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Legal Framework of NGOs in Western European Countries

1. A constitutional Right

- Right of Associations stated in most Constitutions
 - When not stated in the Constitution still remains a constitutional right
 - o Ex: France. 3 parts to the Constitution:
 1. Declaration of Human and Civil Rights (1789)
 - Refers to the purposes of Political Association.
 2. Preamble of 4th Constitution
 - Refers to the rights to join Trade Unions.
 3. 5th Constitution: Only Institutions of the 5th Republic. (1958)
- However, a decree of the Constitutional Court declares that the Right of Association is a constitutional right. (July 16, 1971)
- Right to establishment of Foundations can also be considered a constitutional right.
 - o Such is the case in Spain and Greece.
 - o Whereas the Spanish constitution protects clearly stipulates the protection of the right to establish a foundation, the Greek constitution protects mainly in article 109:
 - "1. Alteration of the contents or term of a will, a codicil, or donation as the provisions benefiting the State or a charitable cause is prohibited.
 - 2. Exceptionally, a more beneficial use or disposal of a bequest or donation, for the same or another charitable cause in the area designated by the donor or the testator, or in the greater district thereabout, shall be permitted, as specified by law, after it is certified by a court judgement that for any reason whatsoever, the will of

the donor or the testator cannot be fulfilled, either in whole or to its greatest extent as well as if it can be more fully satisfied by the change of use."

2. Constitution requirements

As a general rule (except for in Ireland and UK): 2 forms of Non-profit Organizations

- Associations
- Foundations

2.1. Requirements regarding founders/members:

Founders may be legal and/or natural persons for both associations and foundations.

The minimum number of founders required for an association is usually 2-3 (as is the case in Belgium, France and Luxembourg).

However, some countries require a larger number of founders to establish an association:

- Germany: 7
- Greece: 20

Some countries such as Luxembourg and Belgium have for requirement that a minimum number of members be nationals: 3/5 of the members. This requirement will have to be modified in accordance with the decision from the European Court of Justice of 1999:

Commission of the European Communities v the Kingdom of Belgium

The decision of the court was that Belgium violates Article 12 of the amended EC treaty prohibiting discrimination against EC nationals on the basis of nationality.

The law of Belgium will need to be changed accordingly in order not to restrict the numbers of EU nationals in Belgian associations.

(the provision referring to the law on International Organizations –with the requirement that at least 1 member be Belgian was anyhow to be amended in a current draft.

2.2. Requirements regarding endowment

Some countries require a minimum endowment

- Austria: 1 million Shilling,
- Denmark: 250.000 Kronas
- Finland: 150.00 FIM
- France, for corporate foundations, the minimum endowment is proportional to the amount of annual action program established.

For Public Benefit Organizations, the highest administrative court that registers them estimates whether the endowment is sufficient for carrying the statutory purposes of the foundation. The practice of the court to require a minimum endowment of 5 million Ff has been abandoned.

Most laws state that the endowment has to be sufficient for the organization to be able to carry out its activities.

2.3. Acquisition of legal personality

The procedure for establishing foundations usually requires pre approval in particular in countries where only public benefit foundations can be established. For associations the rules for establishment and therefore the acquisition of public personality are very diverse. Mainly,

- by simple signature of statutes (Denmark, Sweden)

- Notorization of the statutes (Netherlands, Portugal) In Portugal at the time of presentation of legal documents to the public ministry, the ministry may suggest changes to the governing documents
- Simple declaration of the establishment of the association to the competent authority which will then publicize the charter in the official journal (France, Belgium, Luxembourg)
- Submitting a registration application to the competent authority
 - o Court: Germany, Greece
 - o Administrative offices: ex Ministry of interior in Spain although rules may vary if the autonomy has adopted its own rules for registration of entities. In Italy, presidential decree or prefectoral decree.
- After prior approval of the statutes by the local authorities, and during the reunion of the general assembly after the draft statutes have been approved by the local authority (Austria)

NB: Italian associations without legal personality still have a limited legal capacity! (take legal action and acquire fixed assets, be granted tax benefits).

2.4. Dissolution/Nullification of Associations in France

The only requirement for the creation of an association provided in the Law of 1901 in France is that "two or more persons gather together their knowledge for a purpose other than the sharing of profits." (§1). Associations acquire legal personality by declaration procedure and the Act does not provide any activities as grounds for refusal to register an association.

However, if an association carries out activities of an illegal character; which contradict law or morality; or threaten the national territorial integrity and the republican form of government- its registration will be considered null (§3) and its dissolution will be pronounced by the court. (§7). The Law on Combat Groups and Private Militia was adopted in 1934 in order to enable the administrative dissolution of particularly threatening associations. The dissolution by Presidential decree of associations carrying out activities such as armed public demonstrations, terrorism, or

racially motivated violence (§1), enables a more expeditious pronouncement of dissolution when the state is confronted with such urgent matters. Such a dissolution may be appealed to the *Conseil d'Etat*, which is thereby instructed to make its decision urgently.

On December 16, 1999, the Senate passed a bill “on the reinforcement of the penal dispositions against associations or groups representing, through their illegal actions, a threat to public order or a major danger for human being”, which if adopted as such by the National Assembly, will amend:

- The sanctions provided in the Law of 1901,
- The Law on Combat Groups and Private Militia of 1936,
- The Public Health Code.

➤ Bill is criticized by US congress.

The draft law attempts to include as a ground for dissolution systematic violations of the law that are performed carried out by these organizations. In proposing the inclusion of these provisions on dissolution in the law on Combat Groups and Private Militia of 1936 instead of the Law of 1901, the legislators indicate they favor the urgent dissolution procedure (administrative dissolution) over the usual dissolution procedure pronounced by the court, which has not enabled such dissolutions to take place in an effective manner in the past. In its report, the Law Commission also highlighted the fact that with regard to the problem of sects, no legal person had yet been condemned for their illegal actions and that mainly individuals were prosecuted.

2.5 Public Benefit organizations

The status of public benefit organizations can be granted according to two different approaches:

- Either the status is granted by the fiscal authorities for the purpose of granting tax benefits. This is the case for example in Sweden or Austria where the list of organizations qualifying for exempt status is reviewed by the tax authorities every year.

- Or the status is granted by civil authorities. For example, in France it is within the competence of the highest administrative court to grant the status. In France, the public benefit status grants not only tax benefits but also greater legal capacity such as the right to possess real estate, which can be used for purposes other than those stated in the organization's charter, receive donations from inheritance. Carrying a certain type of activities is usually not sufficient for an organization to qualify for the status. In such countries, requirement may include the adoption of standard statutes, a minimum amount of assets, the fact that the organization was established for a minimum period of time. The tax authorities in these countries will grant automatic tax benefits to these organizations which have been granted the public benefit status by the civil authority but may also grant tax benefits to other organizations which cannot qualify for the status granted by the civil authorities but carry out activities the tax authorities considers of public benefit. The organizations which have been granted the status by the civil authorities may be granted greater tax benefits than those which are recognized as public benefit organizations by the tax authorities. It is important to note that in Belgium for example, one of the requirement to be eligible for the public benefit status granted by the tax authorities (versus the status granted by Royal Decree) is to be able to present upon request to the fiscal authorities the list of donors.¹

2.5. European Association

¹ Elie Alfandari *Associations et Fondations en Europe, Régime Juridique et Fiscal*, Editions Juris Service, Lyon, 1994 p 70.

TAXATION OF NON GOVERNMENTAL ORGANIZATIONS IN COUNTRIES OF THE EUROPEAN UNION

by Caroline L. Newman

INTRODUCTION

The European Union in its effort to reach a common market attempts to harmonize its trade, social and tax legislation. Some of the EU policies achieved harmonization in tax legislation which concerns the NGO sector, namely the VAT and custom duties. Other tax legislation such as income or social tax has not yet been harmonized. However, the rules applied to the taxation of income of public benefit organizations (PBOs) or the treatment of NGOs with respect to social tax are very similar in many European Countries.

Taxes that are of greatest concern for the sector in NIS countries will be discussed in this paper:

- Income tax: Taxation of donor's contributions to PBOs,
- Income tax: Taxation of income of PBOs,
- Social tax
- VAT, and
- Customs duties

These legislations will be reviewed according to their level of harmonization from legislation for which there is no existing common rule to the most harmonized rule implemented in all member states.

The tax treatment of NGOs for certain taxes is linked to whether the concerned organization is regarded as a public benefit organization or not. Thus it is necessary to review the concept of

“public benefit”, since the described legislation will be related to public benefit organizations in most cases in particular with respect to income tax.

Each country has established its own notion of public benefit and its procedure for granting the public benefit status to an organization.²

Public Benefit activities include the usual religious, educational, environmental, medical, humanitarian, scientific, or sports activities and any other activities the country regards as activity of public benefit depending on its priorities. For example, in Sweden an activity in support of the country's defense in cooperation with the military and other government authorities³ is also considered to be public benefit activity. Usually, organizations that can qualify for the status are associations and foundations or any other non-profit legal form with the exception of political parties and trade unions. Rare are the countries such as Finland where political parties can be granted public benefit status.

1. Income tax treatment of Donors to PBOs: no common patterns in EU countries

Donors to NGOs can be granted a tax credit or tax deduction on the part of income donated to an NGO only when the donation is made to a public benefit organization.

Regarding the tax treatment of these donations, in some countries such as Germany or Denmark it might be required that the donation be made for the furtherance of the charitable purposes of the organization and not be allocated to economic activities in order for the donor be granted a tax benefit. Further, it is common that tax legislation states that the tax privilege cannot be granted to a donor who receives a counterpart from the donee. In addition in most countries only

² See chart

a maximum amount of the donation can be deductible from taxable income or benefit from a tax credit. The range for amounts deductible is varies significantly⁴ from:

- Countries where no deductions/credits are granted to donors, such as in Sweden (maybe because in Sweden NGOs receive great subsidies from the State and therefore there is no particular need for private contributions)
- To countries where no limits is set on the amounts deductible/credited from contributions to NGOs. Such is the case in Greece where donations exceeding the donor's annual income can be carried over the next fiscal year⁵. (Greece being amongst the poorest of European Union Member States, subsidies from government might not be sufficient enough and therefore NGOs need to rely more on private donations).

The range between the treatment of corporate or individual donations is also variable:

- Some countries allow individuals to deduct/credit a greater portion of income than corporations. Such is the case for example in France, Italy and Spain.
- Other countries, such as the Netherlands or Finland, on the contrary allow corporations to deduct a greater portion of income than individuals.
- While other countries treat corporate and individual donations in the same manner. (Denmark, Germany, Greece, Luxembourg).

2. Income Tax of PBOs

³ Some propositions to the tax legislation in Sweden may amend the type of activities of public benefit and if adopted, the strengthening of the defense of Sweden will not be considered a public benefit purpose any longer.

⁴ See chart

⁵ in Greece certain restriction apply on the procedure for transferring the donation. Amounts donated by individuals exceeding DR 100,000 in one year as well as all donations made by corporations must be deposited in a loan and deposit fund

The income is composed of the passive income (revenues from dividends, rent, royalties for example) and the active income (revenues from economic activities). Should be considered economic activities, activities which have a regular character and are aimed at making profits. For example, the legislation from Luxembourg defines the “economic enterprise” of a non-profit organization as an independent, systematic and repeated activity other than farming or forestry activities with the purpose of getting receipts or other economic advantage.” Both passive and active income are liable to income tax.

2.1. Passive income

As a general rule, membership fees, grants, gifts, contributions should not be included in the taxable income of a PBO. This rule is valid in all EU countries except for Austria where most donations are subject to a concessional flat tax rate of 2.5%.⁶ In some countries, such as in France, donations above a certain amount need prior approval from the State in order to be exempt from income tax.

In most countries the passive income of an organization that does not engage in economic activities is entirely exempt. However, when an organization engages in economic activities, the passive income to be allocated to these economic activities becomes liable of income tax.

2.2. Active income

Public benefit organizations can carry out economic activities in all countries of the European Union (with the exception of Greece where only foundations can engage in economic activities) and, under certain conditions, may be granted tax benefits on profits from these economic activities.

There are two fundamental principles regarding the profit tax status of PBOs. Either they are considered liable of income tax or they are considered exempt from income tax. In both case, the PBO will be granted tax benefit on its income tax if rules regarding the use or the earning of this income are respected.

2.2.1. Tax Exempt Status

In most countries of the EU, PBOs are granted a tax exempt status by the tax authorities. As a general rule, the organization has to adopt accounting standards that enable the tax authorities to distinguish the passive income from the active income as well as the income generated from related or unrelated economic activities. In addition, the economic activities of the organization have to be carried out respecting certain set of rules.

- In some countries such as in Luxembourg or Austria, it is required that public benefit organizations carry out only economic activities which are absolutely necessary for the realization of their statutory purposes such as sports events or exhibitions. In Austria, an organization needs in addition to obtain a prior approval from the Ministry of Finance or it risks losing all its tax benefits. Therefore it is within the competence of the tax authorities to decide on a discretionary basis whether the activities are absolutely necessary in order for the organization to carry out its statutory purposes.
- A more progressive and the most common practice is to grant exemption on income tax generated only from “related economic activities” (see article on “Economic Activities of Not-for-Profit Organizations” in this handbook for a definition of “relatedness”). In this case, the passive income allocated to unrelated activities will become taxable income. In Finland for example, an organization qualifying as a public benefit is granted the “exempt status under special law”. Finnish associations which qualify as exempt can only engage in economic

⁶ In Austria, for donations *inter vivos* both the donor and the donee are liable to pay gift and inheritance tax, for donations *post mortem*, only the donee is liable to pay the tax on the amount of the donation. Donations of real property

activities described in their charters and which are related to their main purpose and considered commercially insignificant. Italy grants tax exemption to any income from related economic activities⁷ of PBOs with the ONLUS status, even when these organizations do not possess legal personality.

- Another approach has been defined by the French tax authorities in September 1999. In this case, public benefit organizations are considered tax exempt and the main criteria to be taken into consideration for the exemption of active income is to evaluate through three steps whether the organization enters into competitions with the business sector or not. The three steps are the following (see article on France in this handbook for more details):

1) Is there a financial interest in the management of the organization?

For example, are directors salaries superior to $\frac{3}{4}$ of the minimum salaries; are the profits distributed to members or directors, of founders?

If the answer is YES, then the organization is liable to income.

If the answer is NO, then the second step needs to be considered.

2) Does the organization enter into competition with the business sector?

In other words, can individuals obtain similar services from businesses in the geographic area?

If the answer is NO, then the organization is exempt from tax generated from active income.

If the answer is YES, then the third step needs to be considered.

3) Does the organization carry out economic activities under the same conditions as the business sector does?

is taxed at an additional 4%. Only the first AS 1,500 donated is tax exempt.

⁷ Economic activities provided to members, associates, partners of a religious, social assistance, cultural, sports, political organizations which have acquired legal entity status are exempt from income tax. However do not qualify for exemption the following activities : sale of new consumer goods, restauration, hotel, transportation, prot, airport services, supply of water, gaz or energy, organization of tourism trips, commercial exhibitions or fairs, radio and telecommunication services, advertizing , and storage services.

Four points need to be analysed in order to be granted tax exemption from active income: the product must be of “Social Utility”, the public should be targeted (such as minorities, the poor...), the price adapted to the public and not leading to unfair competition, and finally, publicity has to be informative and not commercial.

Other countries also take into consideration the competition of the non-profit entity with the business sector. For example Spain or Germany⁸ where the essential test is the relatedness of the economic activities or the Netherlands, where the essential test is the allocation of profits to public benefit purposes, will also verify that the economic activity performed do not enter into competition with the business sector.

When the volume of economic activities of a public benefit organizations becomes too significant, it is often recommended, as is the case in France, that the organization set up a separate commercial entity in order not to loose its exempt status. In the United Kingdom on the other hand, a charity may not engage directly in economic activities, and may only do so through a subsidiary.

Finally, in some countries such as Spain, taxable income is taxed at a reduced rate. (see art. 53 of the Spanish law on Foundations commented in this handbook).

2.2.2. Liability to income tax as the basic rule

In Denmark, all legal entities, whether businesses or non-profit entities are liable of income tax. However, all profits from income of a PBO, either passive or active, can be deducted from the taxable income when they are allocated to the charitable purposes of the PBO. In Denmark, for example, any portion of active income allocated (or to be allocated within the 5 following fiscal years) to the charitable purposes of the organization is deducted from the taxable income. If the

⁸ Elie Alfandari *Associations et Fondations en Europe, Régime Juridique et Fiscal*, Editions Juris Service, Lyon, 1994 p 424.

organization allocates all its income to its charitable purposes, it will not need to pay income tax on its profits.

In most countries it is important that a great part of the income be allocated to the statutory purposes of the organization. For example in Spain, public benefit organizations are required to allocate 70% of the net income to the statutory purposes within 3 years, or in Sweden an average of 80% of annual income within 5 years.

2.2.3. Unconditioned exemptions

It is common that when the income or turnover (whether active or passive, related or unrelated, allocated to the charitable purposes or not) of a PBO remain under a certain threshold, it will be exempt from income tax. This threshold is of Kr 25,000 on income of foundations in Denmark, DM 60,000 on gross income (active income) of associations or foundations in Germany, 11,000 Florins of profits in the Netherlands, FF175,000 on turnover in France (up to FF 500,000 depending on the type of commercial activity), SK 15,000 on taxable income of Swedish associations.

Some types of income may not be included in the taxable income and this varies depending on the country. For example the Finnish Income Tax Act (section 23) stipulates that the following activities are not to be included in the taxable income:

1. "income from organizing lotteries, bazaars, athletic competitions, dance and other recreational events, collecting goods and other equivalent activities for the purpose of funding its activities, nor income received from catering, sales or other such activities carried out in connection with the aforementioned events;
2. income received from membership publications and other publications directly serving the organization's purpose;
3. income received from the fund raising by selling emblems, cards, banners or similar articles;

4. income received by selling the products manufactured in hospitals, mental institutions, penitentiaries or labor institutions, in old people's homes, disabled persons' institutions or in other such institutions for the purpose of treatment or for educational purposes;
5. income received from running a bingo”.

3. Social Tax

In all countries of the European Union, legal entities whether they are business or not-for-profit entities, are liable on social taxes. Social taxes are usually paid by employers as well as by employees. The social taxes rates paid by employers may vary⁹ from 4.6% in the United Kingdom to 80% in Italy for example. The employee's share can range from 20% in France to as low as 2% in the UK. In some countries like in Denmark the employer and the employee contribute a rather low lump sum because it is the income tax that provides for social budget lines.

The non-profit entities do not benefit from special treatment in this respect. Further, if an organization compensates volunteer's work, it may be liable of social contributions on the compensation. Such is the case in Finland.¹⁰

In France, other taxes are calculated on the salaries paid by the employee: the professional tax and the apprenticeship tax. These taxes are considered commercial taxes and not social taxes and for this reason if the organization qualifies for tax exemption on commercial taxes, it can be exempt from these taxes.

⁹ See Chart

¹⁰ IFA, *Cahiers de droit fiscal international*, « Taxation of non-profit organizations, vol.LXXXIVa, 1999, p. 379.

4. VAT (see Article 13 of the 6th directive in this handbook)

The 6th directive on VAT of May 17, 1977, is a key piece of legislation for VAT in the EU. It is implemented in all member states. The Council directive 92/77/EEC of October 19, 1992, established the minimum rates to be applied in the EU countries: a standard rate no lower than 15% and one or two lower rates of at least 5%. Annex H of this directive is essential because it stipulates which activities are to be taxed at a lower rate.

Article 13 of the 6th directive lists all activities of public interest that are to be exempt from VAT. The activities discussed are exempt under the condition that they be carried by bodies governed by public law or NGOs.

4.1. Supply of goods and services provided by NGOs under specific conditions:

4.1.1. Hospital and medical care and closely related activities.

The issue of “closely related activities” remains vague in its interpretation. A Community list of concerned transactions was drawn up but apparently not published.¹¹

4.1.2. Welfare and Social Security.

The supply of these goods is exempt when the NGO providing it is either recognized as a PBO in the member state or an old people's homes.

4.1.3. Protection of Children.

The supply of these goods is exempt when the NGO providing it is recognized as a PBO in the member state.

4.1.4. Education.

Are exempt the supply of goods and services closely related to children or young people's education, school or university education, vocational training or retraining.

4.1.5. Professional Unions, Religious, Patriotic, Philosophical, Philanthropic, political, and civic organizations.

Are exempt the supply of goods and services linked to the benefit of members of such organizations in return for a subscription. Subscriptions must not represent a consideration for individually identifiable services provided to a member. Activities of professional unions should therefore be limited to the collective representation of their members.¹²

4.1.6. Sport or Physical Education.

The provision exempts "certain activities" closely linked to sport or physical education to persons taking part in sport or physical education. Therefore the supply is not to be limited to the members of a sports club but to any person practicing a sport or physical activity provided by this club. The use of the term "certain" is again problematic. The proposal for a 19th directive included a list of sporting and physical education activities to be exempt from VAT. However, this proposal was withdrawn in 1993.

4.1.7. Culture.

Again the provision exempts "certain" cultural activities. In this case, the original draft of the proposal of the directive enables to foresee which activities the drafters had in mind. The draft stipulated that were to be exempt the "supply of services by theaters, cinema-clubs, concert-halls, museums, libraries, public parks, botanical or zoological gardens,

¹¹ Terra and Kajus, *A Guide to the European VQT Directives, Commentary on the Value Added Tax of the European Community*, Volume 3, IBFD publications, August 1999, p. 55

educational exhibitions and operations within the framework of activities in the public interest of a social, cultural or educational nature.”¹³

The supply of all these goods and services by NGOs is exempt from VAT if the supply is essential to the transaction exempted, the basic purpose is not to obtain additional income in direct competition with the supplies of commercial enterprises liable for VAT, and one or more of the following conditions is met:

- Profits are not to be distributed but assigned to the improvement of the services provided;
- The NGOs is to be managed on a voluntary basis by persons with no direct or indirect interest
- The NGO should charge accredited prices by the public authorities or prices lower than market price
- The exemption should not create distortion in competition.

The supply of services and goods in connection with fund-raising event by organizations which regular activities are the activities described above are exempt under the condition that the exemption does not distort competition. Member states may introduce restriction to this exemption in limiting the number of fund-raising event that qualify for VAT exemption.

4.2. Supply of staff by religious and philosophical institutions:

The supply is carried, out with the view to spiritual welfare, for the purposes of the following activities as these were described in the paragraph 3.1. above.

- Hospital and medical care,
- Welfare and social security work,
- Protection of children,

¹² Terra and Kajus, *op cit.*, December 1997, p. 76

¹³ Terra and Kajus, *op cit.*, December 1995, p. 83

- Education

4.3. Activities carried out by NGOs which are liable of VAT at a lower rate no less than 5%(see appendix H to the Council Directive 92/77/EEC in this handbook)

- Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or substantially devoted to advertising matter;
- Admissions to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities;
- Admission to sporting events;
- Use of sporting facilities;
- Supply of goods and services by organizations recognized as charities by Member States and engaged in welfare or social security work, insofar as these supplies are not exempt under Article 13;
- Provision of medical and dental care as well as thermal treatment in so far as these services are not exempt under Article 13.

5. Customs regulation of the EU

The council regulation n° 918/83 of March 1983 setting up a community system of relief from customs duty provides for relief of certain goods imported by accredited organizations. The EU does

not establish harmonized accreditation requirement and it is for the member governments to adopt their own criteria for accreditation.

Contrary to a directive, for which a member country is expected to amend its legislation in order to reach compliance with EU legislation, a regulation is to be adopted in its integrity by the member countries.

5.1. Import of humanitarian aid goods

Title XVI regulates import of goods for humanitarian aid¹⁴ addressed to charitable or philanthropic organizations accredited by their respective governments. Such goods are to be admitted free of import duty when they are:

- Basic necessities such as food, medicine, clothing and bed-clothing to be distributed free of charge.
- Sent free of charge to be used for fundraising at occasional charity events for the benefit of the needy persons.
- Equipment and office materials sent free of charge for the purpose of meeting operating needs or for carrying out charitable or philanthropic aims of charitable or philanthropic organizations.
- Specially designed for the educational, scientific or cultural advancement of blind, physically or mentally handicapped persons. (Some specific requirements apply to these articles and will not be treated in this article).
- Imported for the distribution or to be made available free of charge to victims of disasters of the EU.

¹⁴ See the brochure prepared by ICNL on comments to the Ukrainian Law on Humanitarian Assistance.

- Imported for free circulation by disaster-relief agencies in order to meet their needs during the period of their activity.

The exclusive list of goods, which cannot benefit from exemption from import duty includes alcoholic and tobacco products, coffee, tea, motor vehicles other than ambulances, and materials and equipment intended for rebuilding disaster areas.

The regulation provides that exemption from import duty shall be granted only to organizations, which adopted accounting procedure to allow the competent authorities to supervise their operations and which provide all the guaranties considered necessary.

5.2. Import of Educational Scientific and Cultural Materials

Title XII provides for exemption of customs free import of some educational, scientific and cultural materials; as well as scientific instruments and apparatus when addressed to public establishments or NPOs accredited by the member state. The import of scientific instrument and apparatus may not granted such exemption when they are manufactured in a country of the EU. The commission regulation N° 2290/83 implements this title and establishes further conditions to granting the exempt status to such goods:

- The goods are to be dispatched directly to the declared place of destination
- The goods have to be accounted for in the inventory,
- The goods are to be used for non-commercial purposes,
- The verification of the use of the goods by competent authorities has to be facilitated.

When an organization ceases to qualify for exemption under title XII and XVI or decides to use the goods differently than for the purposes granting the exemption, the organization is liable to pay the import duties on the goods in question or on the goods remaining in the possession of the organization, which do not longer qualify for exemption.

Additional exemptions are granted in titles XIII and XIV to the import of laboratory animals and biological and chemical substances intended for research as well as therapeutic substances of human origin and blood grouping tissue typing addressed to accredited non-profit organizations engage in research or laboratories.

CONCLUSION

The European Union is still in the process of harmonizing the legislation of its member states. Therefore it is to be expected that issues such as income tax and social tax will at some point be regulated at the EU level. It is certainly realistic to say that where there is already a common pattern the European Commission will propose a legislation which will not lead to major changes in most member states and that for example the taxation of NGOs with respect to social tax and corporate tax will certainly reflect the existing legislation in most EU countries.

International Conventions

1. European Convention on the Recognition of legal personality of international non-governmental organizations

It is usual that a prior approval from the government be required in order for branches, rep offices of foreign organizations to be established.

The following countries have ratified the European Convention on the Recognition of legal personality of international non-governmental organizations:

- Austria,
- Belgium
- France,
- Greece
- Macedonia,
- Portugal,
- Slovenia,
- Switzerland,
- UK

Portugal and Belgium are in the process of modifying their legislation in order to comply with the convention. Belgium did?

Characteristics of the NGOs that may qualify for the international Status

- Non-Profit Organizations : open to any form of NPO “and other private institutions”
- Purpose of International Utility (v. National or local utility, excluding political organizations interested only in internal problems of a country)

- Created by act of internal law of state party to the convention (excludes international organizations created under international law)
- Carries out activities in at least 2 states (not necessarily member to the convention)
- Statutory office and central management have to be both on state parties to the convention.

When an NGO acquires legal capacity in one party state, it can carry out its activities in another party state without having to get from them any special accreditation or authorization...

France has included a declaration in its ratification. (Nov.99). The French Government wishes that its ratification declaration be adopted as amendments or a protocol to the convention. The French Government suggests:

As interpretation of article 1 be considered organizations having a “non-profit aim of international utility” and carrying on “activities with effect in at least 2 states” the following organizations:

- Organizations with a consultative status with the COE or other IO of the UN system, or with observer status in the COE steering committees for intergovernmental co-operation
- Organizations carrying out activities in 2 countries AND recognized as organization of international interest under the domestic law of one of the states.

2. Aarhus Convention

Article 6, 7 and 8 of the convention provides for public participation:

- In decision on specific activities

- concerning plans, programs and policies relating to the environment.
- During the preparation of executive regulations and/or generally applicable legally binding normative instruments.

Public participation enables to develop better co-operations to parties involved in some issues for which they wish to develop a policy in order to tackle a problem confronted by society such as environment. It is important to be able to involve the broadest definition of “public” in order not to omit some of the public. The participation of community based organizations in this respect enables for the broadest representation of the “public” interested in the issue.

Regarding the public participation in the drafting of legislation required in the Aarhus convention, environmental organizations can provide governments with their expertise in the matter and therefore assist in developing adequate legislation. In Western European Countries, most countries have some formal procedure for participation in the drafting of legislation. For example:

- Finland: 1993: *National Commission on Sustainable Development*
Includes: Parliament, public administration, business, industry, labour unions, scientific community, NGOs, media, other interest groups.
Draft Law; Building Act: give municipalities, NGOs and individuals to take part in interactive process and improve planning process.
- Switzerland: *Referenda* Parliament decision regarding new laws publicized. Time period for which people can request referendum
 - 3 months: 50.000 signatures, for referendum at national level

- Groups form “referendum committees” usually NGGOs and organize collection of signatures

Initiative, NGOs campaign for introduction of new measures of public concern

- Prepare draft (for amendment to constitution°
 - Other legal initiative, : “general suggestion”, parliament mandated to elaborate the respective law
 - 100.000 signatures necessary for initiative at federal level.
- in Denmark the largest NGOs are regularly consulted on draft laws and appointed to advisory committees on rule-making.
 - In Norway, Ministers finalize draft laws and send them for public comments to all institutions and interested groups, who have 3 months to comment.