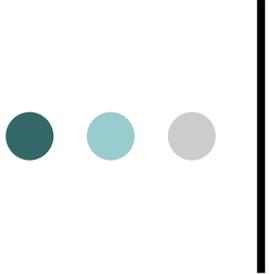




Perspective on Regulatory Issues for Social Enterprise Development in CEE

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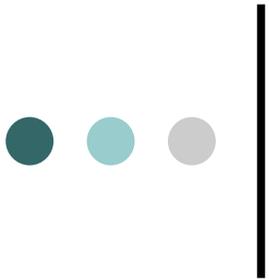


Policy environment

Factors influencing general environment for enterprise *and* NGO development:

- **framework regulation** – institutional forms available;
- **level of taxation** – profits tax, income tax, social security contributions;
- **financing mechanisms** – banking system, loans, investment schemes;
- **governmental incentives and subsidies** – supported employment, special loans, grants programs, etc;
- **privatization and contracting of social services** – procurement laws, licensing laws, regulation and practice of social contracting etc.

Where are NGOs privileged, where are they discriminated or in level competition with businesses?



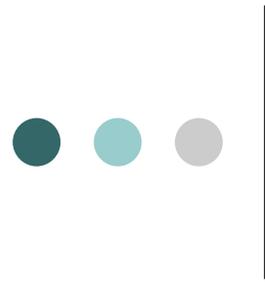
Overview of Issues Involved

- Legal and fiscal environment for social enterprise:
 - Legal forms
 - Governance
 - Economic activities
 - Tax incentives
 - Fiscal regulations
 - Transparency and accountability



Legal forms

- Main NGO forms: associations, foundations, and institutions.
- Generally not allowed to conduct economic activities as primary activity.
- Special NGO forms evolved to address the „niche“: public benefit company (Hu, CzR, Sk), micro finance organizations (Bosnia).



Governance

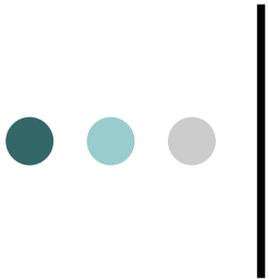
- Difference between **membership** (associations) and **non-membership** organizations (foundations, institutions).
- A **public benefit company** is governed like private enterprise („owners, quotaholders“).
- Governance responsibilities and liability issues still unclear in CEE countries (standard of diligence of board members of an NGO that engages in economic activities: *prudence of the common person v. prudence of the business person?*).



Economic activities

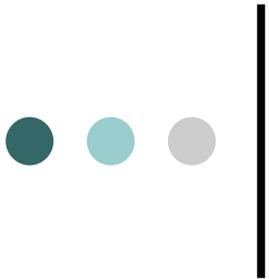
Issues involved in regulating NGOs economic activities:

- How are they defined?
- Should they be allowed with or without further conditions?
- To what extent they should be taxed?
- How to prevent an unfair competition with business?



Permissibility of economic activities:

- Almost all CEE countries allow NGOs to engage at least to some extent in economic activities (*exception: Macedonia*).
- Economic activities defined as *regular sales of goods and services on the market*.
- *Not included*: occasional sale of good and services and fundraising activities; receipt of gifts and donation, passive income, activities carried out using volunteers; and fees that are intrinsically connected to PB purposes of an NGO (tuition)



Permissibility of economic activities

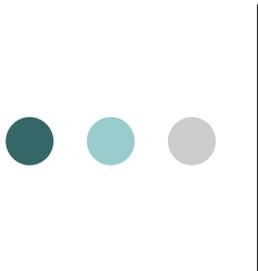
Most CEE countries allow only related economic activities (*Slovenia, Croatia, Romania, Bulgaria, BiH*).

- *Difficulties*: not a clear-cut line between related and unrelated economic activities.
- Most CEE countries have a non-distribution constrain clause (*Albania, Hungary, Latvia, Poland, Slovenia, BiH, Czech Republic*).
- *Difficulties*: how is a non-distribution constrain clause construed?



Permissibility of economic activities

- Some CEE countries allow **only PBOs** to engage in economic activities (*Poland*).
- Some CEE countries prohibit certain types of NGOs to engage in economic activities (*foundations and funds* in the **Czech Republic** and *foundations and non-investment funds* in **Slovakia**).



Taxation of NGO economic activities in CEE: *Survey of Tax Law* (www.icnl.org)

<i>Prohibit direct ec.act.</i>	Macedonia
<i>Not taxed (related)</i>	Federation of BiH
<i>Fully taxed</i>	Albania, Bulgaria, Slovenia
„Relatedness“ test	Estonia, Latvia
„Destination of income“ test	Poland, Kosovo
Hybrid test /tax tresholds	Czech Rep, Hungary, Romania, Slovakia, Serbia, Montenegro



Tax Incentive - Philanthropy

- General rule: donations to NGO by individual and corporate donors enjoy tax benefits:
 - tax deductions
 - tax credits (only in *Hungary* for individuals)
- Limits: percentage of income tax base, only donations to public benefit organizations (charities) are tax exempt.
- Difficulties: PB narrowly defined in some countries (Bosnia, Serbia, Croatia).
- Percentage laws (*Hu, Sk, Pl, Lt, Ro*)



Fiscal regulations

- Taxation – VAT, customs etc.
 - Accounting laws
 - is there a separate regime for NGOs?
 - Laws on financial and credit institutions
 - is it possible to lend to NGOs?
- + Tax authorities' capacity and understanding of NGO issues!



Transparency and accountability

- **Most common basic accountability mechanism: public benefit status (charitable) status** (*Poland, Hungary, Latvia, Bosnia*).
- **Increased requirements of transparency and accountability in exchange for tax and other benefits.**

How to balance public and private interest?



Conclusion

- Social enterprise regulation: complex challenges, no easy answers.

To find out more, visit

www.ecnl.org.hu/icnl.org



Or contact us at: dragan@ecnl.org.hu

Thank you!