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on

PROMOTING THE ROLE OF VOLUNTARY  
ORGANISATIONS AND FOUNDATIONS IN EUROPE

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## I INTRODUCTION

### PURPOSE

1 This Communication concerns one sector of the social economy in the European Community - that of voluntary organisations and foundations. These organisations are playing an important role in almost every field of social activity. They contribute to employment creation, active citizenship, democracy, provide a wide range of services, play a major role in sport activities, represent citizens' interests to various public authorities and play a major part in promoting and safeguarding human rights as well as having a crucial role in development policies.

1.1 Over the years they have made an increasing contribution to the development of Europe which is something that should be encouraged and developed.

1.2 Given this importance, the European Commission carried out an extensive survey in order to gain a better knowledge of the sector and to identify issues to be addressed. The results of the survey are given in annex 1.

1.3 The aim of the document is to illustrate the growing importance of the sector within the European Union, to show what problems and challenges these organisations are facing and to open up a dialogue on the basis of a set of ideas, in order to favour their development at European and national level, to improve their capacity to meet future needs and maximise their contribution to European integration.

1.4 This document presents a series of measures which could be taken at Member State level, but does not seek to impose on Member States specific solutions or actions. It is up to individual Member States to take on the different issues as they see fit. However, conforming to the principles of subsidiarity and proportionality there are some objectives which can be dealt with at Community level. These ideas are outlined in the "Conclusion".

## II. SCOPE

### *Voluntary organisations*

2 Of the three sectors - co-operatives, mutual societies, and voluntary organisations - which go to make up the social economy, that of voluntary organisations is by far the most difficult to delimit or define.

2.1 At their most basic, voluntary organisations are simply groups of people who have come together for some purpose or other.

2.2 At one end of the spectrum, the world of voluntary organisations merges imperceptibly into the tissue of everyday social, community, and family life; at the other end can be found great institutions of enormous national and even international importance such as universities, hospitals, research and cultural institutions, which many people are accustomed (erroneously) to think of as straightforward "public" bodies. Others, in contrast, have hundreds of professional staff, thousands of volunteers and a turnover of many millions of ECU's. Very many voluntary organisations work closely with public authorities in conventional spheres like social work; others maintain a strong tradition of complete independence and are concerned with radical social programmes or "alternative" lifestyles.

2.3 There is, however, some agreement that voluntary organisations share to varying degrees the following features:

a) they are distinguished from informal or ad hoc, purely social or familial, groupings by some degree, however vestigial, of formal or institutional existence.

(b) they are non-profit-distributing, that is to say they have purposes other than to reap profits for their management or members.

(c) they are independent, in particular, of government and other public authorities, that is to say free to govern themselves without interference according to their own rules and procedures.

(d) they must be managed in what is sometimes called a "disinterested" manner. The

use of this term is meant to indicate not just that voluntary organisations must not themselves be profit-seeking, but also that those who manage them ought not to do so in the hope of personal gain.

(e) they must be active to some degree in the public arena and their activity must be aimed, at least in part, at contributing to the public good.

2.4 The degree to which particular voluntary organisations share the above five features will vary considerably. Deciding, for example, whether a voluntary organisation is indeed independent is not easy, and the notion of the "public good" is bound to be controversial. The definition does, nonetheless, offer a degree of coherence in a complex area.

2.5 This paper deals with all organisations which share, to some degree, the above five features. However, three very specific kinds of organisation have been consciously excluded. These are political parties, which can be voluntary organisations but are clearly a special case; religious congregations (that is, in the strict sense, and not excluding organisations of religious inspiration active in work of general public benefit); and trade unions and employers' organisations.

### **Foundations**

3 Like voluntary organisations, foundations also undertake a wide range of activities. In some countries the foundation is frequently the preferred vehicle for pursuing purposes indistinguishable from those typically pursued in other countries by voluntary organisations. From the legal point of view, however, foundations form a more homogeneous group than do voluntary organisations, the only important distinction being between those that are for essentially private, and those that are for essentially public, benefit. It is foundations which have some public purpose (even while remaining private bodies) which are the focus of this Communication.

3.1 For present purposes foundations are thus bodies with their own source of funds which they spend according to their own judgement on projects or activities of public benefit. They are entirely independent of government or other public authorities and are run by independent management boards or trustees.

### **Types of voluntary organisation**

4 Voluntary organisations and foundations are difficult to categorise and define. Part of the difficulty at the European level lies simply in the different national traditions which they reflect, and their strong tendency to combine several different objectives. Most voluntary organisations and foundations can, however, be considered as having one or more of the following functions:

(a) Service delivery or provision to provide to their members or clients services such as social services, health care, training, information, advice or support.

(b) Advocacy, i.e. organisations whose purpose is to campaign, lobby, and otherwise argue on behalf of some cause or group with the aim of changing public perception or policy.

(c) Self-help or mutual aid: organisations typically formed by groups of individuals with some common interest or need in order to provide mutual help, information, support and cooperation.

(d) Resource and co-ordination: so-called "intermediary bodies" which co-ordinate the activities of, or provide information and support to, either individual organisations working in a particular field or to the sector in general. Such organisations fulfil the important function of providing an interface between the sector and public authorities.

4.1 Many voluntary organisations and foundations are, of course, national and even international in scope. The great majority, however, carry out their activities in regions or localities. In general, the narrower their geographical focus the greater the range of functions voluntary organisations tend to fulfil and the more difficult it is to separate these

functions one from another. Throughout Europe hundreds of thousands of autonomous local groups working at the level of the neighbourhood, city quarter, village, or small rural area, whose aim is to improve the quality of life for the local community. Such organisations in effect simultaneously fulfil, typically in an informal way, all the functions described above - providing services and mutual support, drawing attention to the needs of the community or of particular groups within it, and providing a mechanism through which the community can make its aspirations known to public authorities.

**The legal and fiscal framework for Voluntary Organisations and Foundations**

5 The importance of having clear, positive legal and fiscal frameworks for voluntary organisations and foundations to work in cannot be underestimated. Organisations find it difficult to develop their work when such frameworks do not exist, whether they be at national or European levels. Annex II gives an overview on the way that legal and fiscal frameworks for the sector are based in the European Union.

**III. THE ROLE AND IMPORTANCE OF VOLUNTARY ORGANISATIONS AND FOUNDATIONS**

6 It is clear from the results of the Commission's survey that voluntary organisations and foundations, though often very small, together command sizeable assets and mobilise large human resources, both salaried and volunteer. Like other forms of enterprise, and particularly small and medium sized enterprises many voluntary organisations and foundations are also economically active - they sell products, provide services for which they are paid, and generate surpluses which are then reinvested.

6.1 The contribution of the sector to the economy is very considerable indeed. Just how

significant has recently been revealed by the results of the first rigorous comparative survey of the sector in four Member States (the United Kingdom, France, Germany and Italy) directed by the John Hopkins University, Baltimore<sup>1</sup>. These results are of conceivable interest.

6.2 The study found that:

in Germany the sector accounts for 3.7% of total employment and 10% of total service employment. That is no less than a million people. The non-profit sector is especially important in health: 40% of the hospital patient days are provided by the sector, as are 60% of the residential care facilities.

in France 4.2% of the employed work in the sector or over 10% of the total employed in the service sector. In all some 800,000 people are employed. Non-profit organisations look after over half of those in residential care and about 20% of primary and secondary school students. Non-profits are especially prominent in social services and in sport where 80% of those with sporting interests belong to non-profit clubs.

in Italy nearly 2% of the employed work in the sector or over 5% of those employed in the service sector. In total the sector, which is prominent in social services, employs about 400,000 people. Non-profits run 20% of kindergartens and over 40% of residential care facilities.

In the UK 4% of the employed work in the sector or over 9% of those in the service sector. Altogether about 900,000 people are employed in the sector, which plays an especially important role in the provision of research and education: - all colleges are run by non-profits, as are 22% of primary and elementary schools.

6.3 Finally, the combined expenditures of the sector in these countries was no less than 127 million ECU (17 billion in Italy, 31.3 billion in France, 36.6 billion in the UK and 42.2 billion in Germany).

<sup>1</sup> Published in 1994.

The figures for non-profit operating expenditures as a percentage of gross national product are no less impressive: 2% in Italy; 3.3% in France, 3.6% in Germany; and 4.8% in the UK

6.4 Moreover it is in terms of employment growth that the most interesting facts of all emerge. What the study found - in any event in France and Germany where figures were available - was that over the decade from 1980 to 1990 the sector has been a powerful creator of employment. In France the sector accounted for one out of every seven new jobs created in that decade and in Germany one out of every eight or nine. This is a very significant finding indeed.

6.5 These figures should not, perhaps, come as a complete surprise, given the growth of the sector in the recent past and the reasons which seem likely to be behind it (see paragraphs I.4 and I.5 of annexe I). Some of these reasons are likely to be, historical, or to have been specific to particular Member States. Other factors, however - the discovery of new needs and the development of new social preoccupations, and above all the tendency of governments to engage voluntary organisations and foundations in the delivery of services of which they themselves were formerly both designers and providers have been increasing throughout the Community.

6.6 But such policy developments have not developed evenly in all the Member States. The extent to which they have been accompanied by clear constitutional or administrative changes designed to favour the involvement of voluntary organisations and foundations has varied.

6.7 The figures demonstrate clearly that the sector has shown itself capable of opening up new opportunities contributing not just to improving the quality of life but also employment and economic growth. It is for this reason that the sector should be encouraged to play a bigger part in the quest for job creation as stated in the "Employment Pact", for example in the context of Local Employment Initiatives.

6.8 Throughout the Community many voluntary organisations and foundations are engaged in the training and retraining of the unemployed, sometimes as providers of government programmes but often on their own account, as well as providing services for less favoured people - for people with disabilities, for alienated youth, for those who for one reason or another have repeatedly failed to gain a hold in the job market.

6.9 Voluntary organisations and foundations also give valuable training to numerous volunteers, many of whom later find employment on the conventional jobs market as a result of the experience and expertise they have acquired. Volunteering is also for many people an invaluable means of preserving the work habit at a time when, particularly for the long term unemployed. The voluntary sector is likely to provide with enriching opportunities for new experiences aiming at gaining social abilities which will enhance employability and moreover, the feeling of ownership and citizenship among young people. The European Voluntary Service deals with this issue and provides an educational experience based on the active involvement of young people in a local project. Volunteering is also very important for older retired people who are looking to continue to use their skills and maintain a continued active role in society.

#### ***Social importance***

7 There are no accurate figures of knowing how many persons in the Union are members of voluntary organisations but, on the basis of some Member States' estimates it is commonly reckoned to be somewhere between a third and a half of the population, approximately a hundred million.

7.1 Historically the influence and achievements of voluntary organisations, and their sister organisations foundations, would be difficult to overestimate. It is to voluntary organisations and foundations to which we owe the origins of many of the services such as education, health and social services which we

take for granted today. Their contribution to the development of social and political ideas, and to the intellectual climate in which we now live, has been similarly immense. Voluntary organisations and foundations have played a vital role in the dissemination of scientific ideas and of technological developments and have provided forums for the exchange of thinking across the whole range of human concerns. They have led the fight for the recognition of human rights and the dignity of the human person, and for the preservation of our cultural heritage and of the natural environment. Many promote a spirit of solidarity on behalf of the less favoured, the sick or people with disabilities, the poor and the excluded, the aged and the young, and between those who have jobs and those who do not, between men and women, between generations, between the more prosperous regions and the poor or struggling regions. Voluntary organisations make important contributions to the fight against social exclusion, sexual exploitation of women and children, as well as racism and xenophobia. They have played a major role in the mobilisation of public opinion in favour of development, promoted democracy, and have established privileged links with the representatives of civil society in the developing countries, as well as providing much needed emergency help and food aid in times of crisis, often showing heroism working in troubled regions.

7.2 Today voluntary organisations and foundations are active in every conceivable field of human interest or endeavour and their contribution to the welfare and development of our societies and to our diverse cultures remains as essential as it has ever been, especially in view of the process of European integration. At the same time they continue to innovate, to discover new needs and to experiment with ways of responding to them.

In this way voluntary organisations and foundations continue, as they have always done, not just to provide the seed bed or "gene pool" from which future social and other policies may eventually grow but also the political, social and intellectual climate in

which change comes to be seen as desirable on a wider scale.

### *Political importance - Citizenship*

8. For many people, membership of, or volunteering for, voluntary organisations and foundations, provides a vital means through which they can express their sense of citizenship, and demonstrate an active concern for their fellows and for society at large.

8.1 The part that voluntary organisations play in strengthening a sense of citizenship and providing a means for its expression is of growing importance at the European level. Indeed, they have an active part to play in creating a sense of European citizenship as mentioned in Article 8 of the Treaty on European Union. Voluntary organisations and foundations have long fostered international contact and understanding between peoples and are now showing a keen interest in the part citizens have to play in the forging of the European Union and in giving substance to the citizen's Europe. Their experience and basic philosophy, together with their growing organisation at the European level, fit them well for this role.

### *Political importance: Promoting Democracy*

9. Voluntary organisations and foundations foster a sense of solidarity and of citizenship, and provide the essential underpinnings of our democracy. In the light of the challenges now facing the European Community, and indeed in the different countries of East and Central Europe, these functions have never been more vital.

9.1 There is no doubt that voluntary organisations and foundations make a profound and indispensable contribution to the democratic life of Europe. Indeed, the existence of a well-developed association and foundation sector is an indication that the democratic process has come of age. For many people participation in a voluntary organisation may be their only



experience of democratic processes outside of the normal electoral framework.

9.2 Their contribution to the effectiveness with which representative democracy functions should not, however, be underestimated. Above all, they now play an essential part as intermediaries in the exchange of information and opinion between governments and citizens, providing citizens with the means with which they may critically examine government actions or proposals, and public authorities in their turn with expert advice, guidance on popular views, and essential feedback on the effects of their policies.

9.3 That voluntary organisations and foundations are important to the democratic process does not mean that they could ever take on the role occupied by elected representatives. There are, indeed, some dangers in the sort of "single issue" lobbying which some voluntary organisations tend to espouse. Their preoccupation with particular causes or with particular individuals or groups can make them unjustifiably impatient with the balance between competing interests which all democratically elected governments seek to achieve. There is a need for greater understanding about the constraints of policy decision making.

#### IV THE SECTOR AND THE EUROPEAN INSTITUTIONS WORKING TOGETHER

9.4 The European Institutions have a long history of contacts and informal consultation with the voluntary sector. This is the case with many of the European Commission's services, such as DGIB, DGVIII with Development Agencies and ECHO which have achieved an experience of particular interest in their cooperation with humanitarian aid NGOs, DGV and the platform of European Social NGOs arising out of the Social Forum, DGXI and environmental organisations, DGXXIII and the Consultative Committee for Cooperatives, Mutuals, Associations and Foundations. DGX in particular looks to the voluntary sector to

disseminate information on European issues to the citizens.

NGOs are involved in a significant number of research projects funded within the 4th Framework Programme (1994-1998). The targeted Socio-Economic Research Programme widely covers the issue of the role of the sector in the economy and its importance for social cohesion. It is intended to put even more emphasis on this topic within the 5th Framework Programme (1999 - 2002).

The European Parliament also relies on a large number of voluntary organisations in order to obtain information and views on a wide range of issues. The heterogeneity of the sector is valued, in particular, for its knowledge and experience of social policy, environmental, aid and development issues and for providing a vital link with citizens in their localities, especially to those most vulnerable in society.

9.5 The increasingly pivotal role the voluntary sector plays in a wide range of issues central to the construction of Europe, including in particular, in many Member States, in the management and delivery of key aspects of social welfare services, has been acknowledged and reflected in the Commission's main statements on social and employment policy, for instance in the Green and White Papers on Social Policy and the White Paper on Growth, Competitiveness and Employment.

9.6 However, for many years the contacts between the European Institutions and the voluntary sector took place on a completely ad hoc basis and it was not until the Treaty of the European Union, in 1992, that the importance of links with this sector was first formally expressed in the creation of Declaration 23 which is annexed to the Treaty.<sup>2</sup>

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<sup>2</sup> Declaration 23 states: "The Conference stresses the importance, in pursuing the objectives of Article 117 of the Treaty establishing the European Community, of cooperation between the latter and charitable associations and foundations as



9.7 A high level of political commitment exists at European level to ensuring that more systematic consultation with the voluntary sector is instigated, as regards both the development and implementation of policy, commensurate with their increasingly important role, especially in social policy, in the Member States<sup>3</sup>.

Subsequent to the creation of Declaration 23, a number of developments have taken place which moved forward the process of consolidating co-operation with, and instigating more systematic consultation of, NGO's and other voluntary sector organisations. Key amongst these developments were:

- the holding of the first European Social Policy Forum in March 1996, which brought together over 1000 participants mainly from NGOs, on the eve of the beginning of the Intergovernmental Conference. This saw the launch of a new policy objective: the building over time of a strong civil dialogue at European level to take its place alongside the policy dialogue with the national authorities and the social dialogue with the social partners. It is intended that the Forum be held every two years.

This emerging civil dialogue has two main aims:

- to ensure that the views and grassroots experience of the voluntary sector can be systematically taken into account by policy makers at European level so that policies can be tailored more to real needs, and;

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*institutions responsible for welfare establishments and services".*

<sup>3</sup> It should also be noted that the Commission has had a long standing dialogue with the sector in other areas such as with Development NGOs through the EC-NGO Liaison Committee which receives 90% of its funding from the Commission.

- to disseminate information from the European level down to the local level so that citizens are aware of developments, can feel part of the construction of Europe and can see the relevance of it to their own situation, thus increasing transparency and promoting citizenship.

- the creation in 1995 of a Platform of European social NGO's, representing a large number of organisations, in order to assist in the preparation of the European Social Policy Forum and to facilitate the development of civil dialogue.

- the setting up of a "Comité des Sages" in 1995 to prepare a report on fundamental rights to be discussed at the Social Policy Forum with a view to it providing an input to the IGC discussions on the revision of the EU Treaty.

This report which advocated a Europe of civic and social rights has also sparked off a Europe-wide debate through a series of national seminars involving, in particular, the voluntary sector and the Social Partners.

- the creation, in 1997, of a new budget line, B3-4101, to promote co-operation with NGO's and other voluntary sector organisations and to strengthen the capacity of these organisations to engage in civil dialogue at European level;

9.8 In the context of the preparations for the IGC an ongoing dialogue was developed between the sector, the Commission and the European Parliament.

Important issues relating to the sector have been discussed in the framework of the IGC. These include:

- a legal base for regulations concerning associations at European level
- a legal base for incentive measures both in employment and the social field

- the integration of Declaration 23 into the Treaty and specific provision for the consultation of, and dialogue with charitable associations and foundations on all policy matters which concern them

- a modification of article 8a to take (by co-decision) measures to facilitate freedom of circulation.

The Commission intends to make relevant proposals according to the outcome of the IGC.

With regard to future progress, in order to retain the maximum amount of creativity and free expression, it is important not to over-bureaucratise or institutionalise consultation of the voluntary sector and to strive instead for a flexible but systematic approach in developing the civil dialogue and relations between the voluntary sector and the European Institutions which takes full account of the principle of subsidiarity and of the specificities of each Member State.

9.9 The Commission has also attempted to open up a wide range of funding programmes to the sector. This includes the Structural Funds, the PHARE and TACIS programmes for East and Central Europe, the Leonardo da Vinci Programme, the Declaration 23 and the new Third Sector and Employment budget lines, the SME and Social Economy budget lines, as well as the European Voluntary Service Programme which encourages transnational volunteering, the EDF for cooperation and development with the LOME countries, and specific budget lines for external actions, in particular cooperation with the ALAMED countries, to name but a few.

It is estimated that overall some 800 million ECU (of which 196MECU is in the form of co-financing) annually of EU development assistance is channelled through NGOs and the Commission looks to the sector in many policy issues towards developing countries.

The European Commission is also working closely with NGOs in the fight against sexual exploitation of children and women.

The Commission would like to see its cooperation with the sector developed further in view of deepening European integration. Proposals to this end are made in the "Conclusion".

## V PROBLEMS AND CHALLENGES FACING THE SECTOR

10. Voluntary organisations and Foundations are working under enormous pressure and within a constantly changing environment. In some cases organisations are taking on the running of services that were hitherto provided by the public authorities. However, there are very real problems and challenges facing the sector in the way that it can respond to providing these new services. Organisations which have traditionally played the role of providing a back up for state run services, suddenly find themselves having to run those services themselves. This may mean completely new staffing arrangements, new management structures and needs, a complete change in the financing of the organisation, a change in the way that it works with the public authorities, and indeed with other voluntary organisations and foundations. How will the organisation be resourced? Will funding come from public authorities in the form of long term grants or short term contracts: indeed, will there be enough funding? Will an organisation be able to increasingly draw on support from the public (individuals) or the corporate sector? This change may also mean a major rethink in the *raison d'être* of an organisation. Should an organisation which was set up to promote the needs of specific parts of the population (people with disabilities, socially excluded, ethnic minorities, etc..) and to provide some back up services, be asked to suddenly take on the running of the mainstream service itself?

10.1 These are all areas that have major implications for organisations in the way that

they are resourced and trained, and public authorities should be aware of the importance of giving voluntary organisations and foundations the resources and time to be able to adapt to new needs.

**10.2 Despite their increasing reliance on foundations and voluntary organisations to carry out a wide range of functions, public authorities have not on the whole acknowledged their responsibility to ensure that the sector is as well placed as possible to make its distinctive contribution to the public good. The result is that in many Member States the sector, as a sector, operates in what amounts, at least in strategic terms, to a policy vacuum. This lack of a coherent framework of public policy has inhibited it from contributing, to the optimum extent possible, to the solution of the problems which we face. It is time it was remedied.**

**10.3 One of the greatest problems facing policy makers is the present serious lack of information about the sector. In an important sense, policy-making has also been inhibited by the structure of government itself, and in particular by the habit of public authorities of relating to associations and foundations as suppliers of services to particular client groups or as interlocutors in particular subject areas. Social service departments have contact with organisations supplying social services, environment departments with those active in the environmental field, and so on. Over a period of time, such departments and their officials can acquire a close and detailed knowledge of the particular organisations with which they deal. Within government as a whole, however, such knowledge as departments may acquire remains fragmented. For the most part it is rare for public authorities to have an overview of the sector as a whole or of its needs, or of significant developments within it. The same phenomenon has no doubt also been one of the factors which in a number of Member States has inhibited the growth of a "broad sectoral"**

consciousness amongst voluntary organisations and foundations themselves.

**10.4 The urgent need now is for public authorities to complement their "vertical" approach and to begin to look seriously at "horizontal" issues affecting the sector as a whole with a view to developing appropriate policies. At the same time, the public role of voluntary organisations and foundations needs to be acknowledged and the acceptance of the sector as a full partner in the debate on all policy and implementation matters which concern them, needs to be actively encouraged at all levels.**

**10.5 Over the past ten years the amount of transnational work done by voluntary organisations and foundations has increased dramatically. This is due to a growing number of European funding programmes being opened up to the sector which encourage transnational collaboration, and an expanding number of organisations who are interested in developing their services in other countries.**

**10.6 There is also a large and continuously growing number of European wide federations or networks of voluntary organisations and foundations. Some, such as the Red Cross Liaison Committee act as a co-ordinating organisation for individual national organisations which share the same aims and objectives, as well as the same name. Others such as the European Foundation Centre or CEDAG (the European Council for Voluntary Organisations) act as a focus point for lobbying the public authorities on behalf of the sector, and providing and developing examples of good practice within their - often - diverse membership.**

**10.7 There are also many development and emergency aid agencies which have a long tradition working overseas, but which are working more and more together at a European level and with the European Commission. Indeed, the EC-NGO Liaison Committee of Development NGOs, works closely with**

DGVIII (Development), with ECHO, DGIB and with other Dgs of the European Commission.

10.8 The ability of voluntary organisations to make their full contribution in transnational activities in the social and employment field has been limited by the suspension of some European programmes since 1995 pending a European Court of Justice ruling on the legal basis of such measures. In its proposals to the IGC, the Commission has endeavoured to remedy this by proposing a legal base for the transfer of best practice, networking and exchange of experience on a transnational basis in such fields as the fight against social exclusion and the promotion of equal opportunities and the combating of discrimination on the grounds of gender, disability, race or age. This would enable the Community to adopt such incentive measures as have already been established for education, training and public health.

10.9 There are however, many other problems facing organisations trying to develop their transnational European work: They include:

*\* difficulties finding like minded organisations in other countries in order to develop joint projects*

Although on paper an organisation may seem to have the same aims and objectives, in reality it may not. The role of an organisation working with a specific client group in one country may differ a great deal from one working in another. There are also difficulties in organisations working together which is often due to differences in culture and language

*\* inability of organisations to access European funding<sup>4</sup>*

Many organisations have trouble obtaining good up to date information on European funding. They also may have difficulties with Member States which are reluctant to allow voluntary organisations and foundations access to specific European funding programmes in which the Member States have a decision making role.

*\* difficulties finding matching funding for projects which are co-financed through European funding programmes*

Matching funding for projects often comes from public authorities who may be putting forward their own rival bids, or not be interested in supporting the project.

*\* over dependence on European Community Funds leading to difficulties in forward planning and continuity of management owing to the incompatibility of the short term nature of this funding and the long term core funding needs of voluntary organisations.*

Difficulties in obtaining funds at national level has led some organisations to look for European funding which can be inappropriate to their main aims and objectives. Failure to continue receiving these funds can undermine their existence.

*\* difficulties faced by organisations due to late payments of European funding.*

Payments held up for various reasons at European or national levels can often cause problems for organisations carrying out transnational projects.

*\* lack of legal recognition for organisations in other countries.*

This can cause serious problems for organisations wishing to open offices in other Member States, or provide services that are financed by public authorities from another Member State. The Commission has already proposed certain measures (notably the Statute for a European Association) aimed at giving

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<sup>4</sup> Decision making for many European funding programmes is frequently made at national rather than at European level.

organisations a legal personality in other countries within the European Union.

\* *weak representativeness of organisations taking part in consultation*

In some cases European networks lack the structure and adequate membership to ensure that views of a wide spectrum of operating organisations at local, regional and national levels are taken into account.

\* *lack of understanding by some public authorities on what European work voluntary organisations and foundations wish to do.*

Many organisations complain that public authorities are not aware or being supportive of the transnational work that they are trying to do. This often results in transnational projects being hindered.

\* *lack of adequate training.*

Inadequate training can lead to poorly run organisations and the inability to respond to challenges and new needs.

\* *lack of access to networking techniques*

Subsequent to poor training some organisations are not able to develop links with other like minded organisations.

10.10 Not all these problems are insurmountable, and indeed some of them are already being dealt with by the European Commission and by some Member States. However, it should be stated that they are often dealt with on an ad hoc basis, and not as part of a coherent strategy and policy towards the sector. The following section presents a number of ideas which can be addressed by the sector itself, as well as at Member State and European levels.

## VI CONCLUSION

### MEMBER STATE LEVEL

The Commission believes that for the most part action will need to proceed, in line with the principle of subsidiarity, at the level of the Member State or, where appropriate, at the level of the region or the locality.

The Commission proposes that the Member States examine attentively the following areas:

\* *acquiring a much deeper knowledge and understanding of the sector at all levels*

There is no doubt that policy making is at present severely hampered by the lack of systematic and reliable data about the sector. Indeed there are parts of the Community where the sector has had so little public profile that policy makers appear to have been scarcely aware of its existence. All concerned actors, European, national, regional, local authorities and the voluntary sector itself, need therefore to address the question of what practical steps they could each undertake to map the extent and contribution the voluntary sector makes.

\* *the relationship ("partnership") between public authorities and the sector*

Voluntary organisations are being asked to take on an increasingly important role, by public authorities across the Community and by the European Commission itself. It is therefore important that voluntary organisations are given the opportunity to be involved in planning services and policy making with public authorities at all levels. Relationships between voluntary organisations and public authorities should be clearer and new partnerships developed. Partnership between voluntary organisations and governments will involve contractual arrangements between individual voluntary organisations and public authorities which will properly involve their own constraints. But whatever relationship they may have with governments, voluntary organisations and foundations are independent of government and must remain so. Public authorities should review public policy and make proposals about what would need to be done for policy to help the voluntary sector to increase its capacity and where relevant to improve its skills in order

that it can best fulfill the new roles it is being called on to address.

• **the law governing voluntary organisations and foundations**

The competent authorities should examine what scope exists for clarifying and adjusting legal frameworks so that they are conducive to the voluntary sector fulfilling its full potential at national, regional and local levels.

• **the fiscal basis and competition rules on which the sector operates**

The taxation rules applicable to the sector have to be clear and simple, and incentives as well as exemptions have to be studied attentively. Any individual tax treatment has to be justified in relation to the constraints specific to this sector and to its method of internal organisation which differentiates it from traditional economic actors.

• **how the continued financial health of the sector is to be secured**

Positive legal and fiscal regimes are important for the growth of the sector in each country, as well as to ensure public accountability. However, public authorities should also ensure that the sector is seen positively by society and that funding by public authorities, the corporate sector and private donations are all encouraged.

• **training**

The growth of the sector has not been matched by an increase in training to help voluntary organisations develop their skills and expertise in order to meet new needs. All too often, training budgets are the first to be hit when funding becomes difficult to obtain and voluntary organisations are asked to cut costs. Public authorities should ensure that voluntary organisations are given adequate training in order to provide the services and do the work that is being increasingly asked of them.

• **information society developments**

Voluntary organisations and foundations have a clear interest in being associated closely with information society developments. The participation of voluntary organisations and foundations in pilot projects, particularly in the applications field, should be encouraged.

• **better access to programs co-financed by the Structural Funds**

Many voluntary organisations are concerned about access to finance from the Structural Funds. Insofar as the implementation of Community Support Frameworks and operational Programmes is the responsibility of Member States, the latter are encouraged to examine and review current administrative practise so as to facilitate access to information and broader participation by the voluntary sector. The same applies insofar as the designation of beneficiaries for global grants is concerned.

**VOLUNTARY SECTOR AND FOUNDATIONS LEVEL**

It is important that voluntary organisations and foundations make every effort to promote themselves, through use of the media and new information technology. They should try to be open and accessible in order that the public and public authorities understand their aims and objectives and how they work. Organisations should encourage relevant training for their staff and volunteers, and when appropriate, should try to develop good links with public authorities and the corporate sector.

The sector should look to diversify its funding base in order not to become too dependant on any one source of funding. Networks of organisations should also try to ensure that their membership base is as comprehensive as possible in order for them to be truly representative.

**EUROPEAN COMMUNITY LEVEL**

In addition, the Commission proposes the following at European Community level:

• Voluntary organisations play an extremely important role as interfaces between citizens and government authorities, although in many cases this role still does not receive proper recognition. Voluntary organisations are asking for their work in this sphere to be recognised; they are no longer satisfied with a single

lobbying role, but are asking to be consulted systematically and regularly by Community bodies on all matters, and on all decisions which might affect the work they do, how they do it and their efforts to achieve their objectives.

The Commission will maintain and further develop a continuous exchange of information and points of view by establishing systematic and regular dialogue and consultation with the sector<sup>5</sup>. In this connection the Commission welcomes the establishment by the aforementioned movements of the Consultative Committee for Cooperatives, Mutual Societies, Associations and Foundations, which aims to ensure the consultation and the horizontal co-ordination of the sector. The Commission will also look to develop its dialogue with the sector through the European Social Policy Forum and the new budget line promoting cooperation with charitable associations, and will examine how the representation of voluntary organisations on other existing advisory committees can, where appropriate, be organised. The development of this **dialogue and partnership** will contribute to a better understanding and building of European integration at all levels. As well as this, the revised treaty should include such measures as the fight against exclusion, the promotion of employment, and measures in areas such as non discrimination and immigration, which call for this strengthening of dialogue.

▪ The role of voluntary organisations in present-day society will not be recognised without more knowledge of how this sector operates, and of its requirements and expectations. As people are very far from being fully aware of all this, particularly in all the Member States and at European level, an effort must be made in this direction. One of the ways of making progress in this matter is to give a **higher profile** to voluntary organisations and

their work. For these reasons, and in order to support the effort to improve knowledge of this sector, the Commission will consider proposing a **year of voluntary organisations and European citizenship**.

▪ The Commission recognises the importance of the role that voluntary organisations can play as disseminators of information, and as bodies close to ordinary citizens, and proposes to involve them more closely in its activities of disseminating information. Voluntary organisations have played an important role in the development of past "European years". This role has not always been acknowledged. The Commission therefore intends to ensure that the role of voluntary organisations is recognised and publicised in all "European Years" relevant to the sector.

▪ The European Parliament has proposed that studies be made on the expansion of the social economy in the European Community, in particular the establishment of an **observatory** to follow developments in this sector in the single market. The Commission considers that for voluntary organisations and foundations, this task could be undertaken within the European observatory for SMEs, and proposes that the collection and analysis of information, in the framework of the existing structures, should be based on what voluntary organisations do and want to do at transnational level, and particularly on the problems which they encounter in doing so, i.e. problems arising from differences in their legal forms in the various States, money transfers, leasing or purchasing premises in other states, obtaining subsidies, the effectiveness of the mutual recognition of vocational qualifications, obstacles to sponsoring in the Member States, etc. It would also look to identify areas of good practice which could be promoted and disseminated.

• To undertake transnational activities, voluntary organisations need instruments which are not yet widespread, but which are a *sine qua non* for any activity of this kind. These instruments range from a knowledge of languages to familiarity with current differences in the various Member States concerning

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<sup>5</sup> In this context it should be recalled that the European Commission has published a directory on European Non Profit organisations in order to enable officials to consult more systematically and as widely as possible.



taxation, working methods, administrative procedures etc. There is great demand for training on the part of those voluntary organisations which are interested in expanding their transnational activities. The Commission will therefore give an impetus to promoting better access to **European training programmes** which officials of voluntary organisations wishing to expand into Europe could use.

On the other hand the involvement of the voluntary sector during the European year of life long learning gives evidence of the actual and potential contribution of this sector to life long learning, including adult education which is largely managed by the voluntary sector. In the years to come, this contribution is likely to become crucial to build a knowledge society for all.

▪ Voluntary organisations often have difficulty in finding partners or people to work with outside their own Member States who could help them in their transnational activities, and facilitate access for them to a number of Community funds for which this is a condition of eligibility. All the more because the numerous Community instruments and policies available to enterprises for **finding partners at European level** (BC-Net, Europartenariat, BCC etc..) are not always suited to the needs of voluntary organisations.<sup>6</sup> Accordingly, the Commission will see that they are made easily accessible to voluntary organisations, and that they meet their specific requirements.

▪ Voluntary organisations and foundations have a clear interest in being associated closely with **information society developments**. An effort should be made to raise their awareness of the opportunities and benefits that the information and communication technologies, services and applications can offer them. The Commission has already set up the Information

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<sup>4</sup> The RECITE and ECOS/OUVERTURE programmes, and also the PACTE programme can facilitate the internationalisation of voluntary organisations and foundations.

Society Project Office as a "one stop shop" within the Commission to facilitate access to information in this area. The Information Society Forum will seek to involve all parties concerned, including voluntary organisations and foundations, in the policy debate. The participation of voluntary organisations and foundations in pilot projects, particularly in the applications field, should be encouraged.

▪ Many voluntary organisations are calling for **easier access to sources of finances**, including to the Structural Funds as well as other sources. The complexity of application systems and administrative procedures, which often lead to delays in payments can prevent small, lean voluntary organisations from making the valuable contributions they have the potential to make in the implementation of the various EU funding programmes.

Insofar as the Structural Funds are concerned, the Commission will, in conjunction with the Member States, continue to actively explore ways of facilitating access to Community finance, including the possibility of pre-financing by the Member States and the increased use of global grant finance. In general terms, it will be proposing ways of streamlining and simplifying procedures in the context of the reform of the Structural Funds which is due to take effect from the year 2000. Likewise, it will continue to encourage a broad interpretation of the concept of partnership extended to economic and social partners<sup>7</sup>, compatible with the need for proper and effective systems for monitoring the management of public funds.

The Commission will also explore ways of publicising more widely information on existing Community Finance which is available to voluntary organisations and foundations.<sup>8</sup>

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<sup>7</sup> Article 4 of the Framework Regulation No. 2081/93 on the Structural Funds.

<sup>8</sup> DGVIII (Development) already has a document "Digest of Community Resources available for financing the activities of NGOs and other Governmental and/or Decentralised Bodies representing Civil Society in the fields of Development Co-operation and Humanitarian Aid".

The results of activities financed under the new budget line B3-4013 will help shed some light on the employment dimension of the third sector. In particular the actual and potential role of the voluntary sector and foundations in the employment development process and their job creation capacity will be examined and examples of best practice identified. The Commission will ensure that the resulting analysis and conclusions are widely disseminated.

The European Commission's support through training and the use of information technologies will improve their capacity to network in order for them to fully participate in European Community Programmes.

- The survey has shown that there is a growing interest by voluntary organisations in developing their transnational work. Voluntary organisations are keen to learn different models and ways of working from organisations in other countries. Many organisations find this difficult to do, due to the lack of resources. The Commission could help organisations such as foundations to explore the possibility of them setting up a special fund in order to facilitate the transnational work of voluntary organisations. In particular, the fund would enable voluntary organisations to pre-finance certain projects for which grants have been asked from public authorities, and also enable study visits, and the attendance of conferences, seminars and training events for organisations which normally lack the means to do so.

- The numerous difficulties facing voluntary organisations when they contemplate transnational projects are often the result of national legislations which are ill-suited to the new needs, but they can also arise from the effect of measures taken at Community level, which, since they were drafted with other objectives in view, may turn out to be obstacles for voluntary organisations and foundations. For this reason the Commission proposes to study and monitor closely the effects of Community policies, actions and legislation on this sector. This follow-up and analysis should be carried out systematically also through better

inter-departmental co-ordination, with the aim both of monitoring the implementation of Community rules in the sector and of promoting the structures of voluntary organisations and their access to the Single Market.

**The Commission intends to conduct a broad dialogue involving the sector, the European Parliament, the Committee of the Regions, the Economic and Social Committee, Member States and other interested parties in order to fully discuss the issues contained in this document. The Commission intends to hold a series of conferences and seminars to discuss the Communication and issues arising out of it.**

## ANNEX I THE SURVEY

I How many voluntary organisations and foundations are there? How are they financed? How many people belong to voluntary organisations? How many people do they employ? How many people work for voluntary organisations or foundations as volunteers? How big is the sector, and is it growing? How is it developing at the European level? What are its needs and aspirations for the future?

I.1 Unfortunately, as has already been made clear, there is a serious lack of information about the voluntary sector in Member States, and still more at the European level. This lack of essential facts reflects not simply what has, until fairly recently, been a lack of interest amongst scholars and policy makers, but also the absence of any sort of convenient sampling frame.

I.2 In an attempt to throw some light on the scene, the Commission therefore decided to carry out a questionnaire study of voluntary organisations in all the Member States. The method used was to distribute questionnaires to voluntary organisations throughout Europe via their representative organisations in Brussels and at national level. The survey was carried out between June and October 1993 and altogether some 2300 replies were received. This is a surprisingly good response and the Commission is grateful to everyone involved. The response may itself be taken as an indication of the lively interest that voluntary organisations in the different Member States have in developments at a European level.

I.3 Given the method used, which was the only one open to the Commission, the study must be regarded as strictly exploratory and its results, which are not in any sense scientific, should be treated with caution. The findings are, however, of interest and are discussed below.

## Growth of the sector

I.4 All the evidence suggests that the associative sector has grown enormously since the end of the last war and the survey clearly reflects this phenomenon, highlighting in particular the very marked increase in the number of voluntary organisations in the last twenty or so years. The growth of the sector in the last decade might justly be called explosive. Of the voluntary organisations which responded to the questionnaire, some 75% were founded after 1961, about 65% after 1971 and about 45% after 1981. There is no reason to believe that the sample was abnormally "young" nor does growth appear to be slackening. There are minor differences between the sector in different Member States - for example, for reasons which will be obvious, the sector appears to be on average younger in Spain and Portugal than elsewhere in Europe (84% of the Spanish and 85% of the Portuguese sample were founded after 1971 and 63% and 62% respectively after 1981) - but the same basic phenomenon can be observed everywhere in Europe.

I.5 There are no doubt many reasons for this very marked growth but the following factors have almost certainly been influential:

- increases in prosperity following the second world war and latterly increased leisure time (shorter working week, longer holidays and two-day weekends)
- the shift evident in most European economies during the 80's towards the provision of services
- the increasing delegation to voluntary organisations of services (particularly social services) previously delivered by public authorities ("social privatisation")
- changes in public preferences away from uniform and relatively impersonal services of the kind typically provided by public authorities towards the more individual client-oriented approach favoured by voluntary organisations

- the identification of a whole range of new needs and the growth of new social preoccupations (e.g. sexual equality, the environment and preservation of the biosphere, foreign aid to developing countries following the granting of independence to former colonies in the 60's, peace etc.)
- the employment crisis in the late 70's and early 80's leading to the creation of employment schemes involving voluntary organisations
- historical reasons peculiar to particular Member States such as the release of pent-up associative demand following political changes in Spain and Portugal or the movement to create structures outside the purview of the state following the social and political upheavals of 1968
- demographic changes taking place in Europe such as the increasing number of retired/unemployed people leading Member States to offload services from the State to the private and associative sectors as a way of cutting public expenditure

### ***Numbers of members***

I.6 One well-known voluntary organisation in the Community has over 13 million members. Most voluntary organisations, however, are small, often having no more than a handful of active adherents. Because of the methods used by the Commission, the sample contains a disproportionate number (30%) of "intermediary organisations" in the sense explained in paragraph 4 and of national organisations. The results will therefore have considerably overestimated the average size of voluntary organisations in the Community. (Most intermediary organisations responding to the survey were federations - that is, umbrella bodies providing some centralised services (such as information and combined lobbying) for a number of separate voluntary organisations or branches (usually with their own legal identity) working in the same field. Nonetheless the figures are of interest.

I.7 In the sample, about 40% of voluntary organisations had fewer than 100 members and more than half had fewer than 200. The range was, however, very wide. Thus 13% of the sample had between 1 000 and 5 000 members, and 15% had over 5 000. As would be expected, national organisations tended to have more members than those with a regional focus - they appear, roughly speaking, to have twice as many members as regional organisations.

I.8 Of the federations responding to the survey very nearly half represented more than fifty organisations, with 9% representing over 500. Such bodies do, of course indirectly represent large numbers of members of individual voluntary organisations: in our sample over half (55%) of federations indirectly represented more than 10 000 members with 32% representing over 100 000. The average number of members indirectly represented was over 1 300 000.

I.9 The size of voluntary organisations and federations appears to vary according to a number of factors. Larger bodies tend to be older, as do organisations working in fields of obvious and enduring interest, such as social services and education. As has already been remarked, voluntary organisations with wide geographical scope tend to be larger than those with a relatively parochial focus. The size of the membership also reflected to some degree the size and relative wealth of the Member State and the relative maturity of the sector.

### ***Employment***

I.10 The numbers of staff employed by voluntary organisations varies very widely - from none at all to many thousands. The great majority of voluntary organisations are, in effect, small enterprises and, like their counterparts in the conventional economy, most employ no more than a handful of staff. A few, however, are large organisations by any standards, employing large numbers of full and part-time salaried staff.

I.11 The average voluntary organisation in our sample employed 40 full and 10 part-time staff. The equivalent average figure for intermediary

organisations was a little higher. These averages do, however, conceal wide variations. Thus some 14% of our sample employed no paid staff at all, 17% employed over 50 people (full and part-time), 6% between 101 and 500, and 4% over 501. The commonest number of employees was between 1 and 5. Full-time staff appear to work on average for 36 hours a week and part-timers for 20 hours. These figures varied less from country to country than they did according to the area in which the voluntary organisation was active: for example, as might be expected, voluntary organisations active in the health or social services field tended to employ many more salaried staff than those active in, say, civil rights.

### Volunteers

I.12 Another very important source of support for voluntary organisations is, of course, **volunteers**. 81% of our sample said that they employed volunteers. Voluntary organisations in some countries appeared to make rather greater use of volunteers than others, but in no country did the proportion of voluntary organisations which have volunteers working for them fall below 60%. Again, the numbers of volunteers employed varied widely: 30% of voluntary organisations (including federations and other intermediary organisations) told us that between 1 and 5 volunteers were active in their organisation; about 18% reported that they were supported by between 6 and 10 volunteers; 60% had over 51 volunteers, 10% had between 101 and 500, and 7% had over 500. A few voluntary organisations (3%) were supported by over 2 000 volunteers. On average each volunteer spent about nine hours a week working for the organisation they supported.

I.13 Although there did not appear to be major differences between the number of organisations in different Member States using volunteers, the ratios of salaried staff to volunteers varied widely from country to country - from about 1:1 to about 1:8. Such differences did not appear to be related to the size or wealth of Member States or any other particular factor. It may be that they simply reflect varying traditions, or the

extent to which volunteering is, or is not, organised.

I.14 The numbers of volunteers employed also varied markedly according to the voluntary organisation's main field of activity. For example, voluntary organisations working mainly in the field of culture and recreation, or in human rights, clearly depended to a much greater extent on volunteer workers than did voluntary organisations working in health, education, or social services. However, while there was some tendency for voluntary organisations to rely on either salaried staff or volunteers, it was not necessarily the case that voluntary organisations with few salaried staff had few volunteers, or vice versa - the mix varied a great deal.

### Assets

I.15 The voluntary organisations and federations in our sample had:

- financial assets amounting to 2,208 thousand ECU;
- property amounting to 702 thousand ECU;
- equipment amounting to 1,102 thousand ECU;
- other assets amounting to 835 thousand ECU;
- total assets of 10,068 thousand ECU.

These averages conceal wide variations between voluntary organisations themselves and between countries. By and large it is, as would be expected, voluntary organisations in the richer Member States which have on average bigger assets, though the variation in even these countries is as wide as anywhere. Voluntary organisations in Member States where there are still remnants of the old mortmain laws, or where the laws governing inheritance are still relatively rigid, have discernibly fewer assets in the form of property.

## Expenses

I.16 Data on organisations' annual expenditure was broken down into salaries and wages, administrative costs, and other costs. On average the costs incurred by our sample organisations amounted to the following:

salaries and wages: thousand ECU	27,743
administrative costs: thousand ECU	465
other costs: thousand ECU	1,044
total costs thousand ECU	31,149

There were minor differences between countries: broadly voluntary organisations from better off Member States spent more than average on wages and salaries. Not surprisingly larger organisations spent rather more on administration than did federations, which were generally more expensive to run than simple voluntary organisations.

## Sources of Income

I.17 Very many voluntary organisations depend to some degree on external subsidies of one kind or another, typically from public authorities, but often from individuals or other private donors. Many others are virtually self-supporting, obtaining their income from membership fees or by the sale of services or other products. To get an idea of how they financed their expenditures, we asked voluntary organisations in our sample to state what proportion of their income was from their own resources and what proportion came from so-called external sources, such as gifts and subsidies.

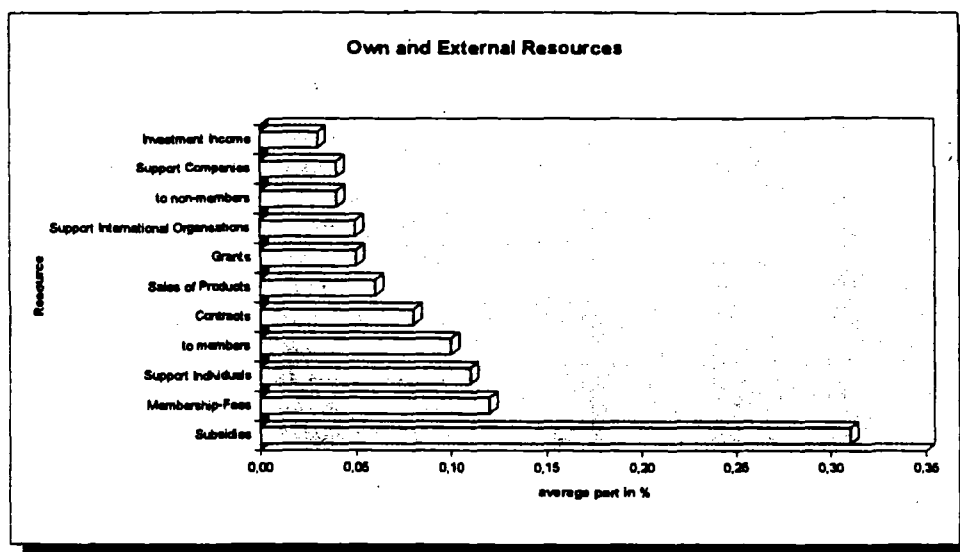
I.18 For the purposes of the study, income from the sale of services (whether to members or non-members) or products (e.g. publications), membership fees, investment income and income from contracts, were all counted as "own resources". Under "External resources" were included subsidies from government bodies and other public authorities,

and support from individuals, international bodies, foundations and companies.

I.19 On average membership fees (30%) and the sale of services (30% of which 20% were to members and 10% to non-members) made the largest contribution to voluntary organisations' "own resources", followed by contracts (17%), sales of products (15%), and investment income (8%). To put the matter in another way, on average a typical European voluntary organisations derives some 62% of its "own resources" from economic activity of one form or another - i.e. from selling services directly or under contract, or from selling products such as publications. Again these averages did, however, conceal wide variations in the amounts that voluntary organisations gained from various sources and in their relative importance. For example, in two Member States the most important source of income in the "own resources" category was sales to non-members; and in another membership fees apparently contributed little in comparison with contracts with public authorities.

I.20 There was less variation apparent when we looked at "external resources". By far the most important source of external income for voluntary organisations in all but one Member State was reported to be subsidies from public authorities (52%). This was followed by support from individuals (22%), support from international bodies (10%), grants from foundations (9%), and lastly support from companies (7%). Again to put these averages into perspective, grants from foundations were generally not an important source of income (between 3% and 6%) in all but two Member States, as were supports from business.

I.21 Of all the sources of internal and external income, subsidies were clearly the most important, followed by membership fees. The following diagram compares all the sources of internal and external income and gives their mean percentages of the total.



I.22 Additional information was also sought from voluntary organisations and federations about the balance of "own" to "external" income over the last three financial years. The ratio of own resources to external resources was on average about 45:55, with no significant fluctuations over the three years. In each year, however, there were some voluntary organisations/federations claiming that 100% of their income was derived exclusively either from their own or from external resources. In other words most voluntary organisations appear to generate a little under half their income themselves, relying for the remainder mainly on subsidies of one kind or another; but there are numbers of voluntary organisations which are either wholly self-sufficient or alternatively, wholly dependent on external aid.

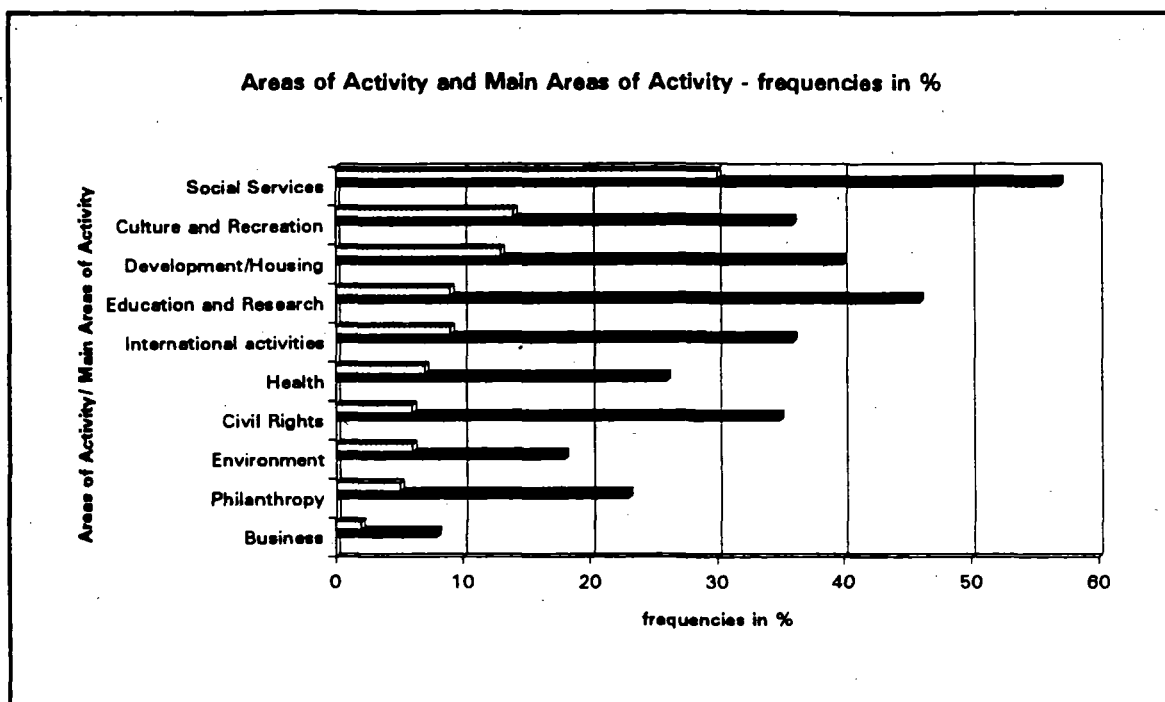
### *Sphere of Activity*

I.23 The questionnaire used the following ten main spheres of activity with which to classify voluntary organisations/federations:

I.24 The figures in brackets indicate the proportion of respondents naming each of these areas as one in which they were active. These figures take account of the fact that, as has already been made clear, many voluntary organisations are active in a number of fields at once. This is clearly revealed by the following diagram showing the proportions of voluntary organisations whose main activity may lie in one field but which are also active in others. There were, as would be expected, differences between countries, though it is noteworthy that social services was named most frequently in all

<b>Social Services</b>	<b>(57%)</b>
<b>Education and Research</b>	<b>(46%)</b>
<b>Development and Housing</b>	<b>(40%)</b>
<b>Culture and Recreation</b>	<b>(36%)</b>
<b>International Activities</b>	<b>(35%)</b>
<b>Civil Rights and Advocacy</b>	<b>(35%)</b>
<b>Health</b>	<b>(26%)</b>
<b>Philanthropy and Voluntarism</b>	<b>(23%)</b>
<b>Environment</b>	<b>(18%)</b>
<b>Business and Professional Voluntary organisations</b>	<b>(8%)</b>





but two countries (it is unlikely that this finding simply reflects our particular sample). Greater differences appeared, however, when we looked in more detail at the type of social services provided where voluntary organisations in different countries appear to specialise in different sub-areas such as family care, youth work or services to elderly people or people with disabilities. The latter three groups were, in fact, most often mentioned. This may reflect the fact that governments most often turn to voluntary organisations to provide services for these particular groups.

**I.25** Looking in a little more detail at the figures on, for example, "culture and recreation", reveals that 41% of voluntary organisations whose main activity lies in this field are also involved with other cultural and artistic activities - 37% with sport, 29% with recreational and entertainment clubs and 27% with the media and communication. Voluntary organisations which gave another area as their main field of activity were also active in "culture and recreation".

**I.26** A further example is provided by "health": 36% of voluntary organisations which claimed that health was their main area of activity were involved in rehabilitation, 35% were involved with public health services, and 26% were active in nursing homes. Nursing homes were also mentioned by, for example, 29% of voluntary organisations which gave "Philanthropy and

Voluntarism" as their main area of activity; and 17% of voluntary organisations who were mostly involved in "social services" were also involved in "rehabilitation".

**I.27** This "multi-functionality" is typical of the philosophical approach adopted by voluntary organisations and often also reflects their circumstances as key sources of aid or information in a particular locality. Voluntary organisations in this sense are rarely entirely "subject-oriented": their focus is above all on people and their problems. In this spirit, many voluntary organisations provide what is, in effect a "one-stop-shop" either for the inhabitants of a particular area, or for the group which is their special concern. Thus a voluntary organisation dealing with, for example, people with disabilities, will deal not simply with the immediate results of a particular disability, but will tend to occupy itself also with the information and advice needs of its clients and with the whole range of concerns affecting them, including, most importantly, their rights as citizens. This latter is a particularly important point: as a glance at the diagram will show: while only 6% of our sample regarded themselves as primarily concerned with human rights, 35% gave it as a field in which they were active. The same multi-functionality is evident throughout the diagram.

**I.28** When we looked at the expenditure and assets of voluntary organisations working in different fields we found that bodies concerned

with social services and health had the highest expenditure. The voluntary organisations and federations whose main concern was with civil rights and advocacy had the lowest costs and the smallest assets. Environmental voluntary organisations/federations and those whose main objective was education and research were best off from the point of view of assets.

I.29 As regards the "own resources" of voluntary organisations, the most important source of income for bodies in the field of culture and recreation was the sale of services to members and membership fees, both providing 29%. In the fields of education and research and international activities, contracts, (25% and 27% respectively) were the most important source of self-generated income, while in the area of health it was membership fees (36%). Voluntary organisations providing social services also said that membership fees constituted a significant part of their "own resources" (33%), as did those dealing with civil rights (38%), development and housing (31%) and the environment (35%). In contrast, charity organisations obtain the bulk of their own resources by selling services to members (28%) and non-members (26%). For business and professional organisations, membership fees are by far the largest element in the "own resources" category.

I.30 As regards external sources of income, organisations working in all fields are largely supported by subsidies of one kind or another. Subsidies provide from 31% of total external income of charitable voluntary organisations/federations to 73% of such income for business and professional bodies. As has already been noted, support from individuals is also an important source of income. Charitable voluntary organisations and federations, for example, said that support from individuals represented 37% of their external income. Environmental voluntary organisations claimed the proportion to be 29%, and in the fields of social services, education and research and international activities, it represented a fifth of external resources. The major exception to this picture was provided by business and

professional voluntary organisations, which derived only 2% of their external income from individuals.

### *Geographical scope*

I.31 In asking about the geographical area covered by voluntary organisations, we were chiefly interested in gaining an impression of what sort of proportion of our sample considered Europe as a significant, if not the only, focus of their organisation. The results varied surprisingly widely: in one country only 4% of respondents regarded their scope as extending to Europe, compared to 35% in another country. They should, however, be considered together with our findings (reported below) on the number of actual or intended partnerships or other activities undertaken by voluntary organisations at the European level. Interestingly, there appears to be little correlation between how important a focus organisations consider Europe to be and their propensity to form European partnerships.

I.32 The scope of a voluntary organisation's interest is not, of course, necessarily closely related to its organisational structure. For example, an internationally active voluntary organisation may well be locally based, whereas one which may be active at a national level within a particular Member State may lack any interest in Europe. As a broad rule, however, the greater an organisation's geographical scope the more it appears to play an active role at all levels. Thus most national organisations considered that they were also active at local and regional level, but few local organisations considered that their scope extended to national level. In line with this, most of the voluntary organisations that are active at the European level are, in fact, nationally organised.

### *Target groups and beneficiaries*

I.33 We asked voluntary organisations which particular groups of people their organisation worked with or was concerned with and to indicate to whom, or to which bodies they offered services and on what basis. The great majority of voluntary organisations and

federations defined their target public widely - 46% of respondents said that they served the "general public" or alternatively "young people" (37%) or "adults" (35%). In contrast, very few voluntary organisations mentioned more narrowly-defined groups as their particular concern. It may be doubted whether there is much significance in this finding. Since voluntary organisations were not, in practice, confined to one choice from the list provided in the questionnaire, the likelihood is that most respondents whose activity was directed on the one hand at a specific group of people e.g. "drug addicts" or "veterans" and, on the other hand at the population as a whole (whether to draw attention to their work or to canvass for support) indicated both the specific group and "general public".

**I.34** When we asked voluntary organisations to whom they provided services the answer was, again, most often the "general public" (39%), followed as the next most frequent categories by the "target group" (38%) and members. (36%), governments or other public bodies (22%). The extent to which these services were provided free or in return for payment varied according to the country concerned and to whom the service was provided. Free services were most often provided to the general public and to members, and paying services to the voluntary organisation's particular target group or clients or to public authorities.

**I.35** Overall, more free goods or services were provided by voluntary organisations/federations than goods and services against payment. Not surprisingly, voluntary organisations and federations that mainly offer their services free rely more heavily on support from outside than do bodies which charge. To what extent services are provided free or, alternatively, have to be paid for depended heavily on the voluntary organisation's field of action. For example, the support of the homeless is likely to involve the provision of free (or at least very cheap) goods or services whereas it may be reasonable to charge for, say, adult education. Similarly, sports clubs, where perhaps relatively costly equipment is needed, or which are prestigious,

will provide fewer free benefits than those voluntary organisations involved in social services, especially of a relatively informal kind.

**These findings, together with those on voluntary organisations' sources of income are a clear indication of the important redistributive effect which these bodies have**

*European Community-wide partnerships  
between voluntary organisations  
and foundations*

**I.36** Because of the method we used, our sample undoubtedly contained a greater proportion of voluntary organisations which are active at the European level than would be expected in a more scientific sample. The figures are nonetheless impressive evidence of the extent to which the sector is already beginning to come together throughout the Community: 50% of those voluntary organisations answering the relevant question, or nearly a quarter of the total sample, said that they were already involved in cross-border activities in some form of partnership with nationals or organisations from other Community countries.

**I.37** Given that the inspiration for the majority of the well-known networks already working at European level came from countries in the north of the Community, it might have been expected that the tendency to form partnerships might be less marked in the south than in the north. In the event, the findings did not support this hypothesis: there were differences between countries, which are not altogether easy to explain, but no clear division was discernible between the overall picture north and south.

**I.38** Looking ahead, 46% of our respondents said that they envisaged entering into cross-border partnerships at some time in the future. Interestingly, an analysis by country showed, in effect, that it is voluntary organisations in those countries that have hitherto formed a below-average number of partnerships which have the strongest future intentions. In other words, when it comes to operating on the European stage, voluntary organisations in countries now lagging behind appear to have every intention of catching up.

**I.39** Of voluntary organisations already in partnerships, 27% were active in "social services", 14% in the field of "culture and recreation", 13% in "international activities", 11% in "education and research" and 10% in "development and housing". Again, there was evidence that voluntary organisations working in some fields where few partnerships have yet been formed have stronger future intentions as regards cross-border work: for example, no fewer than 75% of our sample voluntary organisations which are active in the field of "development and housing" said that they were planning partnerships for the future. On the other hand, only 22% of voluntary organisations active in the health field said that they were planning to enter into partnerships. This may well reflect the fact that many voluntary organisations supply what are, in effect, public services - and furthermore in a highly regulated field. In these sorts of circumstance, partnerships may simply offer voluntary organisations less and thus be less attractive.

***Problems in forming partnerships***

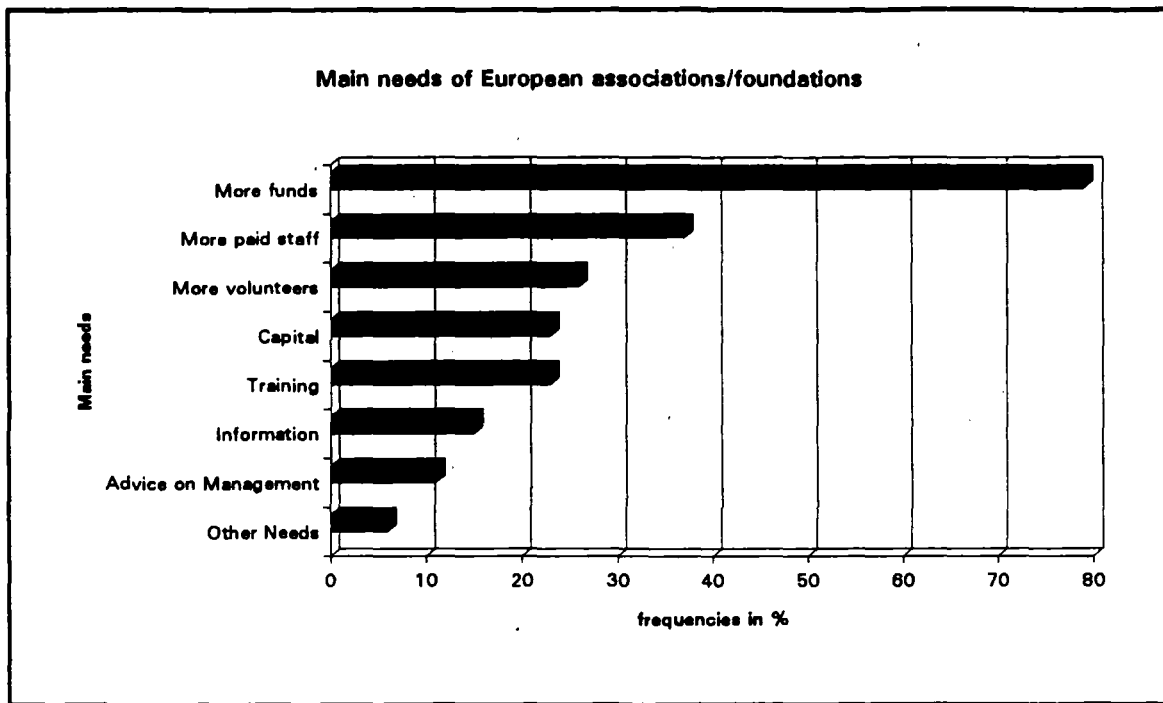
**I.40** Just over half the voluntary organisations involved in them said that they had met problems in forming or running their partnerships. The broad findings were as follows:

fiscal	21%
legal	19%
administrative	29%
communication	51%
other	35%

The figures in brackets indicate the proportion of respondents encountering each kind of problem. Few differences were apparent between national, regional or local organisations, though there was a tendency for smaller organisations to be less preoccupied with difficulties. The outstanding finding is, of course, the extent to which "communication" has caused difficulties, though the extent of legal and fiscal problems is also noteworthy. It seems likely that the legal difficulties, at least, will be largely removed by the proposed Statute for a European Association. Language is probably the most important impediment to "communication" but it is likely that there are other complicating cultural factors at work as well, such as misunderstanding of role and importance of the sector in different countries, misunderstanding of how organisations work, the lack of understanding of cultural, legal and fiscal backgrounds, the existence of different ways of working etc..

***Main future needs of voluntary organisations***

**I.41** We asked respondents to tell us what they felt were their voluntary organisation's main needs for the future. The results are given below.



It is clear from the results that the perceived need for more funds and more staff, and above all the former, is more or less universal. The same demand exists in the sector in all the Member States, though there is a tendency for voluntary organisations in poorer countries, where the sector tends to be less well developed, to feel their comparative lack of funds more keenly. Voluntary organisations are not, on the whole, capital-intensive, and it is not surprising, therefore, that there should not be the same desire for more capital. Nonetheless almost a quarter of our respondents mentioned capital as a need.

I.42 The desire for more paid staff appears to be felt most by older voluntary organisations (those founded between 1945 and 1950); younger voluntary organisations, in contrast, appear in relatively greater need of information and management advice. The desire for more volunteers was very widespread but particularly evident amongst voluntary organisations working in the fields of "health" and, for obvious reasons, in "philanthropy and voluntarism". The need for more training was mentioned by almost a quarter of respondents and appears to be felt by voluntary organisations working in all fields regardless of their age.

*Points for the Commission:  
development of the  
sector at the European  
level*

I.43 Finally, we invited respondents to let us know of any points which they would like to bring to the attention of the Commission and to put forward any suggestions they might have about how the Commission might help the development of the sector at the European level. The answers we received ranged widely from simple demands for "recognition" in a quite general sense (either of the non-profit sector or of some particular organisation) to relatively complex suggestions for changes in, or extensions to, European Community policies.

## ANNEX II OVERVIEW OF THE LEGAL AND FISCAL FRAMEWORK FOR VOLUNTARY ORGANISATIONS AND FOUNDATIONS

II.1 The following is an overview of the legal and fiscal basis on which foundations and voluntary organisations operate in each of the Member States. Following the definition given in paragraph 2.3 no account is taken of "economic" associations which exist in some Member States and which can engage in commercial or other profit making activities, nor of the several varieties of private foundation.

### *Legal basis*

II.2 The freedom to establish or join, or indeed to leave, a voluntary organisation is nowadays a right (normally guaranteed under the constitution) in all Member States of the Community. The right of association is, of course, also guaranteed under the European Convention on Human Rights.<sup>9</sup> Generally speaking it is possible for nationals of any Member State to establish a voluntary organisation or foundation anywhere in the Community, although some Member States stipulate that there should be a minimum number of their own citizens or residents involved<sup>10</sup>. Some Member States have however, special statutes precisely to enable foreign nationals to establish voluntary organisations which, though subject to the same national registration or publication requirements as any other voluntary organisation, are then run according to such internal regulations as may be laid down in the country from which the founders originate.

II.3 Generally speaking, where jurisdictions make the distinction between private and public

<sup>9</sup> Article 16 of the ECHR permits derogations to the right of association in the context of a political activity of non-national citizens.

<sup>10</sup> This is in fact in contravention of Articles 6 and 52 of the Treaty on European Union.

law both voluntary organisations and foundations are entities of private law. Not all Member States define either voluntary organisations or foundations explicitly, and not all make a fundamental legal distinction between voluntary organisations on the one hand and foundations on the other. For present purposes, however, voluntary organisations can be taken as groups of private individuals who have come together for some non-profit end in the public interest. In contrast, foundations are entities which have charge of assets set aside for purposes in the public interest in the form of an endowment or of a regular dedicated source of income.

II.4 That part of the sector of interest here is, therefore, neither wholly private nor wholly public in nature. It follows that fundamental to the law must be some means of demarcating its proper sphere of operation from the territory occupied by purely private activity, by government, or by commercial companies and other forms of profit making enterprise. Within the Community this has been achieved either formally - by setting out the basic features of internal organisation and governance to which non-profit organisations must conform; or by objects - by laying down what spheres of activity count as in the public interest and by establishing other rules defining how the non-profit status of the organisation is to be secured.

II.5 Broadly speaking the first of these approaches - that of defining non-profits by their formal features is characteristic of the civil code tradition, and the second - that of delineating the sphere of non-profit activity in the public interest ("charity") by the purpose of the activity itself - is the fundamental feature of the common law tradition.

II.6 Many commentators draw a sharp distinction between these two approaches, and it is certainly true that the legal traditions from which they derive are very different. The practical effect of the difference in approach can, however, be exaggerated. Many jurisdictions contain special legal provisions for voluntary organisations with certain aims regarded as of public interest which, combined

with different levels of tax relief, means that in practical effect organisations in many Member States are defined in terms of both their formal structure and their objects. It is also true to say that in practical terms the basic provisions of the law on foundations (and in particular the emphasis given to the preservation of assets, with all that that implies) in code countries are also very similar to those found in common law jurisdictions. The clear link here is probably historical. The common law on charity has enjoyed an unbroken tradition and has never drawn a fundamental distinction between foundations and voluntary organisations - both are charitable trusts. Since foundations are the older form, it appears that the law was simply applied later to voluntary organisations without any major adaptations. In contrast many code countries have not enjoyed the same continuity, the result being that the law has diverged.

**II.7** Voluntary organisations may be incorporated or unincorporated and both forms are found in all jurisdictions. It seems likely that the majority of voluntary organisations in the Community are in fact unincorporated and thus without legal personality. There are some disadvantages to being unincorporated: it is not always easy for the voluntary organisations to acquire any assets it may need, and its individual board members or trustees, in whose names the business of the voluntary organisation is carried on, may be uncomfortably exposed to liabilities. In most places the law has, however, developed ways of mitigating the difficulties - by the use of the law of agency, for example, or by a common fund to which members contribute and to which creditors have first recourse, and in most jurisdictions the unincorporated voluntary organisation does not appear to be prevented from taking part in legal process as a voluntary organisation (that is to say under its own name rather than that of a responsible board member).

**II.8** In code countries the incorporation of voluntary organisations is generally achieved by the publication of statutes conforming to the law in the relevant official journal, together with a list of (board) members. Incorporation (or, more accurately, the registration which is its

condition) may be refused on the grounds that the statutes of the body are non-conforming. A refusal to register a voluntary organisation in these circumstances is an entirely administrative matter and implies no political judgement on the status of the organisation. It needs, therefore, to be carefully distinguished from the circumstances in which organisations may be refused special status for tax purposes (see below, paragraph 5.14 and 5.15). The statutes (and often a full or partial list of members) are typically required to be registered with either the local court or with the responsible ministry, regional or local authority. All foundations have legal personality, which again is normally achieved by the publication of statutes etc.. Unlike voluntary organisations, however, foundations are generally subject to some degree of a priori control to ensure that the statutes are in strict conformity to the law, that (since they are often intended to exist "in perpetuity") management succession has been properly allowed for, and that their intended assets are adequate to achieve their ends.

**II.9** In common law jurisdictions no special form of incorporation is available for either voluntary organisations or foundations. Instead bodies seeking the convenience or protection of incorporation have a number of different forms to choose from depending on the area of activity in which they are engaged. By far the most common is the so-called "company limited by guarantee" - in effect a non-profit-distributing company - but there are other forms available such as the "housing association" or the so-called "friendly society". There are also (comparatively rare) examples of charitable voluntary organisations and foundations which have been incorporated by Royal Charter or by special Act of Parliament.

**II.10** Incorporation is available everywhere by one means or another, but the resulting degree of legal capacity is not always as great. In a number of Member States legal capacity is effectively unlimited (in any event as long as the body concerned acts in accordance with its statutes). In others, however, neither voluntary organisations nor foundations can receive gifts



and legacies or own real property without the express permission of the relevant public authority.

**II.11** There are differences too when it comes to the difficult question of the degree to which voluntary organisations and foundations (but in particular voluntary organisations) are allowed to engage in economic activity without the loss of tax privileges. Some degree of economic activity is allowed in all Member States, the rule generally applied being that such activity must not be voluntary organisations' principal activity in the sense that it must be carried out not for its own sake but for some non-profit aim, and must be ancillary to the objects of the voluntary organisations in the sense that it must be directly tied to the voluntary organisation's objects and not simply designed to improve the organisation's general financial position. In line with the non-distribution constraint under which all voluntary organisations operate, any surplus from economic activity has, of course, to be put towards the achievement of the voluntary organisation's aims. In some jurisdictions, it is possible for a voluntary organisation or foundation to supplement its income by creating or acquiring an entirely separate commercial company which then remits its income to the parent body.

As far as competition rules are concerned, all competition rules will be adhered to, taking into account the specificities of the sector.

### **Taxation**

**II.12** All Member States allow some voluntary organisations - broadly speaking, those which are regarded as having purposes in the public interest - some degree of relief from direct taxation either by exempting them from taxes imposed on companies and other forms of profit making enterprise, or by imposing a lower rate than that paid by companies, or by establishing a minimum income threshold below which tax is not incurred. These forms of relief are not necessarily mutually exclusive. Where voluntary organisations are exempt from company tax they may have to pay income tax instead. Some Member States allow partial or full exemption

from property taxes on real property owned or occupied by the voluntary organisation or foundation. In addition there may, rarely, be partial relief from employment taxes.

**II.13** If the principle of a degree of tax exemption for some voluntary organisations and foundations is universal, the approach adopted by Member States differs significantly, as does the extent to which relief is given to bodies working in different spheres. In some jurisdictions, voluntary organisations and foundations are in principle subject to the same tax regime as companies and receive no relief from direct taxation unless they are recognised (either, as having certain objects, by law, or individually by the relevant authorities) for tax purposes. In others (and in particular those where voluntary organisations and foundations are defined as being in the public interest) tax relief is accorded as of right but may be lost if the voluntary organisations is regarded as carrying on commercial or lucrative activity outside the limits recognised by law or jurisprudence. In such circumstances the privileged tax status of the organisation may be removed altogether. Alternatively relief may be withdrawn only in respect of those activities which are regarded as profit making in the relevant sense.

**II.14** Besides these differences in approach there are significant variations in the way in which Member States delineate the sphere of activity that they regard as being in the public interest. There are thus considerable differences in the extent of tax relief for which voluntary organisations and foundations working in different fields are eligible. Some jurisdictions define the area of public interest for the purposes of tax relief very generally and broadly, including, for example, any activity of public utility or benefit. Such jurisdictions typically give full relief to all bodies meeting this broad criterion. Other Member States take a much more restrictive approach. In one, for example, reliefs are presently available only for a small number of individual organisations named by the law. Yet other Member States take both a restrictive approach and one which also

discriminates between different sorts of bodies. Thus only very limited relief may be granted to all non-profit bodies, fuller exemption being confined to bodies operating in a restricted number of fields - such, typically, as health, culture or social services - and subject to stringent management and accountability requirements. Such special tax status is subject to administrative and political discretion and in some Member States appears to be increasingly rarely accorded.

#### *Tax relief for donors*

II.15 All Member States grant a measure of tax relief to donors to voluntary organisations or foundations, whether they be individuals or companies or other forms of organisation. Reliefs may be granted up to a maximum amount in any one tax year or, alternatively, up to a maximum proportion (expressed as a percentage) of an individual's gross or after-tax income. The arrangements for companies are usually similar, relief generally being granted either up to a maximum amount or up to a proportion of profits before or after tax. Minimum amounts or proportions may be imposed and, in the case of companies, the permitted base for calculating the maximum gift may be turnover rather than profits.

II.16 Some Member States grant some degree of tax relief to donors to any voluntary organisation or foundation active in the public interest as broadly defined. In others, more restrictive criteria are applied, relief to donors typically being restricted to gifts to those voluntary organisations which are themselves granted special status for tax purposes. Indeed, unless they possess the required status, voluntary organisations in these Member States do not normally have the capacity to receive gifts at all (see paragraph 5.10 above). In jurisdictions where voluntary organisations or foundations normally have limited legal capacity, voluntary organisations given a general dispensation to receive gifts may nevertheless be required to dispose of any gift of real property within a specified period. In some Member

States the voluntary organisation or foundation may be charged tax on the gift received.

II.17 Member States also take a different attitude when it comes to legacies. In some Member States individuals are free to leave all or part of their estate to a voluntary organisation or foundation of their choice and, while this appears to be a less common practice than in the past, many still do so. Alternatively they may create a new body - usually a foundation - with some cherished aim. Such testamentary gifts are generally tax free both to the donor's estate and to the recipient body. In those countries where voluntary organisations and foundations have limited legal capacity, however, it may be impossible to leave anything but a notional part of an estate to a voluntary organisation or foundation unless the recipient body has received the required dispensation from the authorities. Willing an estate may be further complicated by strict laws governing inheritance or by requiring that considerable assets be set aside before a foundation can be created.

#### *Indirect tax*

II.18 Article 13(A)(1) of the Sixth Directive 77/388/EEC of 17 May 1977<sup>11</sup> requires Member States to exempt from VAT "certain activities in the public interest". These include hospital and medical care, goods and services closely linked to welfare and social security work or the protection of children and young persons, education and training for young persons and so on.<sup>12</sup> Many voluntary organisations and foundations are, of course involved in the provision of just such services and their transactions are exempt from VAT, provided

<sup>9</sup> Known as the "Sixth Directive", it governs the harmonisation of the laws of the Member States relating to turnover taxes and introduces a common system of VAT and a uniform basis for its assessment.

<sup>10</sup> These exemptions are subject to certain conditions (see Article 13.A.1b),g),h),i)) and are not given automatically.

that they obtain prior authorization from the Member State in which they are established, i.e. they are exempt from the need to file VAT returns, to charge VAT to their clients or to pay output tax. In addition, under Article 13(A)(2) Member States can make the granting of any of the listed exemptions to any body (other than those governed by public law) subject to a number of conditions designed in effect to ensure that exempt bodies are bona fide non-profit organisations whose activities will not affect the competitive position of taxed commercial enterprises. On the face of it the ability to impose conditions on the granting of exemptions would seem to leave a good deal of scope for variations in the treatment of voluntary organisations but in practice, with a few minor exceptions all Member States appear to have implemented the exemptions outlined in Article 13.

**II.19** In addition to the exemptions mentioned above, a number of Member States "zero rate" certain supplies. This can benefit non-profits by allowing them to reclaim input tax.

<p><b>ANNEXE III THE LEGAL AND FISCAL FRAMEWORK FOR VOLUNTARY ORGANISATIONS (ASSOCIATIONS) AND FOUNDATIONS</b></p>
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**BELGIUM**

*ASSOCIATIONS*

**LEGAL POSITION**

1. Right of association guaranteed by law?  
Yes - Article 27 of the Constitution as revised in 1994.
2. Basic definition  
An association, in the strict sense of the term, is a contract via which several people agree to pool certain material resources with an aim other than the production or sharing of profits. (associations involve a degree of permanence in the shared existence).
3. Minimum number of founders  
Three (for ASBLs).  
Two for AIs formed under Belgian or foreign law.
4. Main types of association  
*De facto* associations (not incorporated in one of the forms laid down by law, and not having a legal personality).  
ASBL (Associations Sans But Lucratif) defined by the Law of 27 June 1921 as organizations which do not engage in industrial or commercial operations, and which do not seek to procure material gain for their members.  
International Associations under Belgian law (IA) (Associations Internationales de droit belge) limited to associations with philanthropic, religious, scientific, artistic, or educational objectives (Law of 25 October 1919).

International Associations under foreign law (Associations Internationales de droit étranger) with the same aims as associations under the IA Belgian law (cf. Article 8 of the Law of 25 October 1919, which entitles an association with its head office abroad to open an office in Belgium).

5. Membership nationality requirements  
ASBL: Three-fifths must be of Belgian nationality or resident (established and registered) in Belgium; otherwise the association will not be able to claim legal status *vis-à-vis* third parties, who will themselves, however, be entitled to hold this against them;  
IA(Belgian law): at least one administrator of Belgian nationality, no requirements for ordinary members.  
IA(foreign law): none
6. Legal personality, and how acquired.  
ASBL - by publication of statutes, plus the full names, trades/professions and addresses of the association's administrators in the annexes to the "Moniteur".  
IA (Belgian law) - by Royal Decree (published by extract in the "Moniteur"); legal personality effective *vis-à-vis* third parties ten days after publication of the statutes plus the full names, trades/professions and addresses of the association's administrators in the annexes to the "Moniteur".  
IA (foreign law) - legal personality effective *vis-à-vis* third parties ten days after publication of the statutes, plus the same information as for IAs under Belgian law (including the address of the office in Belgium). Such publication requires prior "recognition" by the Government..
7. Legal capacity  
Immovable property  
All types of association are restricted to the permanent ownership of only such

immovable property as is strictly required for the fulfilment of their purposes (extension of legal capacity for the "Notre-Dame de la Paix" university departments at Namur and the "Saint Louis" university department at Brussels).

#### Donations

ASBL: acceptance of donations of movable property (including cash) above FBR 400 000 and of immovable property must be authorized by Royal Decree.

IA: acceptance of any donation (irrespective of its value) must be authorized by Royal Decree.

No authorization required for: goods transferred to one ASBL by another ASBL to promote activities similar to those of the donor, donations granted by public bodies to an ASBL, proceeds of collections, etc.

#### 8. Statutes

ASBL: There must be a written document (authenticated or under private seal) which must contain certain items of information, including the objective for which the association was formed (Article 2 of the law of 1919).

IA (Belgian law): idem (the statutes listed in Article 2 of the law of 1919 must be mentioned).

IA (foreign law) - As for IA (Belgian law), plus the address of the office in Belgium; otherwise can exercise in Belgium all the rights accorded by its national statute.

#### 9. Registration requirements

None as such, but see publication requirements above (para 6). A list of international associations is kept by the Ministry of Justice.

#### 10. Commercial activity

Unclear. In theory not allowed, but in practice acceptable so long as not the association's principal activity (i.e. not

carried out for its own sake but for a non-profit end) and ancillary to its main object. (Ancillary means directly tied to the association's objects and not simply designed to improve the association's financial position, and any profits are put towards the association's aims.)

#### 11. Disposal of assets on liquidation

To ends of no benefit to the individuals involved, in general as laid down in the statutes.

### TAX POSITION

#### INDIRECT TAX

#### 12. Article 13 of 6th VAT Directive

All exemptions of relevance to Associations coming under Article 13 have been implemented. Organisations must meet the criteria set out in Article 13(A)(2)(a).

#### 13. Other specific exemptions

No. There is a lower rate (6%) for vehicles for the transport of disabled, sick, injured or blind persons, daily or weekly publications of general information and "produits de récupération".

#### 14. Zero Rates

### DIRECT TAX

#### 15. General position

##### A. Income tax

Not generally subject to company tax unless considered to be carrying on commercial/gainful activity outside the limits recognised by law (Article 182 of the Code des impôts sur les revenus: CIR) or case law. Associations are liable for the more favourable taxes on legal persons (CIR Articles 220-226), including in particular:

income tax and capital gains tax, and to property tax unless the building is used for religious, educational, medical, social work or charitable purposes.

## B. other taxes

A "compensatory inheritance tax" of 0.17% is payable on the association's total assets held in Belgium. Tax on gifts to Belgian associations is reduced to 8% (1.1% if the donor is another ASBL or IA, a recognised mutual society, an establishment of public utility or a professional union). Inheritance tax on legacies made in their favour is reduced to 8.8%.

### 16. Recognition of associations for tax purposes

Under Article 104, paragraphs 1 and 3-5 of the "Code des impôts sur les revenus", gifts to certain institutions and organizations - in particular those established in the form of associations or foundations to which approval has been granted by law or by Ministerial or Royal Decree - are tax-deductible. Approval by Royal Decree is granted for a maximum period of three years (renewable). Officially approved institutions are generally exempt from capital gains and property taxes. In certain cases, express authorization is required for the acceptance of tax-deductible donations by approved institutions established in the form of associations or foundations (cf. 7 above).

### 17. Criteria for recognition

To qualify for recognition, an institution must have legal personality, be of a non-profit-making nature, both in itself and as regards its members, be able to provide documentary evidence of its accounts, be active in the country or one of the cultural communities, keep its list of donors open to inspection by the tax authorities and not spend more than 20% of its budget on administration.

### 18. Qualifying purposes for recognition

Apart from institutions recognised by law, the activities of approved bodies must fall within one of the following

fields: cultural promotion (libraries, private radio and television stations, museums, sports groups, tourism and leisure associations), scientific research, development aid, or social work.

### 19. Gifts by individuals

Tax-deductibility provisions apply solely to gifts to recognized bodies (including associations and foundations). Up to 10% of total taxable revenue up to a limit of Bfr 10 million (index-linked) is deductible. Gifts of major works of art to museums are deductible at government valuation.

### 20. Gifts by companies

Tax-deductibility provisions apply solely to gifts to recognized bodies (including associations and foundations). Up to 5% of net operating profit up to a limit of Bfr 20 million (non index-linked) is deductible.

## ACCOUNTS AND AUDITING

### 21. See paragraph 17 above for recognised associations.

Other forms of associations do not have to publish accounts. In general, internal supervision by members, external verification by tax authorities.

To obtain authorization by Royal Decree to accept a gift, ASBLs must nevertheless have been lodging their annual accounts with the civil court, where they are open to public inspection, since their establishment or at least for the past ten years

## FOUNDATIONS

### LEGAL POSITION

### 22. Constitution

Requires agreement of public authorities to establishment and to statutes and Royal Decree. The statutes together with the names and addresses of

administrators must be published in the annexes to the "Moniteur", and any changes in the statute must also be approved and published.

23. **Basic definition**

Assets irrevocably given over to one of the following non-profit ends: philanthropic, religious, scientific, artistic or educational. No members (Articles 27 *et seq.* of the Law of 27 June 1921).

24. **Nationality requirements?**

Not for administrators, but *siège* must be in Belgium.

25. **Legal personality and how acquired**

Yes, by Royal Decree approving the statutes (published by extract in the "Moniteur") and publication of the statutes in the annexes to the "Moniteur" (may be done retroactively to the act of constitution).

26. **Legal capacity**

Cf. ASBL (7 above)

27. **Disposal of assets on liquidation**

By court-appointed receivers for the purpose laid down in the statutes of the foundation or, failing that, to ends as close as possible to those for which the body was founded.

**TAX POSITION**

28. **As for recognised associations.**

**ACCOUNTS AND AUDITING**

29.

The Government has a duty to ensure that the foundation's funds go towards the purposes for which it was created. All foundations must produce annual accounts and budgets and present them to the Government within two months of producing them. Both are published in the annexes to the "Moniteur". At the request of the government ministry, administrators found guilty of fraud or mismanagement can be removed by the court. In such cases, new administrators are appointed according to the statutes or, at the request of the court, by the Government.



## DENMARK

### ASSOCIATIONS

#### LEGAL POSITION

1. Right to association guaranteed by law?  
Yes - under constitution
2. Basic definition  
None: NB Associations are not necessarily "non-profit" organisations.
3. Minimum number of founders  
Not stipulated
4. Types of associations  
Single
5. Membership nationality requirements  
None - anybody (legal person or individual) residing permanently in Denmark can form an association.
6. Legal personality and how acquired  
Yes - by will of the members. Legal personality is acquired as soon as members have signed adequate statutes and nominated a management committee. (For requirements see below.)
7. Legal capacity  
Unlimited
8. Statutes in prescribed form?  
No. But statutes of unregistered associations must at least contain rules governing relations between members and the methods for nominating their management bodies. The statutes of registered bodies must contain provisions required by law - e.g. the name, head office, the number of members charged with managing the association and how they are nominated, membership conditions and relations between members, the accounting period and method of presentation of accounts etc. Changes have to be notified to the register.
9. Registration requirements

The following categories of association must be declared in the "Register of Foundations" within three months of their creation: employers associations; trade unions and professional associations which have as their principal aim the protection of the economic interests of the professional group to which their members belong; all private law associations with assets of more than 250 000 Kroner (approx 31 000 ECUs) except those:- contracted to carry out legal social aid obligations on behalf of communes or departments; bodies holding property connected with the national church; legally recognised religious congregations; or educational establishments authorised by the state, provided such bodies have no other powers or objectives.

10. Commercial activity  
Associations, like foundations (see below) can engage in economic activity, but receipts from such activity are subject to the same taxes as those imposed on commercial companies.
11. Disposal of assets on liquidation  
Freely determined by the association's statutes (but see paragraph 17 below).

#### TAX POSITION

##### INDIRECT TAX

12. Article 13 of 6th VAT Directive  
All exemptions of relevance to associations coming under Article 13 have been implemented.
13. Other specific exemptions  
Sales of second-hand goods in shops owned by recognised associations and special events organised by them.
14. Zero rates  
Newspapers.

##### DIRECT TAX

15. General position

Employers' associations, trade unions and other professional groupings whose main purpose is to look after the economic interests of the occupational group to which its members belong (labour market groupings) are taxable under the Funds Tax Act. Other associations which simply look after their members' professional and economic interests of a market-and service-oriented nature (trade associations) are similarly liable to tax under the Funds Tax Act. The principle behind this Act is that foundations and associations must basically be subject to the same rules as public limited companies. The rate of tax is the same as for corporation tax, i.e. 34%.

When reporting their taxable income, labour market groupings need to include only earned income, unearned income and profits. Membership subscriptions are thus not to be counted as taxable income. These groupings are entitled to deduct for tax assessment only that expenditure which relates to taxable income.

Trade associations are taxed in full on earned income, but other income is taxed only if it exceeds DKr 200 000.

Trade associations and labour market groupings are entitled to deduct amounts distributed for charitable or non-profit purposes. They are also entitled to deduct provisions set aside for non-profit or charitable purposes.

Trade associations are also entitled to deduct amounts distributed for purposes which accord with their Memorandum of Association, provided that the recipient of any given distribution is liable to pay tax on the relevant amount in Denmark.

Other associations, corporations and foundations (stifelser) not covered by the Funds Tax Act, are covered by the Corporation Tax Act, § 1.1 (6). Associations are liable to pay tax only on their earned income. Similarly,

associations are entitled to deduct operating expenditure only if it relates to earned taxable income.

Trade associations are also entitled to deduct allocations intended to meet purposes which accord with their Memorandum of Association, insofar as those purposes may be considered to be charitable or non-profit.

Associations may set aside provisions to fulfil charitable or non-profit purposes at a later date.

#### 16. Recognition of associations for tax purposes

By law or, for the purpose of receiving tax-deductible gifts or annuities, at the discretion of the tax authorities. Separate lists of bodies eligible to receive gifts or annuities are published each year by the tax authorities. Application may be made for inclusion in either or both of these lists. Exemption from tax on legacies may be granted at the discretion of the tax authorities. Recognition for these latter purposes is, in practice, generally given to bodies listed as eligible to receive tax deductible gifts.

#### 17. Qualifying criteria for recognition

Bodies qualified to receive tax benefits are structured as non-profit associations or foundations. Precluded bodies include those performing solely political tasks. It is a condition that gifts (and legacies) be used solely for charitable or non-profit purposes to the benefit of a fairly large group of people, and that any surplus at liquidation be distributed in accordance with those same principles. In addition, the body must be resident in Denmark (i.e. the head office must be located in Denmark and most of the management functions must be carried out there). It appears that the rules qualifying the receipt of tax deductible annuities are stricter.

#### 19. Gifts by individuals

Single tax deductible gifts can only be made to bodies on the list published by the tax authorities (see above, paragraph 16). Each gift must be at least 500 Dkr. up to a maximum of 5 000 Dkr. a year. The first 500 Dkr. are not deductible. In addition, deductible gifts can be made through covenants (contractual annuities) up to a limit of 15% of earned income plus capital gains before tax, or up to a maximum of 15 000 Dkr., whichever is the greater. Covenants must normally be for a minimum of ten years.

20. Gifts by companies

As for individuals, except that single gifts are deductible from taxable revenue and covenants are allowed up to a maximum of 15% of taxable profit (or 15,000 Dkr.).

ACCOUNTABILITY AND SUPERVISION

21.

None laid down for unregistered associations. Registered associations must produce accounts conforming to good practice and have them examined and signed by one or more auditors. These accounts must be sent to the Registrar of Foundations within six months of the end of the accounting period. If, at the time it is drawing up its accounts, the association has assets of more than (approximately) ECU 380,000, then at least one of the auditors must be professionally qualified. In this latter case, the audit must be a full one and the auditor must be given every facility by the association. Failure to conform to registration or management, accounting requirements is punishable by a fine. The Minister of Justice (who is responsible for the Register) can require an association to include in its statutes any provision deemed necessary, and can ask for any

information thought necessary to verify that the law has been complied with.

FOUNDATIONS

LEGAL POSITION

22. Freedom to establish?

Yes, but the amount of capital given over should normally be at least 200 000 Dkr. (approx ECU 25,000). Foundations with a smaller amount of initial capital can be created with the agreement of the Ministry of Justice, so long as the amount is adequate for the ends foreseen.

23. Basic definition

None in statute. Essentially, goods or capital given over to some purpose forming an entity with its own legal personality managed according to its own statutes by an independent board. No members.

A Fund is a corporate fund if it passes over goods or incorporeal rights, disburses services and similar things for which it normally receives payment, or if it exercises a profession with real estate selling or real estate demise, or if it can qualify as a holding fund.

24. Nationality requirements?

Foundations can be created by foreigners but they must be established in Denmark. In addition, at least half of the members of the managing board and all the foundation's administrators must be resident in Denmark. The authority responsible for foundations may, however, grant an exemption from the residence requirement. In any event, the requirement is waived if this provision conflicts with international obligations.

25. Legal personality and how acquired

Newly-established foundations must report to the Ministry of Justice (Civil Law Directorate) and the tax authorities (Inland Revenue) in the foundation's home district within three months of

being set up. This is simply a formal requirement and has no legal effect on the foundation's legal status. Corporate funds acquire legal personality by registration in the register of Corporate Funds at the Danish Commerce and Companies Agency, for which the Minister of Industry, Trade and Shipping is responsible.

26. Legal capacity

Unlimited

27. Disposal of assets on liquidation

Foundations can be merged or liquidated if their assets are no longer commensurate with their objects. Merger or liquidation - by distribution of the capital - can take place after application by the foundation's administrators and with the agreement of the Ministry of Justice, or can be imposed by the Minister. Bodies authorised to receive gifts must agree to distribute any surplus on liquidation to a similar institution.

Corporate funds can be merged or liquidated if their assets are no longer commensurate with their objects or if their purposes are no longer being served. Merger or liquidation - by distribution of the capital - can only take place after application by the board of the corporate fund and with the agreement of the Administration of the Corporate Funds, which normally is the Danish Commerce and Companies Agency, with consent from the Ministry of Justice.

#### TAX POSITION

28.

Foundations covered by the Funds Act or the Commercial Funds Act are taxable in accordance with the Funds Taxation Act. The principle behind this latter Act is that funds and associations must basically be subject to the same rule as public limited companies. The

rate of tax is the same as for corporation tax, i.e. 34%.

Earned income must be included in full when taxable income is reported. The first Dkr 25 000 of other income is tax-free.

Foundations are entitled to deduct amounts distributed for charitable or non-profit purposes. They are also entitled to deduct amounts distributed for purposes which accord with their Memorandum of Association, provided that the recipient of any given distribution is liable to pay tax on the relevant amount in Denmark. They are further entitled to deduct provisions set aside for non-profit or charitable purposes.

#### ACCOUNTABILITY AND SUPERVISION

For the most part as for registered associations (see paragraph 21 above). But in addition: the administrative authority responsible can remove members of the board who commit acts which render them unworthy of their position, who do not fulfil the nationality or residence requirements, who fail to act in conformity with the statutes, or who are demonstrably incapable of fulfilling their role; the administrative authority can also appoint members of the board (even in non-conformity with the statutes);

bankrupt members of the board must resign;

founders and their relatives cannot form the majority on the board without the permission of the administrative authority. Nor, in the case of a foundation created by a company, can anybody who owns more than half the voting capital form, conjointly with the founder and his or her relatives, the majority on the board without the permission of the administrative authority;

board members cannot receive larger fees for their services than are considered normal for the type of work involved.

board members cannot take part in debates in which they have an interest;

all foundations must basically have their annual accounts audited, and if their own capital in the preceding year was over 3 million Dkr, the auditor must be a chartered accountant. The auditor must normally be resident in Denmark and must be absolutely independent of the foundation, its board members and of any of its employees concerned with accounting or the administration of its

assets. The audit must be detailed and critical, and the auditor must abide by any requirements imposed by the relevant authority. He or she must be given every facility by the foundation;

members of the board are responsible for any damage to the foundation due to their management, as if relevant are the foundation's auditors and the companies, if any, to which they belong;

foundations can set aside reasonable sums to their reserves, but aside from this their funds must be spent on their objects. The amounts allocated for reserves or spending can be varied by the authority responsible.

## GERMANY

### ASSOCIATIONS (VEREINE)

#### LEGAL FRAMEWORK

1. **Right of association guaranteed by law?**  
Yes: Constitution, Article 9, paragraph 1: German nationals have the general right of association. The legal position of the association is governed by Article 21 *et seq.* of the Civil Code (BGB) and by the relevant provisions of the Law on Association (VereinsG).
2. **Basic definition**  
No legal definition. In legal practice and theory an association is defined as a permanent and structured group of persons (natural or legal) who form an entity on a voluntary basis with a view to attaining a common object. The concept of the communality of the members must be expressed at least by a common denomination and in a body which represents them.
3. **Minimum number of founders.**  
Two founder-members. However, there must be at least seven when the statutes are registered with a view to obtaining legal personality.
4. **Types of associations.**  
The Civil Code governs non-profit associations (*Idealvereine*, Article 21 BGB) and commercial associations which aim to make profits (*wirtschaftliche Vereine*, Article 22 BGB). However, the latter are of only marginal importance, and require authorization by the public authority concerned. The result, *de facto*, is that the concept of an association is more or less restricted in Germany to non-profit organizations, irrespective of whether they have legal status.
5. **Membership nationality requirements**  
No restrictions.
6. **Legal personality and how acquired.**

By entry in the register of associations in the court local to the head office (Article 21 BGB).

7. **Legal capacity.**  
Unlimited
8. **Statutes**  
For registered associations (BGB 57 and 58).
9. **Registration requirements.**  
For associations wishing to acquire full legal personality.
10. **Commercial activities.**  
A non-profit association may engage in commercial activities if they are purely ancillary, do not constitute the main object of the association and play a very secondary role in relation to its main non-profit activity. If these commercial activities are not completely ancillary, they cannot constitute the association's main or statutory activity. In principle, ancillary activities are allowed only if their purpose is to help in the performance of activities to which tax concessions are attached (not only fund raising) and if this purpose can be attained only through this activity (Articles 65 to 68 of the tax code). The income, profits and assets arising from other commercial activities of an association which is recognized as a public utility are liable to ordinary tax.
11. **Disposal of assets on liquidation**  
Assets pass to the non-profit association named in the statutes. The statutes may lay down that the Annual General Meeting should nominate the non-profit association authorized to receive the assets, but in this case the authorization of the tax authorities is required.
12. **Article 13 of the Sixth VAT Directive**

#### TAX POSITION

#### INDIRECT TAX

All the exemptions applicable to associations under Article 13 apply.

13. Other specific exemptions

None

14. Zero rates

No

### DIRECT TAX

15. General position

associations are liable for corporation tax. If their income does not exceed DM 7 500 they are exempt from corporation tax (concession).

16. Associations which are recognized or which enjoy tax concessions.

Tax concessions are granted to associations whose statutes and effective management are inspired exclusively by altruism and the general good and which are directly engaged in a philanthropic or religious activity (Articles 51 to 68 of the tax code). Tax concessions are not confined to associations, but are granted on the same conditions to any legal persons within the meaning of Article 1 of the law on corporation tax.

17. Criteria for recognition

It must be clearly apparent from the statutes and the association's administration that in its actions it is pursuing an objective for the public good. The statutes must state very precisely:

- the object;
- the way in which the object is attained;
- the non-profit activity aimed solely and directly at this object;
- that if the association were to be wound up or deprived of its status as a public utility, its assets would remain in the public utility field;
- that the effective management must be in accordance with the statutes.

18. Recognized bodies

Under Articles 52-54 of the Tax Code, any association whose statutes and actual management are exclusively inspired by altruism and the general good and which is directly engaged in a philanthropic or religious activity is recognized as being of public utility for tax purposes.

In tax law, a distinction is made, with regard to the financial activities of an association of public utility, between activities strictly connected with the declared object in order to enjoy tax concessions and financial activities unconnected with this object and therefore taxable.

Activities strictly connected with the declared object are those for which the receipts are wholly allocated to the object which the association has declared in order to enjoy tax concessions. There are no limits on these activities, which are deemed to be without profit aim, and which enjoy tax concessions.

On the other hand, activities not directly related to the declared object are taxable. These are mainly commercial activities engaged in by the association through enterprises engaged to raise funds to be used to attain the object for which the association has applied for tax concessions. These activities are taxed in the same way as any other commercial activity, but do not entail the loss of non-profit status provided that they do not take over from the main activity of the association (first paragraph of Article 55 of the Tax Code).

19. Gifts by individuals

Gifts made by a natural or legal person liable to tax in Germany with the aim of promoting charitable, ecclesiastical or religious activities for activities which are recognized as being for the general good to an association recognized by the tax authorities as being of public utility can be deducted from the donor's taxable



income up to certain ceilings; the ceilings vary, depending on the purpose of the gift, by between 5% and 10% of the donor's total taxable income.

20. Gifts by companies

Companies may deduct gifts up to 0.2% of the sum of total turnover and salaries and wages paid.

20(a). Gifts to non-resident associations

Such gifts are not deductible.

ACCOUNTS AND AUDITING

21. Accounts

The association must produce an annual profit and loss account. This accountancy obligation vis-à-vis members is laid down in Articles 27 (3) and Article 666 of the Civil Code, and vis-à-vis the tax authorities (for the purposes of establishing the non-profit nature of the social object), in Article 63 (3) of the Tax Code.

If the association is engaged in a commercial activity, it is required by commercial law to keep accounting records in the same way as businesses. In all cases, two sets of accounts must be presented, one for taxable activities and the other for non-taxable activities.

Auditing

The administrators are responsible to the Annual General Meeting for keeping proper accounts. The statutes may provide for a supervisory body and also for its powers. If a supervisory body (Aufsichtsrat) is set up, the provisions applicable to GmbH and AG forms of companies are not applicable. The responsibilities of such a body are determined by the statutes.

The task of auditing associations has passed to the tax inspectorate. It comprises the process of regularly recognizing and checking their non-profit status. As soon as a non-fiscal infringement is detected, the file is

forwarded either to the Ministry of Internal Affairs, which is empowered to dissolve an association covering more than one "Land", or - if the association does not cover more than one Land - to the senior government authority in the Land concerned.

FOUNDATIONS (STIFTUNGEN)

22. Constitution

By a Memorandum of Association subscribed to by any person, physical or legal, *inter vivos* (in which case it can be revoked up to the date of approval), or through a will. The memorandum must state the object of the foundation, the resources available for pursuing this object and the governing body or bodies. The resources provided must be adequate for pursuing the object which the foundation has set itself. An application for authorization must be made to the Land in which the foundation has its head office (under the law of the Länder). An appeal against refusal of authorization may be made only on the basis that the administration had not applied its own criteria.

23. Definition

Assets to which a legal personality attaches.

24. Nationality requirements

Any person may be a founder.

25. Acquisition of legal personality

Through approval by the competent authority.

26. Legal capacity

The maximum capacity required to attain the object of the foundation. It may do all that is necessary, or even simply useful, in pursuing its objective.

27. Disposal of assets on liquidation

If it has become impossible for the foundation to accomplish its object, or if the foundation is jeopardizing the public good, the administrative authority may

amend its object while complying with the intentions of the founder as far as possible. The executive committee must be heard. The authority may also abolish and dissolve the foundation (Article 87 BGB). In this event, the assets go to the persons designated in the statutes. Otherwise, they go to the state. The liquidation procedure is as for associations.

#### **TAX POSITION**

28. See associations

#### **ACCOUNTS AND AUDITING**

29. Accounts

See associations

30. Auditing

The managing body for the foundation is subject to the competent administrative authority, which is concerned only with conformity with the rules of public order. It operates in the exclusive interest of the foundation. Auditing of the accounts is governed by the statutes.

## **GREECE**

### **ASSOCIATIONS**

#### **LEGAL FRAMEWORK**

1. **Right of association guaranteed by law?**

Yes. Article 12 of the 1975 Constitution protects non-profit associations and unions provided that they conform to the laws of the State, which cannot make the exercising of this right subject to prior authorization.

2. **Basic definition**

Article 61 of the Civil Code. A union of persons with legal personality, formed with a view to pursuing a given object, as well as a collection of goods assigned to serving a given object.

3. **Minimum number of founders**

Twenty

4. **Types of associations**

Common law associations

Special associations

Unions of persons (without legal personality and to which the provisions relating to companies apply if no other provision is made).

5. **Membership nationality requirements**

The right of association is extended to non-nationals under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedom

6. **Legal personality and how acquired**

Following the application to the Court of First Instance in the area of the administration's office (the Memorandum of Association and the statutes must be appended), the legal authorities verify that the provisions of the law are complied with (check on legality). The association acquires legal personality once the Court's decision is

final and the association is entered in the register of that court.

7. **Legal capacity**

Full legal capacity except for acts inherent to physical persons.

8. **Statutes**

They must be drawn up in writing and are subject to rules on publicity.

9. **Registration requirements**

Registration constitutes acquiring legal personality.

10. **Commercial activities**

Making a profit occasionally in order to obtain resources for the association is authorized.

11. **Disposal of assets on liquidation**

Article 77 of the Civil Code. The assets of a legal person which has been wound up pass to the State, unless provided otherwise by law, the charter or the statutes, or by the decision of the competent authority. The State is bound to pursue the object formerly pursued by the legal person, using these assets. The assets of the association wound up may not under any circumstances be shared among the members.

#### **TAXATION**

##### **INDIRECT TAXATION**

12. **Article 13 of the Sixth VAT Directive**

Application of the exemption laid down in Article 13.

13. **Other exemptions**

Specific rate (4%) for associations pursuing an object for the public good.

14. **Zero rates**

No

##### **DIRECT TAXES**

15. **General position**

Income tax. The basis of taxation for legal persons not pursuing a

profit-making object is constituted by the net taxable income arising from the leasing of buildings or land and securities. The tax is not payable on other income or receipts necessary for pursuing the association's object, such as members' regular subscriptions. In the case of foreign associations, only receipts necessary for pursuing the association's object are not taxed.

16. Recognition of association for tax purposes

Associations with an object which is for the public good enjoy exemption from tax on income arising from the leasing of land and real estate and from securities.

There is also exemption from paying inheritance tax and taxes on gifts made to legal persons which do not have a profit-making object, are legally constituted in Greece and pursue an object of a national, religious, philanthropic, pedagogic or artistic nature or for the public good. The exemption covers all non-national legal persons with the same characteristics regarding assets which they might inherit in Greece, subject to the principle of reciprocity.

17. Criteria for recognition

A very broad concept of the public good. Covers any object which is not of strictly private interest and concerns the interests of large groups of persons (philanthropic, religious, social, artistic, educational).

18. Qualifying objects for recognition

The competent authority for granting exemption is the tax inspectorate in the region of the association's head office.

19. Gifts by individuals

Tax-deductible from taxable income, but the donor must have Greek nationality.

If the amount exceeds DR 100 000 in one year, it must be deposited in a loan and deposit fund.

20. Gifts by companies

Tax-deductible provided that they have been deposited in a loan and deposit fund.

20(a). Gifts to non-resident associations

Not tax-deductible.

### ACCOUNTS AND AUDITING

21. Accounts

The auditing authority is generally the local authority.

### FOUNDATIONS

22. Constitution

Concession system. Act of foundation (act *intra vivos* before a notary or a sworn statement - unilateral act by the founder) and presidential decree which approves the will of the founder and is issued by the competent Minister, depending on the objects of the foundation.

23. Definition

Set of goods intended to implement a project for the public good (in principle) and with a non-profit object.

24. Nationality requirements

25. Acquisition of legal personality

Concession system. Acquisition occurs on the day of publication in the Greek Official Journal of the decree granting authorization.

26. Legal capacity

Full. Acquiring legal personality does not automatically imply acquisition of the assets assigned.

27. Disposal of assets on liquidation

### TAXATION.

28. As for associations.

### ACCOUNTS AND AUDITING

29. Accounts

Audit board.

30. Auditing

The operations of the foundation are monitored by the State.

## **SPAIN**

### **ASSOCIATIONS**

#### **LEGAL FRAMEWORK**

**1. Right of association guaranteed by law?**

- Articles 22 (on associations) and 34 (on foundations) of the Constitution.
- Law 191/1964 of 24 December 1964 governing associations and Supplementary Decree of 20 May 1965.
- Law 30/1994 of 24 November 1994 on foundations and tax advantages for private persons engaged in activities for the public good.
- Several laws of Autonomous Communities.

**2. Basic definition**

Group or union of several natural persons with legal capacity which carries out the wish of this group to pursue on a permanent basis a given permissible object laid down by the statutes of the association (definition in the strict sense).

**3. Minimum number of founders**

The law of 1964 specifies a meeting at which "several persons" agree, without anywhere stating the number of persons or founder members required. Nevertheless, the usual practice is to require a minimum of three persons.

**4. Types of association**

- 1 - Associations governed by the Law of 24 December 1964 (which does not govern public or private foundations, civil or commercial organizations or corporate bodies).
- 2 - Associations governed preferentially by special statutes (associations of canon law, associations established by the state to attain specific objects, trade unions and similar associations, associations of civil servants and military personnel, administrative associations of

property owners, political parties, sports associations, students etc.).

Associations with social, educational, cultural or sporting objects, or those seeking more generally to promote the public good, may be recognized as "public utilities" by the Spanish Council of Ministers, on a proposal from the Minister for the Interior, which gives them several advantages, including tax advantages.

**5. Membership nationality requirements**

Non-nationals legally resident in Spain have the right of association and may exercise it in conformity with the laws and regulations. (organic law 7/1985 on the rights and liberties of non-nationals in Spain)

**6. Legal personality**

Article 25 of the Civil Code grants the status of legal person to corporate bodies, associations and foundations for the public good recognized by the law, and to associations with specific interests, whether civil, commercial or industrial, to which the law grants their own personality independent of that of its members.

In accordance with the legal practice of the supreme tribunal, legal personality arises from a contract of association. In Article 22 (3) the Constitution states that associations are entered on the appropriate register "for publicity purposes only".

**7. Legal capacity**

Article 38 of the Civil Code grants legal capacity to legal persons, which includes associations which are recognized in law. They may therefore acquire and possess goods, and contract debts or engage in civil or criminal proceedings.

Nevertheless, associations which are not recognized as public utilities may not acquire premises which are not strictly necessary for achieving their object, and

they must obtain authorization for certain private donations.

8. Statutes

Article 3.2 of the Law of 1964 lists the information which must be given in the statutes.

9. Registration requirements

Entry in a register is obligatory. The procedures for such registration vary depending on the current provisions in the autonomous region of the head office of the association. For associations subject to the Law of 1974, there is a register for each province and a national register.

There are also special registers for certain associations governed by specific systems.

10. Commercial activities

Authorized

11. Disposal of assets on liquidation

The procedure for disposing of assets in the event of the association being disbanded must be specified in the statutes.

## TAXATION

### INDIRECT TAXATION

12. Article 13 of the Sixth VAT Directive: exemptions provided for in Article 13.

Law 37/1992 of 28 December 1992 on VAT does not exempt associations directly, in that the different rates do not depend on the legal form of the entity but on the nature of its activities. However, it provides for numerous operations common to associations which are exempt or are eligible for a deduction.

13. Other specific exemptions

See 12.

14. Zero rates

No

## DIRECT TAXES

15. General position

Associations which have been recognized as public utilities and which fulfil the conditions laid down in Article 42 of the Law on Foundations and Tax Concessions for Private Participation in Activities for the Public Good have several tax advantages.

1 - They are exempt from corporation tax in respect of the activities which constitute their social or specific object, including additions to assets derived from acquisitions or transfers of cash bonds. They are also exempt in respect of any profit from commercial activity, provided this corresponds to the entity's object or specific purpose.

Income from commercial activities or from capital is not exempt, but is also eligible for certain concessions, in particular the tax band, which is a fixed rate of 10%.

2 - They are exempt from most local taxes.

16. Associations which are recognized or which enjoy tax concessions

Associations which have been recognized public utilities and which fulfil the conditions laid down in Article 42 of the Law on Foundations and Tax Concessions for Private Participation in Activities for the Public Good, and in particular the following conditions:

- they must pursue objects for the public good (social assistance, civic matters, educational, cultural, sporting, health, development cooperation, environmental protection, promotion of the "économie sociale", voluntary social work or research work etc.);

- they must allocate at least 70% of their net income to these objects;

- they must submit their accounts annually to the competent body in good order;

- in the event of liquidation, they must assign their assets to achieving objects for the public good;
- their statutory representatives must be honorary officials.

17. Criteria for recognition as a public utility.

These are given in Article 4 of the Law on Associations of 1964, as amended by the Law on Foundations and Tax Concessions for Private Participation in Activities for the Public Good. The main criteria are:

- the statutory objects must be for the public good;
- activities must be open to all and not restricted to members;
- the association must be non-profit, any profits must not be shared out, and no fees must be paid to the committee for carrying out its duties;
- it must possess the human and material resources necessary for achieving its statutory objects.
- it must have been in operation continuously for two years prior to submitting its application.

18. Types of associations recognized

cf. 16 and 17.

19. Gifts by individuals

Donors who are natural persons may deduct from their taxable income donations or gifts to bodies which enjoy tax concessions, under certain conditions and with certain limitations. Normally, this deduction will be 20% of the value of the gift. However, total tax-deductible expenditure must not exceed 30% of taxable income.

20. Gifts by companies

Organizations with a legal personality may under certain circumstances deduct gifts made to bodies which enjoy tax concessions. This deduction may not exceed 10% of taxable income in most cases.

In addition, participation by businesses in activities for the public good, and - in particular - the acquisition of works of art to be offered as a gift and expenditure on promoting and developing certain arts also attract tax concessions.

20(a) Gifts to non-resident associations

There is no legislation governing associations on this point (for foundations cf. 24).

**ACCOUNTS AND AUDITING**

21. Accounts

Article 11 of the decree of 20 May 1965 provides that associations must keep accounts which show all receipts and expenditure. These accounts must be sent to all members of the association, and then submitted annually to the Annual General Meeting, with a budget for the following year.

Lastly, they must be sent to the provincial authorities in the case of associations in an Autonomous Community which has no regulations on this matter, or to the Ministry of Justice in the case of associations which have been recognized public utilities.

**Auditing**

The law of 1964 provided for the auditing of associations by the government authorities, but this was implicitly repealed by the 1978 Constitution.

Associations recognized as public utilities must submit an annual report of their activities during the previous financial year to the Ministry of Justice.

**FOUNDATIONS**

22. Constitution

A foundation may be constituted "*inter vivos*" or "*mortis causa*". In the first case, there must be a notarized written act, and in the second case, its



constitution must be stipulated in the will.

Entry in a register of foundations, which falls within the competence of the Ministry of Justice, is compulsory and constitutes official formation of the foundation.

### 23. Definition

Article 1 of the Law on Foundations of 1994 defines foundations as organizations constituted on a non-profit basis which, at the wish of their founders, have their assets assigned permanently to an object for the public good.

### 24. Nationality requirements

Non-nationals may set up a foundation in Spain.

In addition, like Spanish foundations, foreign foundations can also engage in activities in Spain which relate to their object and can enjoy the concessions granted to Spanish foundations, provided they are represented on Spanish territory and are entered in the register of foundations.

Registration may be refused if their object is not for the public good or if they are not legally constituted in accordance with their national legislation (Article 5 of the above law).

### 25. Acquisition of legal personality

Foundations assume a legal personality once they are entered in the register of the charter. Registration may be refused if this act is not in conformity with the above law.

### 26. Legal capacity

The assets of the foundation may consist of any kind of goods and assets which can be valued in financial terms. The foundation must be the owner of these and an inventory of them must appear in the register.

The assets are managed and disposed of by the body which manages the

foundation, in accordance with the statutes. Notwithstanding, Article 19 of the above law sets limits to the disposal of the goods of the foundation and makes several transactions subject to the prior authorization of government authority.

In addition, foundations may not have shares in trading companies in which they are liable to be responsible themselves for the company's debts. They may, however, hold shares in joint stock companies.

### 27. Disposal of assets on liquidation

Goods and assets resulting from liquidation of the foundation must be assigned to private non-profit bodies and foundations pursuing objects for the public good which are specified in the charter or in the statutes of the foundation. In the absence of such stipulations, the governing body or government authorities will decide which of these organizations will assume these rights.

Nevertheless, by derogation to these provisions, the act establishing the foundation or its statutes may provide that these goods must be assigned to other public bodies pursuing objects for the public good (Article 31 of the above law).

## TAXATION

### 28.

Foundations legally entered in the register which fulfil the conditions laid down in Article 42 of the above law enjoy the same tax concessions as associations (cf. 15-20). To do so, they must be accredited by the Ministry of Finance and must expressly apply for them.

## ACCOUNTS AND AUDITING

### 29. Accounts

The management of the foundation must draw up an inventory, a balance sheet and accounts, and a report on the activities of the foundation and its financial management every year. It must also obtain a discharge for the budget of receipts and expenditure for the previous year. All these documents must be sent to the government authorities.

In addition, under certain circumstances, an external audit is compulsory.

Lastly, within the three months preceding the end of each financial year the management must also draw up and forward to the government authorities the budget for the forthcoming year (Article 23 of the above law).

### 30. Auditing

Supervision by a higher authority is intended to assist the foundation in exercising its right to exist and to ensure that its constitution and operation are legal. This supervision is carried out by a government body in the case of foundations which fall within the competence of the government.

This government body is responsible for auditing the accounts. It can request the legal authorities to intervene temporarily in the foundation and can assume the responsibilities of the governing body during the period laid down by the judge.

## FRANCE

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. Right to association guaranteed by law?

Yes - (by the preamble to the Constitution of 1958 containing the principles laid down in the Declaration of the Rights of Man and of the Citizen of 1789) and by the Constitutional Council (Decision of 16 July 1971, French Journal Officiel, 18 July 1971).

2. Definition

An association is the convention whereby two or more persons have in common, on a permanent basis, their knowledge or activities for a purpose other than sharing profits (Article 1 of the law of 1901).

3. Minimum number of founders

Two

4. Types of associations

Non-recognized or *de facto* associations

Recognized associations

Associations recognized as a public utility (no legal definition, this recognition is a discretionary act by the State).

5. Membership nationality requirements

No particular conditions

6. Legal personality and how acquired

Non-recognized associations - not applicable

Recognized associations - by declaration to the local authorities of the name of the association, its objects, its premises and the name, profession, domicile and nationality of each of the directors, with two copies of the statutes. This declaration must be published in the French Journal Officiel.

7. Legal capacity

An association declared in this way may acquire, possess or administer "only such premises as are intended for management of the association and meetings of its members, and only such buildings as are strictly necessary for the accomplishment of its stated aim" (Article 4 of the law of 1901). It may receive gifts and legacies only if it has as its exclusive purpose the provision of assistance and welfare services or scientific or medical research, or if it is a cultural or family association or an association affiliated to a federation recognised as a public utility.

An association which is recognized as a public utility has a somewhat wider capacity, since the term "strictly" is not applied. It may also acquire woodlands and land for forestry, and it can receive gifts and legacies. If it receives as a gift or legacy from a will a building which is not necessary for its operation, it must sell it and keep the proceeds. The charitable works proposed must be authorized by the authorities in each case and in advance.

8. Statutes

No prescribed form for the statutes, which constitute the law of the parties.

9. Registration requirements

None, see point 6 of declaration procedure.

10. Commercial activities

Not prohibited, either in the law of 1901 or in legislation. Profits can be made.

11. Disposal of assets on liquidation

The balance of the assets must not be assigned to the members; in accordance with the statutes and/or the Annual General Meeting, it is generally made over to a non-profit organization which pursues a similar purpose.

## TAX POSITION

### INDIRECT TAX

12. Article 13 of the Sixth VAT Directive.  
All the exemptions applicable under Article 13 seem to be included in the General Tax Code.

13. Other specific exemptions  
Certain exemptions from the registration taxes.

14. Zero rates  
None

### DIRECT TAXES

15. General position  
When they are exempt from VAT and are non-profit, associations are not liable to corporate taxes, such as corporation tax, apprenticeship tax and trading tax.

When they are not liable to the taxes levied on businesses at the ordinary rate, they are liable to tax on their assets.

All associations are liable to local taxes, i.e. accommodation tax (except for unfurnished premises and those open to the public) and property tax payable by all owners of premises (except low-cost accommodation).

When they are exempt from VAT they are liable to a payroll tax. If they have more than 10 employees, they are liable to the contribution paid by employers for ongoing vocational training and the employers' contribution to the building effort

They are liable to tax on income from their assets.

16. Recognition of associations

If an association wishes to engage in certain specific activities, it must obtain official approval, e.g. for tourism and leisure activities, certain "authorized" activities in the field of health, social work or medical/social work, activities recognized as being of the nature of

public services, i.e. engaging in hunting or fishing, organizing official sporting competitions etc.

Associations recognized as public utilities

Application for recognition is made to the Ministry for the Interior and granted, under certain circumstances, by decree by the Conseil d'État. This recognition imposes certain obligations but gives broader entitlement to receive gifts and acquire and possess premises.

17. Criteria for recognition as a public utility

Must be a recognized association, and have operated regularly as such for three years, must pursue an object for the public good, cover more than the local area, have at least 200 members, and must adopt model statutes drawn up by the Conseil d'État.

18. Criteria for recognition

Recognition is conferred by the state, which assigns tasks concerned with public services to associations. These associations receive various types of aid, which are subject to administrative constraints and rigorous monitoring. For instance, the "ordonnance" of 8 August 1985 gives sporting federations the monopoly for organizing competitions.

19. Gifts by individuals

Private gifts are tax-deductible at the rate of 1.25% of taxable income for recognized associations, and 5% for foundations and associations recognized as public utilities. These gifts give eligibility to a reduction in tax equal to 40% of the value of the gift (50% when they are for free meals or accommodation for people in difficult circumstances). Only gifts which are made to a French association or a foreign association operating in France are tax-deductible.

20. Gifts by companies

Gifts from companies are tax-deductible at the rate of 37% or 42% of the taxable profit up to 2‰ of turnover for gifts to recognized associations, and 3‰ for gifts to recognized public utility associations and to foundations.

Only gifts which are made to a French association or a foreign association operating in France are tax-deductible.

#### ACCOUNTS AND AUDITING

##### 21. Accounts

Only associations recognized as public utilities, associations subsidized by local authorities and associations engaged in commercial activities above certain thresholds (concerning their budget, balance or number of employees) have a legal obligation to provide accounts in a standardized form.

#### FOUNDATIONS

#### LEGAL FRAMEWORK

##### 22. Constitution

Public utility foundation. The draft must be submitted to the Minister for the Interior and then to the Conseil d'État, which in granting recognition as a public utility authorizes the foundation to receive its working capital. The statutes must be drawn up in accordance with the model statutes issued by the Conseil d'État, which lay down the composition of the administrative committee. This usually follows the principle of thirds, one third of its members being nominated by the founders, one third being members *ex officio* representing the public authorities, and one third being nominated by the "conseil d'administration" - management committee.

Sheltered foundation: set up within a public utility foundation without creating a new legal entity (rare).

Business foundation (Law of 4 July 1990). There is no need for these to be

recognized as public utilities. They are established for a given period - generally 5 years renewable - and their action programme is approved by the administrative authorities.

##### 23. Basic definition

Irrevocable assignation of goods, rights and resources to work for an object for the public good which is non-profit.

##### 24. Nationality requirements

By definition, one-third of the administrative committee is composed of eligible persons representing the government authorities and designated persons. To engage in activities permanently in France or to have the same capacities as a French foundation, a foreign foundation must be recognized as a public utility.

##### 25. Acquisition of legal personality

This is acquired once the decree of recognition as a public utility has been approved by the Conseil d'État and published in the French Official Journal.

##### 26. Legal capacity

Same conditions for accepting gifts as for an association recognized as a public utility, but a wider entitlement to possess assets including premises.

##### 27. Disposal of assets on liquidation

As for associations recognized as public utilities (cf. 11), but the administrative authority's agreement must be obtained.

#### TAXATION

##### 28. As for associations

#### ACCOUNTS AND AUDITING

Auditing and the obligation to produce accounts are the same as for associations recognized as public utilities.

## **IRELAND**

### **ASSOCIATIONS**

#### **LEGAL POSITION**

1. **Right of association guaranteed by law?**

The general right to form associations is guaranteed by Article 40.6 of the Irish Constitution. The more specific right to form associations for non-governmental organisations is set out in the Companies Acts and in the Industrial and Provident Societies legislation.

2. **Basic definition**

There is no specific definition of "associations" or similar term in Irish law. The specific form which an association takes on is determined by the type of legal structure which it opts for. This is discussed further below.

3. **Types of association**

There are three main types of structure relevant to non-governmental organisations:

(a) **Unincorporated bodies.** Such bodies may have a written Constitution. This would set out the aims and objectives of the organisation and possibly details of the membership and Management Committee. In legal terms, the Constitution is a contract or binding agreement between the members of the group to abide by the terms of the agreement, i.e. to try to achieve the aim set out in the Constitution to carry out their activities in accordance with the Constitution, etc.. However, while the Constitution is legally binding as between the members of the group, it has no effect in relation to non members. Thus the group does not have a legal personality of its own.

(b) **A company limited by guarantee.** This is a variation on the standard form of legal personality for business firms in Ireland. In this type of company there are no shares in the company and the

members simply guarantee to pay a certain (usually nominal) amount towards the debts of the company if it is wound up.

(c) **Industrial and provident society.** This type of structure is frequently used by co-operatives. In practice, many of the rules in relation to the industrial and provident society are quite similar to the company limited by guarantee. However, there is one important difference in that whereas a group can become a limited company for any legal purpose, in order to be registered as an IPS, a society must be formed "for carrying on any industries, businesses or trades".

There are also various other types of structure which may be of relevance to non-governmental associations including Trusts, Friendly Societies, etc.. However, the above three are the main types of structure which would be used in Ireland.

4. **Minimum number of founders**

Both the company limited by guarantee and the industrial and provident society must have at least seven members. There is no legal minimum to form unincorporated bodies.

5. **Membership nationality requirements**

There are no specific nationality requirements in relation to any of the main three types of legal structure.

6. **Legal personality and how acquired**

The unincorporated body has no separate legal personality. Both the company limited by guarantee and the industrial provident society do have separate legal personalities. This is acquired by submitting the Constitution of the body in the required form to the relevant government organisation which is authorised to certify the particular body. The Constitution can then be inspected by members of the general public.

**7. Legal capacity**

The legal capacity of the body is set out in its Constitution. In the case of the company limited by guarantee, this is known as the Memorandum and Articles. In the case of the industrial and provident society, this is known as the Rules. There are no specific limitations on legal capacity in relation to non-governmental associations other than those generally laid down by law in relation to legal structures generally.

**8. Statutes in proscribed form?**

In the case of the company limited by guarantee, the statutes must be drawn up in a form acceptable to the Companies Office which is the relevant registration body. Sample memorandum and Articles are published in the Companies Acts, and these or some variation on these would generally be utilised by such companies. In the case of the industrial and provident society, again the Rules must be acceptable by the Registrar of Friendly Societies, who is the relevant registration body. There is no official form of prescribed rules but the Registrar has approved rules drawn up by various non-governmental organisations, and these or some variation on them are generally utilised.

**9. Registration requirements**

As set out above, both bodies must be registered with the relevant registration authority. Other than this, there is no specific registration requirement.

**10. Commercial activity**

There is no specific limitation on the ability of these types of body to carry on commercial activity. However, where a body wishes to obtain exemption from certain taxes from the Revenue Commissioners on the basis of its charitable activities, it must be "the subject of a binding trust for charitable purposes only", i.e. the Constitution or Rules of the group must contain a

binding clause which guarantees that any money received by the group will be used only for charitable purposes. In addition, it is unlikely that a Constitution which contained elements of a commercial nature would be considered to be charitable by the Revenue Commissioners.

**11. Disposal of assets on liquidation**

The Companies Acts and the Industrial and Provident Societies legislation do not contain any general restrictions in relation to disposal of assets on liquidation. Again, where a company wishes to be recognised as charitable by the revenue Commissioners, the Commissioners will normally insist that on being wound up, any assets will be transferred to another body of a charitable nature.

**TAX POSITION**

**INDIRECT TAX**

**12. Article 13 of the 6th VAT Directive**

Article 13 has been implemented in Ireland.

**13. Specific exemptions**

Specific exemptions of relevance to NGOs (including those required by the 6th VAT Directive) include:

(a) school or university education and vocational training or re-training;

(b) hospital and medical care or treatment provided by a hospital, nursing home, clinic or similar establishment;

(c) services for the protection or care of children and young persons;

(d) supply of goods and services closely related to welfare and social security by non-profit organisations;

(e) supply of services and goods for the benefit of their members by non profit making organisations whose aims are primarily of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature.



14. Zero rates

Items which are zero-rated include medical equipment and appliances, i.e. invalid carriages and other vehicles, orthopaedic appliances, etc., walking frames and crutches and similar items.

**DIRECT TAX**

15. General position

The Companies Acts and the Industrial Provident Societies legislation do not contain any general exemption from taxation in relation to non-governmental organisations.

16. Recognised associations

It is possible for either a company limited by guarantee or, more exceptionally, an industrial and provident society, to seek exemption from various taxes from the revenue Commissioners on the basis of its charitable status. In order to qualify as charitable, the objects and powers of the company or society must be so framed that every object to which its income or property can be applied is charitable and, as set out above, its main objects and the application of its income or property must be bound by a binding trust. This means that it must be obliged by law to advance only its stated main objects and to apply its income and property to these objects exclusively.

17. Qualifying criteria for recognition

In order to qualify as a charity, the object of the company must fall under one of the following headings:

- (a) advancement of education;
- (b) advancement of religion;
- (c) relief of poverty, or
- (d) other works of a charitable nature beneficial to the community.

In addition to satisfying the above, the company must keep annual audited accounts and make these available to the Revenue Commissioners on request; it

must prohibit the payment of fees and/or salaries (other than out-of-pocket expenses) to officers and directors for services rendered; it must also satisfy the other criteria discussed, including those in relation to the winding up of the organisation.

The taxes from which an organisation may be exempt include income tax, corporation tax (in the case of companies), capital gains tax, deposit interest retention tax, capital acquisition tax and stamp duty on a transfer or lease of land.

There is no exemption in relation to value added tax, and employees of a charity are liable to income tax under the PAYE system and Pay Related Social Insurance.

18. Gifts by individuals and companies

In some circumstances, gifts by individuals and companies may be subject to tax relief. One of the main reliefs of relevance to the non-commercial sector is that gifts of between £100 and £10,000 to certain educational establishments may be entitled to relief.

**ACCOUNTABILITY AND SUPERVISION**

19.

There is no specific supervision of unincorporated bodies. Companies are subject to reporting and accounting requirements to the Companies office. Annual returns and accounts must be submitted and records must be kept concerning changes in members, management, etc.. Broadly similar reporting requirements are imposed on industrial and provident societies (reporting to the Registrar of Friendly Societies). In extreme cases, investigators can be appointed to investigate the operation of these bodies. Bodies which regularly fail to make returns will be struck off. Generally,

however, the accountability and supervision requirements are not very stringent. In the case of charities, the revenue Commissioners have a supervisory function but again, in practice, this is not very onerous.

#### *FOUNDATIONS*

There is no specific legislation on "foundations" in Ireland. A body which is recognised by the Revenue Commissioners as having charitable status may apply to the Commissioners of Charitable Donations and Bequests to be incorporated under the Charities Acts, 1973. However, there are only about 25 such bodies in Ireland.

## ITALY

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. **Right of association guaranteed by law?**  
Articles 2 and 18 of the Constitution. Articles 14 to 22 of the Civil Code. Law of 27 February 1985, Law No 266 of 11 August 1991 on voluntary organizations.
2. **Definition**  
The law does not give a definition. In common practice it is any stable organization of a number of persons pursuing a common interest, other than profit.
3. **Minimum number of founders**  
No
4. **Types of association**  
Recognized associations  
Non-recognized associations  
Committees
5. **Membership nationality requirements**  
No restrictions
6. **Legal personality**  
Only for recognized associations, following the decree of recognition by the government authorities. A condition for such recognition is to have sufficient assets to pursue the statutory objects. The faculty of recognizing legal persons may be assigned to the President of the Italian Council of Ministers, the Region or the Prefects, depending on the territorial coverage of their activities.  
There are certain constraints on non-recognized associations (cf. 7).
7. **Legal capacity**  
Private legal persons may not acquire fixed assets or accept gifts or inheritances, or even legacies without government authorization. Authorization is considered to be the condition for the acquisition to produce its effects. The constraints on non-recognized associations consist of restricted autonomy on assets, in that persons who have acted in the name and on behalf of the association are also responsible for the debts of the association. Law No 52 of 27 February 1985 now allows non-recognized associations to acquire fixed assets. Non-recognized association and committees may take legal action.  
Voluntary organizations which are entered in the register, even if they have the form of non-recognized associations, may acquire the goods necessary for their activities and receive gifts and legacies.
8. **Statutes**  
The Memorandum of Association must be in the form of a public act for recognition to be granted. There are certain minimum requirements.
9. **Registration requirements**  
No obligation, but if the association is not registered, the administrators are jointly and severally responsible, with the legal person, for its debts (Article 33 of the Civil Code).
10. **Commercial activities.**  
Associations may engage in commercial activities. Such activity should not be aimed at making a monetary profit, but exclusively at obtaining their purposes. If, on the other hand, the commercial activities are autonomous in relation to the purpose of the association, the association may be considered as a *de facto* company, with important taxation and social consequences. Article 24 of the Civil Code provides that members have no right to profit-sharing.
11. **Disposal of assets on liquidation**  
The remaining assets are disposed of in accordance with the provisions of the Memorandum of Association or the

statutes. In the absence of specific provisions, the decisions of the Annual General Meeting which has decided on the winding up are implemented. In the absence of such decisions, the government authorities decide.

## TAXATION

### INDIRECT TAXATION

12. Article 13 of the Sixth VAT Directive

Yes.

13. Other specific exemptions

Goods and services provided by voluntary organizations are exempt from VAT. Exemption from registration tax and taxes relating to the Memorandum of Association and all acts relating to the activities of voluntary organisations.

Exemption from the taxes on gifts, transfers, land registry and INVIM (tax on the increased value of fixed assets) for the associations which receive the gifts. This also applies to legacies and inheritances.

14. Zero rates

No

### DIRECT TAXES

15. General position

Recognized and non-recognized associations are liable to tax on the income of legal persons (IRPEG), which is proportional to the sum of the income received as land revenue, revenue of a land-income nature, income from capital or income arising from engaging in a commercial activity, whether occasional or not. Amounts paid by members as contributions or associations' subscriptions are not included in the taxable amount.

16. Recognition of associations for tax purposes

The IRPEG is reduced by 50% for historical, literary, scientific,

experimental and research societies pursuing essentially cultural objects.

Profits from marginal trading and production activities earned by voluntary organizations are not taxable, provided they are used for the institutional purposes of the organization.

17. Criteria for recognition

Must have legal personality in the first case and be a voluntary organization within the meaning of Law No 266/91.

18. Criteria for obtaining tax concessions

For voluntary organizations, exemption must be laid down by the criteria established by an inter-ministerial decree (involving the Ministry of Social Affairs and the Ministry of Finance), which is being drafted.

19. Gifts by individuals

Gifts for the public good, humanitarian, religious or political objects may be deducted up to a limit of 2%.

This limit may be exceeded when the gift is going to organizations for promoting study, research, dissemination of information, the acquisition, maintenance or restoration of part of the cultural heritage or to institutions which organize fairs and exhibitions with a particular cultural or scientific interest with the authorization of the Ministry of Culture.

Gifts for the central institute for the support of the clergy of the Italian Catholic Church, and those for helping people in developing countries, may be deducted up to a ceiling of LIT 2 million.

Gifts to voluntary organizations which are entered in the register are no longer tax-deductible. The only deduction possible at present is that concerning, on the one hand, an organization subject to corporation tax or, on the other hand, a voluntary organisation with legal personality. Entry in the regional register

of voluntary organizations is therefore no longer sufficient.

20. Gifts by companies

As in the case of private persons, gifts for purposes concerning the public good, or humanitarian, religious, or political purposes, can be deducted up to a ceiling of 2%.

20(a). Gifts to non-resident associations

For associations with their head office in Italy, the system is the same, provided that they are entered in a regional register on Italian territory.

ACCOUNTS AND AUDITING

21. The administrative authority has the power to audit and monitor.

FOUNDATIONS

22. Constitution

Act of foundation (unilateral act *inter-vivos* in the form of a public act or will).

23. Definition

Private legal person with assets assigned to an object.

24. Nationality requirements

No.

25. Acquisition of legal personality

By government authorization in the form of a decree of the President of the Italian Council of Ministers

26. Legal capacity

As for recognized associations

27. Disposal of assets on liquidation

If nothing is laid down in the statutes, the government authorities assign the assets to other bodies with similar objects.

TAXATION

Historical, literary, scientific, experimental and research foundations with exclusively cultural objects within the meaning of Article 6 of Presidential

Decree No 601/73 enjoy a reduction of 50% on taxable income on legal persons. Imports of goods for foundations with the object of giving assistance or carrying out charitable works, education, training, study and research are exempt from VAT.

In addition, as a general principle, foundations which are not engaged in commercial agricultural activities or trade activities are not liable to VAT within the meaning of Article 4 of Presidential Decree No 633/72.

ACCOUNTS AND MONITORING

29. Accounts

No

30. Monitoring

The government authorities have powers to monitor foundations, which consist essentially of the power to amend the objects of the foundation when these have been attained, or have become impossible or meaningless. They have the power to coordinate the foundations and may group foundations together when their assets have become insufficient.

## LUXEMBOURG

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. Right of association guaranteed by law?  
Yes, under Article 26 of the Constitution of 17 October 1868 as amended, the Law of 21 April 1928 on non-profit associations and foundations, and the Law of 11 May 1936 guaranteeing freedom of association.
2. Basic definition  
Article 1 of the Law of 21 April 1928 defines a non-profit association as one which does not engage in industrial or trading activities, and which does not seek to obtain material gain for its members.
3. Minimum number of founders.  
Three
4. Types of association  
Non-profit associations (ASBL)  
*De facto* associations
5. Membership nationality requirements  
No restrictions.
6. Legal personality and how acquired  
Acquired on the date when the statutes are published.
7. Legal capacity  
An ASBL may possess, as its own property or otherwise, only the premises necessary for attaining its statutory purposes. There is no limitation on furniture.  
Gifts exceeding LUF 500 000 must always be authorized by Grand-Ducal Decree.
8. Statutes  
Written act duly authenticated or under private seal.
9. Registration requirements  
The Memorandum of Association must be registered. The statutes and the full

names, trades/professions and addresses of the administrators and the head office must be deposited with the register of trade and businesses. Any amendments must also so be lodged. An alphabetical list of members must be deposited with the chancellery of the court for the place in which the association has its offices in the month when the statutes are published. They must be updated annually.

10. Commercial activities  
Profit-making activities are not prohibited but they must nevertheless be occasional and ancillary to the main activity.
11. Disposal of assets on liquidation  
If the statutes contain no provisions, the decision is taken by the Annual General Meeting. If the meeting cannot make a decision, the receivers decide on a method of disposal which is as close as possible to the social purpose.

#### TAXATION

##### INDIRECT TAXATION

12. Article 13 of Sixth VAT Directive  
Yes
13. Other specific exemptions  
Operations with an educational purpose organized by public or private establishments, operations carried out by youth hostels, the organizers of sporting or scientific, cultural, educational, economic or professional events when the income is intended mainly to cover organizational costs, theatrical representations, conferences, medical and paramedical services, provided that these exemptions do not distort competition.
14. Zero rates  
No

##### DIRECT TAXES

15. General position

In accordance with Article 159 of the Luxembourg Fiscal Code, ASBLs are liable to tax on corporate bodies (IRC). Any person liable to the IRC tax is also liable to a wealth tax. Article 25 of the law of 29 December 1971 lays down the rights of registration and the rights of succession and transfer on death. For gifts *inter vivos* and legacies, the rate is 6%.

16. Recognition of associations for tax purposes

Article 161 of the Fiscal Code provides for an exemption from IRC for organizations pursuing directly and solely charitable or cultural purposes or purposes for the public good. However, they are still liable to tax if they engage in industrial or commercial activities. Only disinterested activities of ASBLs are exempt from tax and not any ancillary or occasional profit-making activities.

17. Criteria for recognition

Non-profit associations pursuing charitable or religious purposes, or purposes for the public good (public health, youth and sport, sciences, arts, culture) may be recognized as being for the public good.

18. Qualifying purposes for recognition

Application must be made to the Ministry of Justice. Purposes must be non-profit, and recognized as being for the public good in conformity with the statutes. A Grand-Ducal "Arrêté", adopted with the assent of the Conseil d'Etat, confers the status. Tax concessions are then awarded on the basis of tax law.

19. Gifts by individuals

Gifts totalling over Flux 5 000 per annum are tax-deductible up to a ceiling of 10% of total income or Flux 10 000 000. Any gifts must be to recognized organizations for the public

good and other bodies recognized as such in law.

20. Gifts by companies

The same rules apply to companies in Luxembourg

20(a). Gifts to non-resident associations

These are not tax-deductible

ACCOUNTS AND AUDITING

21. Accounts

The annual accounts must be lodged with the registry of the civil court on the establishment of the association, or at least the accounts for the past ten financial years, to obtain authorization to accept gifts.

FOUNDATIONS

22. Constitution

Assignment of assets by authenticated document or by will, with approval by Grand Ducal "Arrêté".

23. Definition

Foundations are circumscribed by law, since the only establishments recognized as foundations are those which are engaged in philanthropic, religious, scientific, artistic, educational, social, tourism or sporting activities, using revenue arising mainly from capital acquired either at the time when they were founded or subsequently, to the exclusion of the pursuit of material gain.

24. Nationality requirements

None

25. Acquisition of legal personality

Simultaneously with approval of the statutes by the Grand Ducal arrêté.

26. Legal capacity

As for associations

27. Disposal of assets on liquidation

As provided for in the statutes, failing which the Ministry of Justice assigns them to a purpose as close as possible to



that for which the institution was established.

#### TAXATION

28. As for associations.

#### ACCOUNTS AND MONITORING

29. Accounts

Every year, within two months of the end of the financial year, the accounts and budget must be forwarded to the Ministry of Justice. These documents are published in the "Mémorial"

30. Monitoring

Article 40 of the law of 1928 provides that the Minister for Justice shall ensure that the assets of a foundation are allocated to the purpose for which the institution was established.

## NETHERLANDS

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. Right of association guaranteed by law?

Yes - the right of association is recognized for any person resident within the territory of the Netherlands (Articles 1 and 8 of the Constitution).

2. Basic definition

In accordance with Article 2.26 of the BW (Burgerlijk Wetboek - Civil Code), an association is a legal person composed of members and constituted for a precise purpose other than that laid down for cooperatives and mutual societies<sup>13</sup>. It is constituted by a multilateral legal act. It cannot share profits among its members.

3. Minimum number of founders.

Two

4. Types of association

Associations under private seal

Associations by notarized act

Stateless associations (international associations not under any specific legal jurisdiction, not provided for in law but recognized by the law)

5. Membership nationality requirements

No conditions

6. Legal personality and how acquired

Full: associations whose statutes appear in a notarized act (incorporation of the statutes in a notarized act can also be done during the life of the association). Such an association must be entered in the register of associations;

Limited: associations whose statutes are not incorporated in a notarized act.

Entry of such an association in the register of associations has the effect of limiting the responsibility of the directors, which will be invoked only if the other party claims that the association has not met its obligations.

Foreign associations: the Netherlands follows the principle of incorporation. This means that an association constituted abroad is recognized within the Netherlands, and that the foreign law applicable (which determines whether legal personality can be granted) governs the association under Netherlands law.

7. Legal capacity

Associations whose statutes are incorporated in a notarized act have full legal capacity, they may contract debts, receive legacies and acquire fixed assets without restrictions. Associations whose statutes are not incorporated in a notarized act (with limited personality) cannot acquire registered goods or receive legacies.

8. Statutes

No obligatory form, except for statutes incorporated in a notarized act, for which the content is laid down.

9. Registration requirements

None, except for associations constituted by notarized act or recognized in a notarized act. The act must be entered in the register held for this purpose by the Chamber of Commerce and Industry in the area of the head office.

10. Commercial activities

An association may engage in commercial activities, but the profits must not be distributed to the members. The purpose of an association cannot be to make profits and distribute them to the members.

11. Disposal of assets on liquidation

<sup>13</sup> These are types of associations in Dutch law.

The statutes of an association constituted by notarized act must specify how the assets are to be disposed of on liquidation or the procedure for determining such disposal (BW - Civil Code - and Article 2: 27 (f)). Once creditors have been paid, the balance of the assets is assigned to all parties who are entitled to them under the statutes, pro-rata to their rights, otherwise to the members. If no-one has a claim to the remaining assets they pass to the state, which will assign them in accordance with the object of the legal person as far as possible BW, Article 23b (1).

## TAXATION

### INDIRECT TAXATION

12. Article 13 of Sixth VAT Directive  
All exemptions concerning associations apply.
13. Other specific exemptions  
There are several exemptions for goods and services supplied by associations, and special exemptions for the provision of services and related goods by associations to their members, provided that the exemptions do not produce restrictions on competition and that the organization does not attempt to distribute the profits to the members.
14. Zero rates  
No.

### DIRECT TAXES

15. General position  
Income tax. In general, associations are subject to the common law regarding taxes. There is no special tax for associations (legal persons). An association may be subject to corporation tax (Vpb) if it is carrying on a business which brings it into competition with businesses liable to corporation tax, in respect of the profit which it obtains from this activity.

Tax on fixed assets: Associations with a real title to fixed assets or the users of such assets must pay a local tax.

16. Recognition of associations for tax purposes

No exact definition. Article 24(4) of the law on estate duty provides for tax exemptions for recognized organizations which exist for the public good.

An association for the public good is completely exempt from corporation tax if the profits in any one year are less than HfI 13 000 or if the profit for the past four years is less than HfI 65 000, provided that there is no profit motive, or that the profit motive is secondary and the profits are used solely for the public good (Article 5 of the law on corporation tax and "arrêté" of 20 August 1971). Charitable institutions, libraries, retirement funds, institutions for the preservation and management of land for nature preservation purposes and certain other institutions on specific land.

Tax on income from fixed assets: Associations not liable to corporation tax may apply for reimbursement of the fixed assets deduction, which is deducted at source on dividends or interest.

There are provisions for exemptions (*inter alia* on buildings used for religious purposes) from property taxes.

17. Criteria for recognition

The relevant legislation does not give a definition of the public good. The law on estate duty specifies that a precise order in respect of a legacy or a gift precludes their being for the public good. According to the law, the public good is the opposite of the good of an individual or of a restricted group.

18. Criteria for obtaining approval or empowerment

Recognition by the registration and estate duty inspectorate.

19. Gifts by individuals

Gifts made to approved Dutch associations are tax-deductible at a rate of between 1% and 10% of taxable income on sums exceeding HFL 120 per annum and per donor. Gifts made under contracts in authenticated form for at least five years are tax-deductible in full in all cases where they are for the benefit of a Dutch association composed of at least 25 members (in which case public good is not a criterion), provided that such gifts are in the form of an annuity, that the association has full legal capacity and that it is not liable for corporation tax.

20. Gifts by companies

Gifts made to associations or foundations registered in the Netherlands which have an academic, religious, charitable, cultural object or one for the public good (including political parties) are tax-deductible when they exceed a total of HFL 500 up to a maximum of 6% of taxable income.

20(a). Gifts to non-resident associations

The same regulations apply to associations registered abroad, which are specifically mentioned by the Minister for Finance.

ACCOUNTS AND AUDITING

21. Accounts

Within six months of the end of the financial year, the administrative council forwards to the Annual General Meeting an annual report on the situation and management of the association. It submits the balance and the profit-and-loss account, together with comments, to the meeting for approval. These documents are signed by the directors and other officials.

Auditing

**Internal:** The statutes may provide that the association will have a college of commissaires. In the absence of such a

college, and of an accountant within the meaning of Article 2.393 (1) attesting the veracity of the documents, every year the Annual General Meeting shall appoint a commission of at least two members who cannot be members of the administrative council.

**External:** by declaration of a qualified accountant attesting the reliability of the documents. There is no obligation to publish accounts.

FOUNDATIONS (STICHTING)

22. Constitution

By authenticated act containing the statutes. These statutes must be entered in the special foundations register of the Chamber of Trade and Industry in the area of the head office.

23. Definition

A legal person created by a legal act which has no members and which has the aim of pursuing the object laid down in the statutes using the goods assigned to this object.

24. Nationality requirements

The head office must be in the Netherlands, although foundations may have offices abroad.

25. Acquisition of legal personality

By notarized act.

26. Legal capacity

Foundations have full legal capacity

27. Disposal of assets on liquidation

According to the procedures laid down in the statutes. If there are no claimants to the remaining assets, they revert to the state, which will allocate them in accordance with the object of the legal person as far as possible.

28. Taxation

As for associations

ACCOUNTS AND AUDITING

29. Accounts

In accordance with BW 2 10 (2), the directors of the foundation are obliged to draw up a balance sheet and a profit-and-loss account for the legal person within the six months following the end of the financial year, and to keep them for ten years.

30. **Monitoring**

**Internal:** In accordance with the statutes.

**External:** The government authorities may ask the directors for information. If cooperation is not forthcoming, the President of the Court can order the documents to be shown to the government authorities. At the request of the government authorities, or any other person concerned, the Court can order the directors to be suspended or dismissed and can appoint alternate directors.

## AUSTRIA

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. **Right of Association guaranteed by law?**  
Yes, under Article 12 of the basic national law (Staatsgrundgesetz - StGG): Austrian citizens have the right to form associations. "Legal" associations are more specifically governed by the 1951 Law on Associations.
2. **Basic definition**  
No legal definition. The following definition is based on legal practice and case law. An association is (1) voluntary, (2) intended to be permanent (3) a structured association of several persons (4) intended for attaining a given permissible purpose for the public good (5) through continuous communal activity.
3. **Minimum number of founders**  
One founder (a person who declares himself willing to form an association) is sufficient. Subsequently, the association must have at least three members (cf. also 6).
4. **Types of association**  
Austrian legislation distinguishes between "ideelle Vereine" (non-profit associations), which are governed by the 1951 Law on Associations, and associations set up with profit in mind (Associations Charter of 1852).
5. **Membership nationality requirements**  
Non-nationals, even when not resident in Austria, are entitled to become members of an association in Austria.
6. **Legal personality and how acquired**  
Every association founded in accordance with the 1951 Law on Associations has a legal personality. The notice of intention

to create an association must be submitted to the competent authorities and be accompanied by a draft of the statutes. If no prohibition against forming an association is issued within six weeks, or if the authorities declare that they do not prohibit its formation, the association may begin to function. At least three members must decide at an initial general meeting to form an association on the basis of statutes which have not been rejected by the authorities. The association acquires its legal personality by virtue of this decision. It acquires its legal capacity by electing representatives as laid down in the statutes.

7. **Legal capacity**  
Full legal personality after it has been constituted, L.
8. **Statutes**  
The statutes, as provided for under the law of 1951, must state that the association is registered in accordance with Article 12 of the law of 1951.

#### TAX POSITION

##### INDIRECT TAX

12. **Article 13 of 6th VAT Directive**  
Vereine enjoy the same exemptions in Austria as listed in Article 13 of the 6th VAT directive.
13. **Other specific exemptions**  
There are no specific exemptions covering a wider scope than defined in Article 13.
14. **Zero Rates**  
Zero rates do not exist in Austria.

##### DIRECT TAX

15. **General position**  
Also subject to Corporation Tax (Körperschaftsteuer) are "nichtrechtsfähige Personenvereinigungen, Anstalten,

Stiftungen" and andere  
Zweckvermögen".

16. Exempted from taxation

Non-profit organizations for the general public, for the public welfare, churches (§§ 34 - 47 Bundesabgabenordnung), small insurance associations (60.000 ATS), associations in the field of agricultural activities for the purpose of using common equipment (Weidw und Maschinengenossenschaften), etc., private foundations, unions which are legal professional representatives, financing associations for small and medium-sized enterprises.

17. Qualifying criteria

The most important criterion for recognition is the object defined in the statutes of the association, such as charity, non-profit, public welfare, other specific purposes.

18. Qualifying objects

Religious communities recognized by public law, "pensions - und Unterstützungskassen" under specific conditions (§ 6 KSTG).

The exemptions do not apply to limited taxable persons.

19. Gifts by Individuals

Gifts by individuals to religious institutions (up to 1.000 - ATS p.a.), high schools, associations in the field of research and development can be deducted from income tax. The amount of deductible gifts is limited to 10% of the total incomes the year before.

*FOUNDATIONS*

**LEGAL POSITION**

22. Constitution

Free to create

23. Basic definition

There are two different forms of foundation. 1) Foundation in accordance with the Bundes-Stiftungs-und-Fonds

Gesetz (law on foundations) or general national legislation: with permanent assets for pursuing objects for charitable purposes or the public good. 2) Private foundation, with legal personality, which has been provided with funds by the founder to be used, managed and applied to pursue a permissible object determined by the founder.

24. Nationality requirements

None

25. Acquisition of legal personality

Type 1 foundations (cf. 23 above): these have legal personality, which is acquired when the appropriate authorities decide that the foundation can be authorized.

Type 2 foundations: these have legal personality, acquired on entry in the "Firmenbuch" (register of companies).

26. Legal capacity

Both forms of foundation have legal personality, i.e. they can complete legal formalities and be a party to legal proceedings.

27. Disposal of assets on liquidation

Type 1: to be stated in the winding-up notice of the authorities concerned with foundations.

Type 2: assets pass to the ultimate beneficiaries named in the "Stiftungserklärung" (declaration). If this is revoked, they pass to the founder or to the Republic of Austria.

## PORTUGAL

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. Right of association guaranteed by law?  
Article 46 of the 1976 Constitution, Civil Code, Articles 158 to 166 and 167 to 184, and Decree-Law 594/74 of 7 November 1974.
2. Basic definition  
The law does not give a definition. In accordance with general practice, a group of individuals who pool certain goods or services for an object which excludes making a personal profit.
3. Minimum number of founders  
No minimum.
4. Types of association  
Private associations under the general scheme  
Private associations under a special scheme (e.g. cooperatives and social solidarity organizations)  
Associations without legal personality (non-recognized associations and special committees)
5. Membership nationality requirements  
Unless the statutes provide otherwise, non-nationals can be members of an association
6. Legal personality and how acquired  
Standard recognition, granted on condition that the act of establishing the foundation is authenticated by a notary and that its content is in conformity with Article 167-1 of the Civil Code. Publication of extracts of the act of establishing the foundation and the statutes in the Portuguese Official Journal makes the association recognizable in law by a third party.
7. Legal capacity

Associations have legal capacity subject to the *ultra vires* rule. In accordance with this rule, associations are recognized as having not only the rights and obligations which are necessary but also those which are appropriate for attaining their object. Only rights and obligations inherent to a human person are excluded.

8. Statutes  
Yes. As for the Memorandum of Association, i.e. the notarized act. There is an obligatory basic minimum.
9. Registration requirements  
For associations under the general scheme, registration has the sole function of publicity, and has no constitutive function.
10. Commercial activities  
Associations may have a financial object, not excluding financial advantages for the associates, provided that these are not in the form of a profit as such.
11. Disposal of assets on liquidation  
In the case of goods bequeathed or donated with instructions or intended for a certain purpose, they must be assigned to another legal person, with the same instructions or object. In the case of other goods, Article 162-2 of the Civil Code authorizes members in accordance with the statutes or by decision of the general meeting to decide on their assignment.

#### TAXATION

##### INDIRECT TAXATION

12. Article 13 of Sixth VAT Directive  
Yes.
13. Other specific exemptions  
Medical or paramedical care, educational establishments, artistic activities, insurance and social assistance services
14. Zero rates



Foodstuffs, newspapers, reviews and cultural books, pharmaceutical products and the like, passenger transport, medical services, entertainments.

#### DIRECT TAXES

##### 15. General position

Income tax for legal persons - IRC - (20% of taxable income) which is payable on total income less certain expenses. Subscriptions paid by members and subsidies to finance the attainment of the association's objects are not considered as income.

Tax on assets.

##### 16. Recognition of associations for tax purposes

Legal persons of an administrative public utility (religious communities, voluntary firemen's associations etc.) are exempt from IRC, as well as ordinary public utilities pursuing exclusively scientific or cultural objects, or performing charitable or social work; specific institutions for social solidarity (IPSS) and persons legally similar to these.

##### 17. Criteria for recognition

In the first two cases, the organizations must cooperate with the government authorities, at national, regional or local level. IPSSs and similar bodies must be registered with the regional social security department. Nevertheless, the decision is at the discretion of the authorities. The extent of the exemption may vary depending on the objects.

##### 18. Qualifying objects for recognition

Exemptions are granted by the Ministry of Finance at the request of applicants by means of a decision (despacho) published in the "Diário da República"

##### 19. Gifts from individuals

Natural persons may deduct gifts to the organization specified in Article 56 of the law on the IRS up to a value equal to 15% of their net taxable income. This

also applies to legal persons with non-profit objects belonging to, or established by, religious denominations, teaching or educational associations, scientific research or culture, literary, artistic etc.

##### 20. Gifts by companies

Legal persons may deduct gifts given as cultural sponsoring or to organizations such as teaching or educational, scientific research or cultural, literary or artistic associations from their taxable profits up to a total value equal to 0.2% of turnover, and 50% of any sum in excess of that.

##### 20(a). Gifts to non-resident associations

#### ACCOUNTS AND AUDITING

##### 21. Accounts

The conseil de surveillance - supervisory council - is the body responsible for monitoring the activities of the administrative body. It ensures that the accounts of the association are properly kept.

The accounts of associations which enjoy tax concessions must always be available to the tax authorities.

#### FOUNDATIONS

##### 22. Constitution

By an act *inter vivos* or a will. The notarized form of the act is required, except in the case of a non-public will. The charter establishing the foundation must state the object of the foundation and specify the goods allocated to it. The statutes must always be in authenticated form.

##### 23. Definition

There is no legal definition. In accordance with general practice, the foundation is an organization pursuing a permanent object to which assets have been assigned.

##### 24. Nationality requirements

No, but the head office must be in Portugal.

25. Acquisition of legal personality

Foundations acquire legal personality by individual recognition, which is the responsibility of the administrative authority.

26. Legal capacity

As for associations

27. Disposal of assets in the event of winding up

The assets of wound-up foundations are disposed of according to the common system for associations and foundations

### TAXATION

28. As for associations

### ACCOUNTS AND AUDITING

29. Accounts

30. Auditing

Foundations remain under the permanent supervision of the competent authority for recognition. Foundations must have a tax council. They may be wound up by the authority which recognized them once their object has been attained or has become impossible to attain, in the event of illicit use of resources, if public order is endangered or if the object being pursued no longer corresponds to that laid down in the statutes.

## **FINLAND**

### **ASSOCIATIONS**

#### **LEGAL FRAMEWORK**

1. **Right of association guaranteed by law?**  
Yes. Article 10a of the Constitution Act as amended in 1995 and Article 1 of the Associations Act of 1989.
2. **Basic definition**  
A contract by which several people act together for the common realisation of a non-profit purpose. (The association is a permanent body in the sense that it is not momentary)
3. **Minimum number of founders**  
Three
4. **Types of association**
  - A. Registered associations:
    - non profit associations
    - economic associations (for example co-operative societies established before the entry into force of the Act on co-operative societies of 1954)
    - associations subject to permission (provided by the Associations Act)
    - associations organised by a legal act/statute (for example the Finnish Advocates Associations)
  - B. Non-registered associations which do not have legal capacity
5. **Membership nationality requirements**  
Associations Act: none  
Exceptions: if the primary purpose of the association is to exercise influence over State affairs, it may have as members only Finnish citizens, foreigners residing in Finland and associations whose members are Finnish citizens or foreigners residing in Finland or associations who have member associations made up of Finnish citizens or foreigners residing in Finland.
6. **Legal personality and how acquired**  
Yes. According to the Associations Act, legal personality is acquired by registration. Only registered associations can have legal personality. The members of a registered association shall not be personally liable for the commitments of the association.
7. **Legal capacity**  
A registered association has full legal capacity as a legal person. A registered association may obtain rights, make commitments and appear before a court or another authority as a party. Non-registered associations do not have legal capacity
8. **Statutes**  
Yes.
9. **Registration requirements**  
Registration is not compulsory as such. If registration is wanted, requirements of registration are provided in the Associations Act.  
A notification of formation shall be recorded in a Memorandum of Association which shall include the rules of the association and the name and domicile of the chairman of the board and the persons who have the right to sign for the association. The notification of formation shall be signed by the chairman of the board
10. **Commercial activities**  
A non-profit association may only practise a trade or other economic activity that has been provided in the association's rules or that otherwise relates to the realisation of its purpose or that is to be deemed economically insignificant.

For economic associations there are no general statutes (see types of association n. 4)

11. Disposal of assets on liquidation

After liquidation, the remaining assets should be used as required in the rules of the association. In the absence of such a rule the liquidators must put the remaining assets at the State's disposal to be used to promote the same or similar objects as the liquidated association

**TAX POSITION**

**INDIRECT TAX**

12. Article 13 of Sixth VAT Directive

Corporations for the public good (charitable organisations, sport associations etc.) are liable to tax if their income is deemed to be income from business activities according to the Income Tax Act. This means that in practice all exemptions of relevance to associations coming under Article 13 have been implemented

13. Other specific exemptions

None

14. Zero rates

Printing services for membership publications of associations for the public good are subject to zero rate

**DIRECT TAX**

15. General position

Generally subject to company tax (28% of taxable income) on all their income; liable to real estate tax on taxable value of land and buildings

16. Recognition of associations for tax purposes

According to the Income Tax Act, non-profit associations (associations for the public good) are liable to company tax only on their income for business activities, and communal tax (12,04% of

taxable income) on their income from real property used for other than non-profit purposes.

The National Board of Taxation may grant exemption from tax on income from business or real property if the operation of associations is socially significant

17. Criteria for recognition

Associations operate exclusively and directly for the public good in a material, spiritual or social sense; their activities do not concern only a limited group of persons; members must not get economic benefits (shares of profit etc.) from the operation

18. Qualifying objects for recognition

Dividends, interests and capital gains are not subject to income tax unless the property belongs to a business activity. Business income does not contain, inter alia:

- sales proceeds and other proceeds from occasions arranged for financing the operation of associations; proceeds from membership bulletins and other publications directly serving the operation of associations

19. Gifts by individuals

Gifts given to non-profit associations are not taxable income. Gifts are not deductible in income taxation of individuals

20. Gifts by companies

Gifts given to non-profit associations are not taxable income. In company taxation, gifts are, within certain limits (FIM 5000-150.000), deductible if given for scientific or artistic purposes to associations nominated by The National Board of Taxation

20(a). Gifts to non-resident associations

**ACCOUNTS AND AUDITING**

21. Accounts

## *FOUNDATIONS*

22. **Constitution**  
According to the Act on Foundations, as amended in 1995, the establishment of a foundation is subject to a permission granted by the National Board of Patents and Registration.
23. **Basic definition**  
A foundation is established with a deed of foundation which must include the purpose of the foundation and its property.  
A foundation is governed by an independent administration, the board of which shall be set out in the by-laws of the foundation
24. **Nationality requirements**  
The members of the board of trustees and the persons authorised to sign the name of the foundation must be resident in a member state of the EEA Agreement. However, at least one of those persons must be resident in Finland, if the Ministry of Trade and Industry has not granted an exception to this requirement.
25. **Acquisition of legal personality**  
Legal personality is acquired by registration. Registration of a foundation is compulsory.
26. **Legal capacity**  
Full legal capacity as a legal person; after a foundation has been registered, it can acquire rights and undertake obligations as well as sue and be sued in its own name
27. **Disposal of assets on liquidation**  
If the foundation, after its debts have been paid, has assets and if the by-laws do not provide for their use, they shall pass to the State, which shall without delay transfer the assets to be used to further a purpose related to that of the foundation

## **TAX POSITION**

28.  
See references above to the tax position for associations

### **ACCOUNTS AND AUDITING**

29. **Accounts**  
Foundation must have a minimum of two auditors and two deputy auditors to audit their accounts and administration
30. **Auditing**  
The Ministry of justice ensures that the administration of the foundation complies with the law and the by-laws of the foundation

## SWEDEN

### ASSOCIATIONS

#### LEGAL FRAMEWORK

1. Right of association guaranteed by law?  
Yes. Chapter 2, Articles 2 and 20 in the Constitution of 1974
2. Basic definition  
An association (*ideell förening*) is a legal person in which several persons act together for a certain purpose. The association may not have any economic aims or at least no commercially organised activity
3. Minimum number of founders  
Not regulated
4. Types of association  
*Ideell förening* which is not regulated by statutory law
5. Membership nationality requirements  
No special requirements
6. Legal personality and how acquired  
The association is considered to have a legal personality if there are statutes and a board
7. Legal capacity  
The association is able to acquire rights and obligations, to sue etc., without any special restrictions
8. Statutes  
No, but the statutes have to be as complete as necessary for the aim of the association
9. Registration requirements  
There are no general requirements. An association with an economic activity sometimes has to be registered in the Trade Register
10. Commercial activities  
In principle not allowed. The association may, however, carry on some business

activity as long as it is not commercially organised

#### 11. Disposal of assets on liquidation

The assets are divided in accordance with the statutes. If the statutes do not regulate this matter, the assets may be divided among the members

#### TAX POSITION

##### INDIRECT TAX

#### 12 - 14 General position

Associations with charitable purposes are generally not subject to indirect tax. Other associations are subject to indirect tax on the same conditions as other legal persons.

##### DIRECT TAX

#### 15. General position

Normally not subject to income tax or to the net wealth tax. Non-profit associations pay no income tax for business with a natural connection to the non-profit activity. Income from other business activities are taxable.

#### 19. Gifts by individuals

Gifts over 10 000 SEK are normally subject to gift tax. With the exception of religious communities and associations serving educational, medical, national defence, research, social work or charitable purposes, the gift is not deductible for the donor.

#### 20. Gifts by companies

The same as 19.

#### ACCOUNTS AND AUDITING

#### 21. Accounts

No special supervision for associations.

#### FOUNDATIONS

#### 22. Constitution

All physical and legal persons can create a foundation.

**23. Basic definition**

A property which according to the dispositions of the founder (gift or will), is singled out to be permanently managed for a certain purpose.

**24. Nationality requirements**

None.

**25. Acquisition of legal personality**

A foundation has legal personality as soon as it has been created, i.e. when the property has been transferred to the separate management.

**26. Legal capacity**

**27. Disposal of assets on liquidation**

In principle, a foundation cannot be liquidated as long as it has assets. However, in special cases the assets may be used for a purpose which is very close to the original purpose. A special permit of a governmental authority is required for such a procedure.

**TAX POSITION**

**28.**

Foundations serving national defence, educational, medical, social work, research or charitable purposes are only taxable for business income.

Foundations with a non-profit purpose are not subject to gift tax. Gifts are not deductible for the giver.

Foundations are subject to indirect tax on the same conditions as other legal persons.

**ACCOUNTS AND AUDITING**

**29. Accounts**

**30. Auditing**

Foundations are generally supervised by a local government authority.

## UNITED KINGDOM

### ASSOCIATIONS *(Voluntary Organisations)*

#### LEGAL FRAMEWORK

1. **Right of association guaranteed by law?**  
There is no written right to associations although there exists freedom of association. There is a freedom to create trusts although in some cases trusts with non-charitable objects may be void.
2. **Basic definition**  
There is no single generally accepted legal definition of an association. In its widest sense, an association is one formed by two or more people who of their own volition join together in a common purpose which is not in pursuit of financial gain.
3. **Minimum number of founders**  
In practice two.
4. **Types of association**  
Unincorporated associations  
Trust  
Company limited by guarantee  
Industrial and Provident society  
Incorporated by Royal Charter  
Incorporated by Act of Parliament.
5. **Membership nationality requirements**  
No requirements for associations as such. In the case of a charity in England and Wales, the Charity commission will only register if within jurisdiction. This is normally construed to mean that in the case of an unincorporated charity a majority of the trustees should be resident in England and Wales, in the case of a company registration within the jurisdiction is sufficient.
6. **Legal personality and how acquired**

Company limited by guarantee-obtained by registration with register of Companies.

Industrial & provident Society-obtained by registration with Registrar of Friendly Societies.

Incorporated by Royal Charter-obtained through Royal Charter..

Incorporated by Act of Parliament-obtained through Act of Parliament.

Unincorporated associations-No.

Trust no; however, the body of trustees can obtain legal personality through Certificate of incorporation issued by Charity Commission.

#### 7. **Legal capacity**

There are no restrictions in statute; however, in some areas capacity will be derived from the objects and powers included in the governing document.

#### 8. **Statutes**

No.

#### 9. **Registration requirements**

Registration with the Charity Commission for charities in England and Wales. For other associations, registration will depend on the legal structure. Registration with the Registrar of Friendly Societies for Industrial and Provident Societies, registration with the Registrar of Companies for companies limited by guarantee.

#### 10. **Commercial activities**

There is a restriction on the commercial activities of charities. They can engage in primary-purpose trading but not in permanent trading as a means of fund-raising. Charities that wish to trade to any substantial degree must set up a separate trading subsidiary which can then covenant its profits back to the parent charity and the tax can be recovered.



**11. Disposal of assets on liquidation**

In associations, this will be in accordance with the governing document.

In the case of charities, to other charities with similar purposes. If the governing document does not include provisions dealing with this, the Charity Commission may give directions by Order or Scheme.

**TAX POSITION**

**INDIRECT TAX**

**12. Article 13 of Sixth VAT Directive**

Not all exemptions of relevance to charities have been implemented.

**13. Other specific exemptions**

(a) The supply of education or vocational training otherwise than for profit.

(b) The provision of nursing and medical care in an approved institution.

(c) The provision of welfare services otherwise than for profit.

(d) Fund-raising events.

**14. Zero rates**

These include sales of donated goods, supply of advertising for fund-raising or educational purposes, certain aids for disabled people, vehicles and ambulances for disabled people, certain medicines and medical equipment supplied to charities. Construction of new residential property and buildings used for a certain charitable purposes are zero rated.

**DIRECT TAX**

**15. General position**

No specific exemptions for associations as such.

**16. Recognition of associations for tax purposes**

Charities are exempt from most forms of direct taxation including income tax,

corporation tax, capital gains tax, inheritance tax.

**17. Criteria for recognition**

To qualify for the exemption, the income or gains must be applied to charitable purposes only and trading income other than primary-purpose trading will often be subject to corporation tax.

**18. Qualifying objects for recognition**

**19. Gifts by individuals**

When an individual or corporation executes a deed of covenant promising to pay a particular sum to a charity for a period to exceed three years, a sum representing tax at the basic rate must be deducted and the Inland revenue refunds to the charity the basic rate of income or corporation tax on that sum. Additionally, if the individual is a higher-rate tax payer, he can receive further tax relief through the adjustment of his tax code. A company can claim a deduction from its profit for the gross amount, and obtains tax relief at its marginal rate.

Similarly, since 1990 individuals have been able to make one-off payments under Gift Aid. Currently the minimum donation is £250 in monetary form

**20. Gifts by companies**

**20(a). Gifts to non-resident associations**

**ACCOUNTS AND AUDITING**

**21. Accounts**

## **Financial Statement**

### **1. TITLE OF OPERATION**

Communication from the Commission on Promoting the Role of Voluntary Organisations and Foundations in Europe.

### **2. BUDGET HEADING INVOLVED: B5-3202**

### **3. LEGAL BASIS**

Council Decision of 9 December 1996 on a Third Multi-Annual Programme for Small and Medium sized Enterprises in the European Union 1997 - 2000.

### **4. DESCRIPTION OF OPERATION**

Expenses incurred in connection with meetings of experts and information campaigns with a view to defining future approaches on the role of associations in the European Union.

#### **4.1 Period covered and arrangements for renewal**

The meetings of experts and information campaigns will be for the period of 1997 only.

### **5. CLASSIFICATION OF EXPENDITURE OR REVENUE**

5.1 NCE

5.2 DA

A small proportion (meetings of experts and information ) is 100% financed.

The other subsidies for cofinancing with other resources in the public and/or private sectors will be adjusted in accordance with Community interests.

Conventional subsidies for colloquia, seminars and round tables are allocated at particular percentage rates, depending on the needs of the organizers and the importance of the event as regards the *économie sociale* sector

## **7. FINANCIAL IMPACT**

There will be a series of meetings and conferences in 1997. Total costs 100.000 ECU

## **8. FRAUD PREVENTION MEASURES; RESULTS OF MEASURES TAKEN**

Bearing in mind contractual obligations and the principles of economy and sound financial management, all agreements and contracts between the Commission and the recipients of payments include anti-fraud provisions (monitoring, reports to be submitted, etc.) for checking subsidies and acceptance of services and studies ordered by the Commission before payment.

## **9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS FOR THE COMMUNICATION ON VOLUNTARY ORGANISATIONS AND FOUNDATIONS**

### **9.1 Specific and quantified objectives; target population:**

The establishment of a co-ordinated policy for networks of European voluntary organisations and foundations.

An information network on the *économie sociale* (European citizens' advice bureaus) has been set up by the European Committee of Workers Cooperative Productive Societies, the Euro-Citizen Action Service, the Comité Européen des Associations d'Intérêt Général and the European Foundation Centre in order to meet the need for enterprises in the *économie sociale* sector to interact with the

Community's business community via the European Euro-Info Centres network (the network for networking);

9.2 Justification:

It is necessary to discuss with the Member State governments and voluntary organisations (associations) and foundations how best to implement the policy recommendations set out in the document.

9.3 Monitoring and evaluation of the operation

The voluntary organisations and foundations sector is highly diversified.

This situation calls for great attention at the preparatory stage of the proposed actions so as to strike the right balance between perceived requirements and resources employed.

When the actions are launched, the indicators will be proposed in accordance with the specific features of the action on the basis of a standard fact sheet to be drawn up by the departments. This fact sheet must take account of the eligibility criteria for the various funds and sources of finance.

- *Assessment of the results obtained*

The scheduled actions are of prime importance, since they must enable associations and foundations to take advantage of the benefits of the frontier-free Single Market while complying with competition rules and without sacrificing their identity as partnerships. The results will be assessed, for example, on the basis of the objectives for each action in the light of the European aspects identified on the ground, and of the difficulties encountered by *économie sociale* businesses, because of their involvement in local developments, in using the Structural Funds correctly and to the full.

10 ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilization of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorized by the budgetary authority.

**10.1 Effect on the number of posts**

Type of post		Staff to be assigned to managing the operation	Source		Duration	
			<u>Permanent posts</u>	<u>Temporary posts</u>		Existing resources in the DG or department concerned
		<u>1</u>				
Officials or temporary staff	A B C	1 x A		1	no	
Other resources						
Total		1		1		12 months

The cost of a staff member (A1 to A5 level) is estimated at 100.000 ECU.

**10.2 Overall financial impact of additional human resources**

ECU

	Amount s	Method of calculation
Officials	none	
Temporary staff		
Other resources (indicate budget heading)		
Total	none	

**10.3 Increase in other administrative expenditure as a result of the operation**

ECU

Budget heading	Amount s	Method of calculation
Total	none	within existing budget

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