another approach, used by Poland and Kosovo, 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).

Another option is to employ a mechanical test, exempting income from economic activities below a set threshold, and taxing the rest. 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. Miscellaneous

1. Administrative Expenses

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

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 proven to be an extremely problematic provision and is inconsistent with regional good practices. Lithuanian sponsorship funds were subject to a similarly burdensome 20%-of-income restriction, which has since been abolished.³⁸

Also, according to the Czech Law on Foundations and Funds, the organization’s governing documents must prescribe self-selected limits to the administrative and operational

³⁶ In 2003, there were legislative proposals in Lithuania to subject NGOs’ economic activities to the profit tax.

³⁷ 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, Estonia exempts related (but not unrelated) expenditures.

³⁸ Zaltauskas & Daujotyte, *supra* note 27, at 6.

expenditures of a foundation or a fund, and the limitation may not be changed for at least five 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.

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 (Bulgaria, Hungary, Poland). 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. Romania allows NPOs to be subject to simplified accounting rules if they are not public benefit organizations, have the assent of public finance authorities, and their annual revenue does not exceed €30,000.

IX. 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. The Slovak Public Procurement Act runs counter to this trend by expressly excluding NPOs from public service tenders. However, upon EU accession, all new member states adopted some form of regulation that enables NPOs to apply for the Structural Funds of the EU that are channeled through the national governments (and may include grants as well as 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.³⁹ In the Czech Republic, however, there are clear, published grant application rules in the fields of science, research and development, education, and care for children, and ecology. Similarly, in Hungary, several laws govern various government funds that support NGOs through free and open competitions with set bidding rules; moreover, in certain cases NPOs can gain access to government funds through unsolicited proposals for grants and contracts.⁴⁰ Romania adopted a Law on Grants, which provides for the application of the same basic rules for grant competitions across national and local government agencies. In Croatia, a code of good practices has been adopted, which is designed to ensure transparency of government grant-

³⁹ However, Serbia draft Law on Associations and draft Law on Endowments and Foundations provide for transparent rules on public funding and significantly limit the government's discretion in this respect.

⁴⁰ E.g., in some of the ministries, the Minister has a discretionary amount of funds that s/he may use to support NGOs.

making through open competitions and objective criteria. Finally, in Montenegro, a cross-sectoral commission is empowered to distribute public grants.⁴¹

X. 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 originally designed to be vehicles through which the government could privatize services currently funded through state-run institutions, including hospitals, schools, and museums; but because of insufficient incentives to assume state responsibilities, privatization through public benefit companies has had only modest success. In Hungary, the public benefit company was also created to facilitate privatization. In practice, state agencies, ministries, and local governments in Hungary established public benefit companies staffed with former public administration staff and concluded contracts with these companies to provide public services formerly provided by the state. This mechanism is of course distinct from outsourcing service delivery to independent NPOs. It has been discontinued as of 2007 and the more general “nonprofit company” form has been introduced in its stead, which is less prone to such abuse.

At the same time, some types of social services (e.g., homeless shelters, disability homes, home care networks) are effectively provided by NGOs that receive payments covering a certain part of their costs from the state through a so-called normative support system (provided on a per capita basis). Foundation schools have also been successful, if not numerous, in Hungary.

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

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 (museums or health clinics), but in practice are rarely awarded such assets. More commonly, government assets and funding are distributed to quasi-NPOs or government organized NPOs.

XI. 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.
- *Founders.* Most countries require two to five founders for an association, and one or more founders for a foundation. Most countries also allow legal entities and foreigners to found NPOs.

⁴¹ For more information on NPO-Government partnerships, please visit the European Center for Not-for-Profit Law at <http://www.ecnl.org>.

- *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, and Croatia, 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 sometimes 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; and (4) improving the system of government funding to provide more effective delivery of public services.

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

Common NPO Organizational Forms				
Country	Association	Foundation	Public Benefit Company	Other
Albania	Association	Foundation	Center ⁴²	
Bosnia and Herzegovina (State level)	Association	Foundation		
Bosnia and Herzegovina (Federation)	Association	Foundation		
Bosnia and Herzegovina (RS)	Association	Foundation		
Bulgaria	Association	Foundation		Chitalishta ⁴³

⁴² Albanian centers are much like foundations, except that they are intended to operate with grants from other sources, not to provide grants themselves.

⁴³ Traditional Bulgarian community centers.

Common NPO Organizational Forms				
Country	Association	Foundation	Public Benefit Company	Other
Croatia	Association	Foundation Fund		Private Institutions
Czech Republic	Civil Association, Interest Association of Legal Entities	Foundation Fund	Public Benefit Company	Public Institution, ⁴⁴ Charitable Establishment ⁴⁵
Estonia	Non-Profit Association	Foundation		Non-Profit Partnership
Hungary	Association/ Social organization	Foundation Open Foundation ⁴⁶	Nonprofit Company	Public Foundation, Public Society
Kosovo	Association	Foundation		
Latvia	Association	Foundation	Non-Profit Organization	
Lithuania	Association	Charity and Sponsorship Fund, Foundation, Public Institution	Public Institution	
Macedonia	Citizens Association, Association of Foreigners	Foundation		
Montenegro	Association	Foundation		
Poland	Association, Simple Association	Foundation	Public benefit company	
Romania	Association	Foundation		

⁴⁴ A form used for semi-autonomous state-funded institutions like universities.

⁴⁵ 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.

⁴⁶ Although a special legal type, this is the most common foundation form.

Common NPO Organizational Forms				
Country	Association	Foundation	Public Benefit Company	Other
Slovakia	Civil Association	Foundation Non-Investment Fund	Non-Profit Organization that Provides Public Services, Non-Investment Fund	
Slovenia	Association	Foundation		
Serbia	Association ⁴⁷	Foundation		

⁴⁷ Under the Serbian law, associations are divided into social organizations or citizens' associations, and associations of foreigners.

Founding Requirements for Membership Organizations						
Country	Minimum Members	PERMITTED TO FOUND AND JOIN?				Special umbrella organization form? If so, how many organizations needed to found?
		Citi-zens	For-igners	Legal persons	Minors	
Albania	2/5 ⁴⁸	Yes	Yes	Yes		No
Bosnia and Herzegovina (State level)	3	Yes	Yes, if resident or registered in BiH	Yes	Yes	Not addressed
BiH (Federation)	3	Yes	Yes	Yes	Yes	Not addressed
BiH (RS)	3	Yes	Yes	Yes	Yes ⁴⁹	Not addressed
Bulgaria	3 ⁵⁰	Yes	Yes	Yes		No
Croatia	3	Yes	Yes	Yes ⁵¹	No	Yes; 2 or more associations
Czech Republic	3	Yes ⁵²	Join Only ⁵³	Join Only	Yes ⁵⁴	Yes; 2 or more associations
Estonia	2	Yes	Yes	Yes	Yes	
Hungary	10	Yes	Yes	Yes	Yes	Yes, federation: 10 associations needed

⁴⁸ At least two juridical persons or five natural persons must be members of the association.

⁴⁹ 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.

⁵⁰ Public benefit associations must have at least 7 natural persons or 3 legal persons as members.

⁵¹ Local legal persons can found associations, as can foreign legal persons. Foreign legal persons can join associations whose statutes so specify.

⁵² Citizens of any member state of the European Union have equal rights when residing in the Czech Republic.

⁵³ Sometimes contested by the Ministry of Interior, but supported by a ruling of the Constitutional Court.

⁵⁴ At least one founder must be 18 years old.

Founding Requirements for Membership Organizations						
Country	Minimum Members	PERMITTED TO FOUND AND JOIN?				Special umbrella organization form? If so, how many organizations needed to found?
		Citi-zens	For-igners	Legal persons	Minors	
Kosovo ⁵⁵	3	Yes	Yes	Yes		Current law does not prohibit them
Latvia	2	Yes	Yes	Yes		Yes; 2 or more associations
Lithuania	3	Yes	Yes	Yes	Join Only ⁵⁶	Not addressed
Macedonia	5	Yes	Join Only ⁵⁷	No	No	Yes; associations and foundations
Montenegro	5	Yes	Yes ⁵⁸	Yes	Yes ⁵⁹	Yes; 2 or more juridical persons
Poland <i>Associations</i>	15	Yes	Join Only ⁶⁰	Yes as Supporting Member ⁶¹	Join Only (16+)	Yes; 3 or more
Poland <i>Simple Associations</i>	3	Yes	Yes	No	Join Only (16+)	No

⁵⁵ At least one founder must have residence or seat in Kosovo.

⁵⁶ Children under 18 may be members of an organization active in the field of children's or youth activities.

⁵⁷ 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."

⁵⁸ Must have a residence or place of business in Montenegro.

⁵⁹ 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.

⁶⁰ Foreigners who are not permanent residents may join a Polish association if the association's statute explicitly so provides.

⁶¹ Legal persons can join Polish associations as "supporting members."

Founding Requirements for Membership Organizations						
Country	Minimum Members	PERMITTED TO FOUND AND JOIN?				Special umbrella organization form? If so, how many organizations needed to found?
		Citi-zens	For-igners	Legal persons	Minors	
Romania	3	Yes	Yes	Yes		Yes; 2 or more associations or foundations
Slovakia	3	Yes	Yes ⁶²	Join Only	Yes ⁵⁴	Yes; 2 or more associations
Slovenia	10	Yes	Join Only ⁶³	No		
Serbia	10	Yes	No ⁶⁴	No	No ⁶⁵	

Capitalization Requirements for Foundations and Funds		
Country	Organization Form	Minimum Initial Capital
Albania	Foundation	Appropriate for purposes ⁶⁶
Bosnia and Herzegovina (State level)	Foundation	Assets required, but no minimum amount specified
BiH (Federation)	Foundation	2,000 KM (\$1,800)
BiH (RS)	Foundation	Assets required, but no minimum amount specified
Bulgaria	Foundation	While there must be some initial capital, no specific minimum amount is required. At least in theory, therefore, 1 Bulgarian lev would be sufficient to satisfy the requirement.

⁶² In practice, however, it is recommended that foreigners found associations with local citizens.

⁶³ Permanent residents and foreigners may join if the statute explicitly so specifies.

⁶⁴ Foreigners (including, presumably, permanent residents) may establish special “associations of foreigners” in Serbia.

⁶⁵ As a general rule, a minor is anyone who cannot vote, which in Serbia means anyone under 18.

⁶⁶ 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.

Capitalization Requirements for Foundations and Funds		
Country	Organization Form	Minimum Initial Capital
Croatia	Foundation	Enough to serve purposes permanently; income must exceed amount necessary to maintain property
	Fund	Appropriate for purposes
Czech Republic	Foundation	500,000 CZK
	Fund	None specified
Estonia	Foundation	Can be dissolved if assets are clearly insufficient and no acquisition is likely in the immediate future
Hungary	Closed Foundation	Appropriate for purposes
	Open Foundation ⁶⁷	Enough to begin serving its purposes
Kosovo	Foundation	None
Latvia	Foundation	None
Lithuania	Charity and Sponsorship Fund/Foundation	None
Macedonia	Foundation	5,000 Euro
Montenegro	Foundation	None
Poland	Foundation	Must have 1000 PZL set aside if conducting business activities
Romania	Foundation	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	SK 200,000
	Non-Investment Fund	SK 2,000
Slovenia	Foundation	Appropriate for purposes
Serbia	Foundation	Appropriate for purposes

NPO Registration Procedures				
Country	Entity Type	Body	Time	Special Refusal

⁶⁷ 95% of Foundations in Hungary are “open foundations.”

NPO Registration Procedures				
Country	Entity Type	Body	Time	Special Refusal
Albania	Association, Foundation, Center	District Court of Tirana	15 days	
Bosnia and Herzegovina (State level)	Association	Ministry of Justice of Bosnia and Herzegovina	30 days	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			
BiH (Federation)	Association	Single Canton: Cantonal Ministry; otherwise Ministry of Justice	30 days	Same as BiH State level, and/or if they engage in electioneering, fundraising for candidates, or financing of candidates or political parties
	Foundation	Ministry of Justice and government		
BiH (RS)	Association	District Court	15 days	Same as BiH Federation, and/or if generating profit is the primary purpose of the organization program
	Foundation	District Court		
Bulgaria	Association	Local District Court; public benefit organizations must also register with the Ministry of Justice	14 days for Ministry of Justice	
	Foundation			
Croatia	Association	County offices	30 days	If organization program or activities contravene the Constitution or law
	Foundation	Central Administrative Office (with required permission from activity-area ministry)	30 days for area ministry; 60 total	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	Ministry of Interior		
	Foundation	Register Court		Military organizations must have prior government approval

NPO Registration Procedures				
Country	Entity Type	Body	Time	Special Refusal
	Fund	Register Court		
Hungary	Association, Foundation	District Courts	Expedited procedure	
	Nonprofit Company	District Commercial Court	Expedited Procedure	
Kosovo	Association, Foundation, Public Benefit Organization	NGO Registration and Liaison Department, Ministry of Public Administration	60 business days	Denial if (a) registration documents do not comply with requirements of regulation; (b) statutes would violate provisions of 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	Register Authority	30 days	
	Association		7 days	
	Foundation		7 days	
Lithuania	Association	Register of Enterprises		
	Public Institution			
	Fund			
Macedonia	Association	Primary court of the territory in which NPO is seated	30 days	If statute, program or activities of NPO are directed towards violent overthrow of constitutional system, instigate military aggression or national, religious, or racial hatred and intolerance, or violate the prohibition on political activities
	Foundation	Central Registry	5 days	
Montenegro	Association	Ministry of Justice	10 days	
Poland	Association	Local branch of National Registry Court	3 months	Administrative authorities informed, and can object

NPO Registration Procedures				
Country	Entity Type	Body	Time	Special Refusal
	Foundation	Local branch of National Registry Court	14 days	
	Simple Association	Local <i>starost</i> office	30 days	
Romania	Association Foundation	Primary court	3 days	
Slovakia	Association	Ministry of Interior	10 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 is not a gathering of property or not publicly beneficial (advisory ministry's re-port 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	Ministry of State Administration and Local Self Government, municipal administrative organ over internal affairs	Union: 15 days; Serbia: 30 days	Union: If program or activities are directed at violent destruction of the constitutional order, territorial integrity, or independence of the country; or violation of rights and freedoms protected by the Constitution; or stirring of ethnic, racial or religious hatred
	Foundation	Ministry of Culture		If foundation is judged unnecessary; no redress procedure

Mandatory Governing Organs of Common NPO Forms					
Country	Entity Type	General Assembly	<u>Board</u>	Management	Other Required Body
Albania	Association	Yes		Single person or committee	
	Foundation		At least 3 members		
Bosnia and Herzegovina (State level)	Association	Yes		Board or person representing the association appointed by the assembly	
	Foundation		Founder or authorized person appoints management board of at least 3 members		
BiH (Federation)	Association	Yes		Board or person representing the association appointed by the assembly	
	Foundation		Founder or authorized person appoints management board of at least 3 members		
BiH (RS)	Foundation		Founder or authorized person appoints 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		At least 3, though the General Assembly may agree on a 1-person management board (or manager)	
Croatia	Association	Yes			
	Foundation		General provision for “foundation bodies,” which are representative and		

Mandatory Governing Organs of Common NPO Forms					
Country	Entity Type	General Assembly	Board	Management	Other Required Body
	Fund		managing. Chosen for the first time by a ministry; nominated by director. ⁶⁸		
Czech Republic	Association	Yes			
	Foundation		At least 3 members		Auditor or 3-member Supervisory Board ⁶⁹
	Fund				
Estonia	Public Benefit Company		3, 6, 9, 12, or 15 members ⁷⁰	Managing Director	3-7 member Supervisory Board
	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.
	Foundation		Yes		
	Nonprofit Company	Yes		Yes, as in the limited liability company or other comparable company legal form	Supervisory Board and Auditor or as required by the comparable legal form
Kosovo	Association	Yes			
	Foundation		At least 3 members		
Latvia	Non-profit Organization	Investors in a nonprofit organization have the right to manage it.			
	Association	Yes		1- or several-member	
	Foundation			At least 3 persons, unless a separate 3-person supervisory	Yes

⁶⁸ In Croatia, a "director" is a special temporary officer, nominated by the founder, who starts the organization.

⁶⁹ Organizations with less than CZK 5,000,000 can have only a single auditor.

⁷⁰ 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 Common NPO Forms					
Country	Entity Type	General Assembly	<u>Board</u>	Management	Other Required Body
				board exists	
Lithuania	Association	Yes		Either one person, collegial body, or both	
	Charity and Sponsorship Fund	Founders' Meeting	Yes	A head and a chief finance officer	Auditor
	Public Institution	Founders' Meeting		1-person director	
Macedonia	Association	Yes		Yes	
	Foundation			Yes	
Montenegro	Association	Yes ⁷¹		Unless less than 10 members	
	Foundation		Yes ⁷²	Yes	
Poland	Association	Yes	Yes		Internal auditing organ
	Foundation			Yes	If foundation has PBO status, must have internal auditing organ
Romania	Association	Yes	Yes		Auditor or committee of auditors ⁷³
	Foundation		At least 3 members		Odd number of auditors ⁷⁴
Slovakia	Association	Yes			

⁷¹ However, if there are more than 10 members, it appears that not all of them would have to be members of the General Assembly.

⁷² The Montenegrin law provides that a foundation shall have the management board and the supervisory board.

⁷³ A committee of auditors is required for associations with over 100 members.

⁷⁴ 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.

Mandatory Governing Organs of Common NPO Forms					
Country	Entity Type	General Assembly	<u>Board</u>	Management	Other Required Body
	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 ⁷⁵
	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	

⁷⁵ Although not clearly stated, the statute also appears to allow for substituting this committee with a single auditor.

Restrictions on NPO Governing-Organ Membership

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
BiH (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 members of Foundation Council (a national body)
	Fund	
Czech Republic	Foundation	Board of Directors and Supervisory Board members must not be convicted of a willful crime; must not be an employee or close relative of one; must not be members of both boards
Hungary	Association	Management must be Hungarian nationals or settled non-nationals with a residence permit ⁷⁶
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.

⁷⁶ This restriction does not apply to organizations of an “international character.” In such organizations, the only restriction is that the officers have not lost their civil rights (by being convicted or being judged incompetent). This further requirement also applies to other categories of associations.

Founders' Ongoing Powers over NPOs		
Country	Organization Type	Founders' Special Powers⁷⁷
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.
Czech Republic	Foundation	Founders can request termination or dissolution under certain conditions (as can other interested parties)
	Fund	
	Public Benefit Company	Founders can request termination under certain conditions (as can other interested parties). Founders can veto decision of the Board for Directors on termination or dissolution if they are willing to take over responsibility for continuing certain 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	Only founders can replace board members if they endanger the foundation's aim, and can amend the deed of foundation (but not name, purpose, or assets). ⁷⁸
Latvia	Foundation	Founders have power to appoint initial management and to annul a foundation until it is registered; all donors have power to review Foundation's affairs.
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.

⁷⁷ 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.

⁷⁸ Subject to the same approval procedures as the initial foundation registration.

Founders' Ongoing Powers over NPOs		
Country	Organization Type	Founders' Special Powers⁷⁷
	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.

<u>Limitations on NPO Involvement in Political Activities</u>		
Country	Organization Type	Restrictions
Albania	Association, Center, Foundation	Political parties are not subject to the Law on Non-Profit Organizations.
Bosnia and Herzegovina (State and Federation)	Association, 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, Foundation	Organizations pursuing political activities are governed by a separate act.
Croatia	Association, Foundation, Fund	Political parties are governed by separate act.
Czech Republic	Association	Cannot be founded if explicitly engaged in political activities (association law does not apply to political parties or movements, which are governed by separate laws) but can lobby, endorse candidates, provide information, and advocate.
	Foundation, Fund	Cannot provide financial support to political parties or political movements but can lobby, endorse candidates, provide information, and advocate.
	Public Benefit Company	Can lobby, endorse candidates, provide information, and advocate.

Limitations on NPO Involvement in Political Activities

Country	Organization Type	Restrictions
Estonia	Association, Foundation	Only political parties can run candidates for election, but NPOs are free to lobby. Some general restrictions on funding political parties may apply.
Hungary	Association, Foundation (except party foundations), Nonprofit Company	Hungarian organizations with public benefit status cannot 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 cannot use them for political activities without express permission. If financed with state funds, a foundation may not fund political parties.
Kosovo	Association, Foundation	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.
Latvia	Non-Profit Organization	
	Association, Foundation	Political parties are regulated by other laws; associations and foundations are allowed to engage in public activities such as disseminating information in the media, picketing, and holding public meetings.
Lithuania	Association, Charity and Sponsorship Fund, Public Institution	Lithuanian NPOs may not participate in election campaigns or sponsor political parties or organizations, but all other political, legislative and lobbying activities are permitted.
Macedonia	Association, Foundation	Can't perform political activities (direct participation in campaign or financing parties).
Montenegro	Association, Foundation	Not specifically addressed; in practice, almost unrestricted. Political parties are governed by separate law.
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

Limitations on NPO Involvement in Political Activities

Country	Organization Type	Restrictions
	Foundation	and foundations. In general, at least previous to the new law, lobbying and endorsing candidates were permitted.
Slovakia	Association	Political parties and political movements are governed by separate law. Apparently NPOs can endorse candidates, lobby, and even contribute to campaigns.
	Foundation	Cannot finance activities of political parties/movements or benefit candidates for elected posts.
	Non-Profit Organization	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, Foundation	Not specifically addressed; in practice, almost unrestricted. Political parties are governed by separate law.