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# Financial accountability of civil society organisations

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Improving cooperation with  
EU institutions

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## IN-DEPTH ANALYSIS

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This analysis explores the efforts made by the European Union towards improving the financial accountability of civil society organisations, as well as the self-regulatory tools they have themselves created to prove financial accountability to their stakeholders (donors, institutions, public opinion).

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## EXECUTIVE SUMMARY

In recent decades, civil society organisations (CSOs) – an alternative term to 'Third Sector', used to capture all forms of collective organisation which fall outside government and business sectors – have grown both in number and in their impact on policy-making, at European and also non-Member state level.

The best known types of CSOs are non-governmental organisations (NGOs). The number of NGOs operating at international level is estimated at roughly 40 000. The annual Yearbook published by the Union of International Organizations reports approximately 1 200 new entries every year (inter-governmental organisations are also included in this number, however).

Public institutions, motivated by the need to increase their legitimacy, have increasingly delegated functions to CSOs. Concomitantly, CSOs have expanded their access to public funding. According to the Organisation for Economic Co-operation and Development (OECD), NGOs operating at the international level disburse more than the development aid provided by the United Nations (UN), and channel almost two thirds of the European Union's (EU) relief aid.

In part because of increased access to public funding, and in part because of a stronger relationship with public powers, CSOs are under pressure to demonstrate that they use the resources they are given in an efficient, accountable and transparent manner, e.g. by adopting policies on fiscal transparency, and by maintaining financial solvency.

The EU's interest in regulating CSOs is relatively recent. At present, the legal framework addressing CSOs' financial accountability includes two 'categories' of norms: those that regulate the award of public contracts and the concession of grants, and those norms that address transparency and openness. The first category includes the rules on public contracts and the rules on (co-)financing of CSO projects; whereas the second category includes the Financial Transparency Initiative (FTI) and the Joint Transparency Register (JTR). The FTI gathers all information on EU funding in a single database. The JTR gathers information produced by the various organisations (including CSOs) that are interested in lobbying the EU, and who register voluntarily.

Defining the boundaries of CSO fiscal accountability and effectively tackling cases of fraud or financial mismanagement remains a difficult endeavour. To begin with, the EU still lacks a single overarching understanding (and, consequently, legal definition) of CSOs. This translates into the absence of clear legal definitions, and more generally into the opacity of the information available on CSOs through EU databases. Moreover, as CSOs are 'private entities', they are not submitted to the same integrity mechanisms and norms that apply to public institutions, including internal and external oversight. Finally, a significant administrative burden imposed on CSOs may, in the end, counter EU efforts to tackle financial mismanagement by CSOs.

In many respects, the issue of CSO financial accountability has come to resemble a dialogue of the deaf: EU institution-proposed reforms have been postponed, or have not produced the outcomes expected, or have been fiercely opposed by CSOs. At the same time, the self-regulatory tools (including policies on selecting donors, self-monitoring and codes of conduct and standards) developed by CSOs to enhance their financial accountability have not obtained official recognition from EU institutions: and, consequently, have not satisfied critics.

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**List of main acronyms used**

<b>ABAC:</b>	Commission financial information and accounting system
<b>CONECCS:</b>	Database for consultation, the European Commission and civil society
<b>EC:</b>	European Community
<b>ECA:</b>	European Court of Auditors
<b>ECHO:</b>	European Commission Humanitarian and Civil Protection Department
<b>ECOSOC:</b>	United Nations Economic and Social Council
<b>ESF:</b>	European Social Fund
<b>ETI:</b>	European Transparency Initiative
<b>EU:</b>	European Union
<b>FATF:</b>	Financial Action Task Force
<b>FR:</b>	Financial Regulation
<b>FTS:</b>	Financial Transparency System
<b>GDP:</b>	Gross domestic product
<b>HAP:</b>	Humanitarian Accountability Partnership
<b>IRC:</b>	International Red Cross
<b>JTR:</b>	Joint Transparency Register
<b>MFF:</b>	Multiannual Financial Framework
<b>NGO:</b>	Non-governmental organisation
<b>OLAF:</b>	EU Anti-Fraud Office
<b>PPP:</b>	Public-private partnership
<b>QUANGO:</b>	Quasi-autonomous non-governmental organisations
<b>RAP:</b>	Rules of Application of the Financial Regulation
<b>TEU:</b>	Treaty on the European Union
<b>TFEU:</b>	Treaty on the Functioning of the European Union
<b>UN:</b>	United Nations
<b>WANGO:</b>	World Association of Non-Governmental Associations
<b>WB:</b>	World Bank
<b>WOT:</b>	World One Trust

# 1 The Civil Society Organisations conundrum

## 1.1 Labels and conceptions of civil society organisations

'Third sector' is generally used to mean all entities that are not companies or do not belong to the public sector. However, there is a huge diversity of conceptions and labels to identify the 'third sector'. Scholars, public institutions and practitioners have long debated which of the manifold types of entities that currently co-exist under the label 'civil society' should actually be considered as such, or should rather be categorised differently. In the latter case, different views exist on the taxonomy which would work best for the scope of categorising such entities. The problem of definitions is not merely a rhetorical one. Where the boundaries delimiting civil society are located may have direct implications for regulatory purposes.<sup>1</sup>

The term non-governmental organisation (NGO) remains by far the most used by scholars and institutions.<sup>2</sup> Yet, for the purpose of this analysis, the term '**civil society organisation**' (CSO) will be used. CSO is particularly *en vogue* in the field of aid effectiveness, where a broader conception than NGO is usually needed. In the framework of the present analysis this term appears the most appropriate: it follows the expansive definition currently in use at EU level for addressing the financial support provided to European civil society. Thus, the term CSO will be used as referring to all forms of collective organisation that occur outside the government and private business sectors, as they are traditionally defined.

### 1.1.1 The academic debate

At the academic level, there are **two major schools of thought** concerned with the definition of CSOs. The first school of thought is known as 'the American school' and is embodied in the Johns Hopkins Center for Civil Society Studies, a research centre created in 1991.<sup>3</sup> The American school's approach may be roughly summarised as follows: the focus is on the components of each sector of the national economy, including CSOs. In contrast, the school of thought known as 'the European school' prefers a more analytical perspective. European scholars focus on the various typologies of CSOs, highlighting their mode of operation and analysing how they change over time.<sup>4</sup>

<sup>1</sup> Take as an example, the concept of 'unpaid work'. Depending on which definition of 'not-for-profit' one adopts, unpaid work can be categorised as work offered on a voluntary basis; or it could be otherwise considered as forced, conscripted (or even illegal) labour. Obviously, depending on the case, completely different rules would apply.

<sup>2</sup> It is perhaps important to note that an NGO is distinguished from the term 'non-state actor'. This difference draws from the non-profit character and the presence of a basic organisational structure of the former with respect to the latter. As a matter of fact, the term non-state actor can be considered as a residual catch-all category that may include all private non-governmental or societal actors and can accommodate the diversity deriving from differences in size, duration, range and scope of activities.

<sup>3</sup> United States (US) scholars have a long tradition of research on this topic, as proved by the fact that they coined the notion of 'not-for-profit'. See Evers, A., Laville, J. L., *The Third Sector in Europe*, Edward Elgar Press, 2004. Crucial steps in the direction of defining the third sector have been taken since 1976, when the University of Yale involved 150 researchers in defining the theoretical basis for not-for-profit organisations.

<sup>4</sup> This peculiarity may be partly explained by the fact that European scholars have only recently started to discuss the notion of third sector at the European level. Previous research was mainly linked to national discourse, and therefore it mirrored the different traditions of European states. For a comprehensive analysis of the divergence between American and European scholars on the third sector See Evers, A., Laville, J. L., *The Third Sector in Europe*, Edward Elgar Press, 2004, p. 11.

Such divergence in the scientific approach to the definition of CSOs has two major consequences. The first regards the location of the **line of demarcation** between two definitions commonly associated with CSOs: namely, 'not-for-profit' and 'third sector'.<sup>5</sup> A second implication of the divergences in the academic debate on the definitions of CSOs concerns the **possible overlap** between the concepts of 'third sector' and 'civil society'.<sup>6</sup>

### 1.1.2 The institutional level

At the institutional level there is also no single overarching understanding of CSOs, as clearly shown by the high variance in the terminology adopted by national and international institutions. This can be easily exemplified by focusing on the European Union (EU) level. In EU legislation CSOs are currently referred to (or have been referred to in the recent past) as 'private, non-profit institutions serving households', 'non-governmental organisations (NGOs)', 'non-profit associations', 'voluntary associations/organisations', or more generally as the 'non-profit sector', 'third system' or even 'social economy'.

Specific definitions are also in use. The European Court of Auditors (ECA), for instance, considers the term 'non-state actors' as the most appropriate to define CSOs. In the Eurostat database, cooperatives and mutual societies are grouped with for-profit companies, as they are labelled 'market producers'. The EU Joint Transparency Register (JTR) run by the European Parliament and the Commission allows six categories of organisations to register, including 'NGOs', 'think-tanks, research and academic institutions'. Whilst in the JTR these categories are separated from 'professional consultancies/law firms/self-employed consultants' and 'in-house lobbyists and trade/professional associations', they are associated with the category 'Organisations representing local/regional and municipal authorities, other public and mixed entities'.<sup>7</sup> The European Commission's internal financial information and accounting system (ABAC) includes the possibility to label legal entities as 'not-for-profit organisations' (NFPOs) and as NGOs. In 2013, ABAC registered 8 275 NFPOs and 2 005 NGOs. However, the status of NFPO (or FPO, as the case may be) is determined on an objective criterion: the legal form of the entity, whereas an NGO's status depends on the self-declaration of the concerned entity and the judgement of the authorising officer responsible.<sup>8</sup>

Steps towards a shared definition of CSOs at EU level have been taken since the late 1990s. Take the example of NGOs: in 1997, a Communication from the Commission

<sup>5</sup> Although the two definitions are generally used interchangeably, some scholars prefer to separate them. They assume that using not-for-profit and third-sector as equivalents may be misleading. Hence, they suggest drawing a line of demarcation between 'capitalist organisations' (i.e. entities focused on individual investment) and 'socio-economic organisations' (i.e. entities focused on generating collective wealth). See *Defining the nonprofit sector*, Salamon, L. M., Anheier, H. K., Manchester University Press, 1995.

<sup>6</sup> See Salamon, L. M., Anheier, H. K., *Defining the nonprofit sector*, Manchester University Press, 1995; Habermas, J., *L'espace public, 30 ans après*, 18 Quaderni, 161, 1992.

<sup>7</sup> Also, the JTR does not take account of 'political parties'. However, any organisation which they create or support, and is engaged in activities falling under the scope of the register, is expected to register.

<sup>8</sup> Following an invitation by the European Parliament, this information was made mandatory for all new registrations of (or payments to) legal entities falling into the category 'not-for-profit organisations'. The new rules entered into force as of 16 January 2013. However, information on this is not yet publicly available.

identified five defining elements for NGOs.<sup>9</sup> Following that, in 2000, a discussion paper from the Commission presented a series of common characteristics with which NGOs tended to comply.<sup>10</sup> The Financial Regulation (FR) of the EU does not offer a definition of CSOs. However, in defining the general principles applicable to grants, Article 125 of the FR mentions the fact that, with only a few exceptions, grants are not intended to have the effect of producing a profit. From this principle a general definition of the entities that, differently to commercial firms, operate outside the scope of profit-making, may be derived.

### 1.1.3 The growth of the third sector at the international level

CSOs have experienced significant growth in the last decades. NGOs, for instance, have been described as only the 'tip of the iceberg' of international civil society.<sup>11</sup> Although precise figures are not available, the number of NGOs operating internationally is estimated at roughly 40 000.<sup>12</sup> If we consider only the number of NGOs that have consultative status with the United Nations Economic and Social Council (ECOSOC), these have grown **from 2 050 in 2000, to 3 382 in 2010**.

The former Secretary-General of the UN, Kofi Annan, proclaimed the 21st century to be 'the era of NGOs'; and, since then, scholars make reference to NGOs' leverage in terms of a 'global associational revolution'.<sup>13</sup> Recent estimates calculate that **over one third of current CSOs have their headquarters in the EU and Switzerland**, but they have offices in all four corners of the earth.<sup>14</sup>

As indicated above, no precise figure is available for the number of CSOs. The most comprehensive directory available on this subject, the annual Yearbook published by the Union of International Organizations, reports approximately **1 200 new entries every year** (however, inter-governmental organisations are included in this number). The 1913 Yearbook listed a total of 1 083 not-for-profit international organisations; in 2013 their number is estimated at 66 811 (for the most part, NGOs established after 1990).<sup>15</sup>

Indeed, when considering these numbers, one should always bear in mind that they include a large variety of CSOs. For the sake of clarity, one should distinguish between two main types of CSOs that operate at the international level. The first type of CSOs are well-established and known organisations which employ professional staff, have sophisticated fund-raising systems at their disposal, and represent a range of different interests.<sup>16</sup> Examples of the first type include: Greenpeace, Oxfam and Save the

<sup>9</sup> Namely: (1) to have some formal or institutional existence; (2) to be non-profit distributing; (3) to be independent from public authorities; (4) to be managed in a disinterested manner; (5) and to be active in the public arena. See European Commission, *Communication from the Commission on Promoting the Role of voluntary Organisations and Foundations in Europe*, COM(97) 241 final, 1997.

<sup>10</sup> The discussion paper emphasised the following four characteristics: (1) the not-for-profit nature; (2) the voluntary feature; (3) the legal status; (4) independence from government.

<sup>11</sup> See Edwards, M., *NGO Rights and Responsibilities*, London, 2000.

<sup>12</sup> Many sources report this number. See, inter alia, <http://scenariothinking.org/wiki/index.php/NGOs>.

<sup>13</sup> See Salamon, L., *The Rise of the Non-Profit Sector*, 4 Foreign Affairs, 1994, p. 109.

<sup>14</sup> See Keane, J., *Global Civil Society?*, Cambridge 2005.

<sup>15</sup> A growth rate that is confirmed by a sector-by-sector analysis: for example, in the Yearbook there are five times as many CSOs working on human rights today as there were in the 1950s. Their number, budget and staff grew dramatically in less than a decade, between 1983 and 1993.

<sup>16</sup> See Hugget, J., *Patterns of International Non-governmental Organisation's Growth*, International Development Policy, Revue internationale de politique de développement, Working Papers, , 2012.



Children. Greenpeace was founded in 1971, and by 1985, when French intelligence services targeted the Rainbow Warrior in Auckland harbour, already had offices in 17 countries, and 1.2 million members around the world. Ten years later, the organisation reported 1 330 people working in its 43 offices in 30 countries, plus 5 million supporters located in 158 countries. Equally remarkable are the examples of Friends of the Earth, Oxfam and Save the Children. Friends of the Earth was founded in 1969, and by the early 1980s had already expanded to 25 countries (and 54 by the mid-1990s). Oxfam was established in Great Britain in 1943. In 1960 it opened its Canadian affiliate, shortly followed by affiliates in Australia and New Zealand. By 2009 Oxfam had 13 affiliates across the world. Save the Children is probably one of the largest CSOs in the world, it currently operates in 120 countries.

The second type of CSOs includes small organisations with narrower funding and perspective, operating at national level (e.g. foundations, think tanks). These CSOs are however much greater in number when compared with the bigger CSOs. There are estimated to be **1.5 million in the United States**,<sup>17</sup> **almost 2 million in India** (one for every 600 Indians – more numerous than public schools and health centres),<sup>18</sup> and **almost 277 000 in Russia**.<sup>19</sup> In spite of these numbers, these organisations may count on considerably smaller membership, funding opportunities and, consequently, political leverage. A further difference is that these CSOs mainly operate at local level.

#### 1.1.4 The growth of the third sector at European level

CSOs have grown particularly rapidly in Europe.<sup>20</sup> In the late 1990s their average growth rate in Belgium, France, Germany and Britain was estimated at **24% over five years**.<sup>21</sup> The European Commission estimates that social economy<sup>22</sup> enterprises represent 10% of all EU businesses, employing 6% of the working population of the EU. Of these, 70% are employed in non-profit associations, 26% in cooperatives, and 3% in mutuals.

In the directory of the World Association of Non-Governmental Organizations (WANGO)<sup>23</sup> – a total of 4 569 NGOs are listed in northern Europe, 1 079 in southern Europe,

<sup>17</sup> See Human Rights, [Fact-Sheet: Non-Governmental Organisations \(NGOs\) in the United States](#), 2012.

<sup>18</sup> See OneWorld, [India: More NGOs than schools and health centres](#), 2010.

<sup>19</sup> See The Chicago Tribune, [Hobbled NGOs wary of Medvedev](#), 2008.

<sup>20</sup> Reasons explaining the growth of CSOs at EU level are many. Three, however, are of particular importance. Firstly, economic reasons: the change from industrial to post-industrial societies produced a general expansion of the service economy. Secondly, demographic developments: the so-called 'baby boomer' generation shaped an expanded demand for services (e.g. schools, child-care, leisure facilities). The third sector has expanded in these fields accordingly. Finally, political reasons: the public sector has gone through a process of evolution over the past few years. Among the major changes occurring is down-sizing, due in part to increasing cuts in public expenditure and in part on the emerging philosophy of subsidiarity in service-provision. Thus, the down-sizing of the public sector, together with crisis in the traditional welfare state, have determined an increase in the delegation of tasks to the private sector (including non-profit institutions), through direct delegation or partnerships.

<sup>21</sup> See <http://www.worldvolunteerweb.org/news-views/viewpoints/doc/economic-significance-of-voluntary/print.html>

<sup>22</sup> According to the [definition provided by DG Trade and Industry](#), social economy is a concept used to address 'cooperatives, mutual societies, non-profit associations, foundations and social enterprises that provide a wide range of products and services across Europe and generates millions of jobs'.

<sup>23</sup> WANGO is an international organisation uniting NGOs worldwide in the cause of advancing peace and global well-being.

3 758 in western Europe, and 8 357 in eastern Europe. Thus, according to the WANGO directory, as of 2015, an overall total of **13 194 NGOs operate in the European region.**

Formal alliances of CSOs, as well as single entities, have grown in number in Europe. In research published in 2011, the relevance of such coalitions (also known as '**umbrella organisations**') for EU governance was illustrated by a number of examples.<sup>24</sup> These include the Social Platform (established in 1995), the Human Rights and Democracy Network (created in 2001), and the Green 10 (bringing together environmental organisations), to name just a few.

#### 1.1.5 The growth in fundraising

Even without precise and comprehensive figures, the impact that growth in the number of CSOs has had on their fundraising efforts can be easily understood. According to the estimates of the Organisation for Economic Co-operation and Development (OECD), in 1999, **NGOs operating at the international level disbursed more than the development aid provided by the United Nations (UN), and also channelled almost two thirds of EU relief aid.**<sup>25</sup> In 2001, the London School of Economics estimated that NGOs had collected US\$7 billion in development funds in one year and US\$2 billion in funds from US foundations.<sup>26</sup>

The World Giving Index 2014 – an annual report published by the Charities Aid Foundation, ranking over 130 countries in the world according to how charitable they are – reports only a slight decrease (0.6 percentage points) in people donating at the global level. In fact, while both developed and developing economies have seen a decrease in donations (by 0.8 and 1.2 percentage points respectively), transitional economies have seen an increase in this behaviour (levels in China, for instance, grew from 10% to 13%). In spite of this overall slight fall in the percentage of people donating money, population growth means that the absolute number of people giving money rose by around 84 million people worldwide.

It is believed that charitable giving – by far the most important part of CSO revenue – will increase in the years to come. This is motivated by three important factors, the first of which is the progressive growth in the global population of so-called 'ultra-high-net-worth individuals'. These saw a 9.2% growth in 2012 over the previous year, according to the World Wealth Report. Moreover, an ageing world population may donate more to charities (the World Giving Index estimates that only 24% of 15-24 years old make charitable donations, while 33% of those in the age group of 50 or more engage in charity). Finally, and most importantly, technology also encourages greater awareness of humanitarian causes. One may take the example of web-based petitions platforms that attract millions of members, and raise millions of dollars (or euros) for the causes they support.<sup>27</sup>

<sup>24</sup> See Sgueo, G., *Interlocutory Coalitions' and Administrative Convergence*, in Chiti, E., Mattarella, B. G., *Global administrative law and European administrative law*, Springer, 2011.

<sup>25</sup> See OECD, *Geographical Distribution of Financial Aid to Developing Countries*, Paris 1997.

<sup>26</sup> See Anheier, H., Glasius, M., Kaldor, M., *Global civil society*, London 2001.

<sup>27</sup> Examples include [Change.org](http://Change.org) (the world's large petitions platform with 70 million users in 196 countries) and [Avaaz](http://Avaaz.org) (an online community involved in campaigning, signing petitions, funding direct actions, emailing, calling and lobbying governments in 15 languages, served by a core team on six continents and thousands of volunteers). Also of interest is the case of non-profits such as [Kiva](http://Kiva.org), an online organisation that allows people to lend money via the internet to microfinance institutions in developing countries, and allows donors to contribute to underprivileged entrepreneurs with little access to credit. The net result is that individual donors are able to collectively make a difference to the enterprise of their choice.

### 1.1.6 The economic impact of the growth of the third sector

The growth in the number of CSOs at international and European levels (as well as at national levels) has not only benefited their fundraising efforts, but has also impacted on national and international markets and economic systems.

According to the **2003 UN Handbook of Non-profit Institutions**, the civil-society sector is estimated to account on average for 5% of gross domestic product (GDP) in the majority of Western democracies (**exceeding 7% in Canada and the US**). This means that the GDP contribution of the non-profit sector exceeds (or is on a par with) the GDP contribution of many industries in these same countries, such as utilities and financial intermediation. Examples may also be found by observing single CSOs. In 2010, a study published on International Development Policy reported that **World Vision International, with its 40 000 employees, had revenues approaching US\$3 billion**. The revenues of other well-known NGOs such as **Habitat for Humanity, Save the Children and Médecins Sans Frontières were reported to have each passed US\$1 billion**. Oxfam and Opportunity International claim to have tripled revenues over the past ten years.

Finally, it should not be forgotten that CSOs mobilise thousands of workers and volunteers. In 1991, the Johns Hopkins Comparative Non-profit Sector project showed that the number of full-time equivalent employees in international NGOs in France, Germany, Japan, the Netherlands, Spain, and the United Kingdom alone amounted to over 100 000. In the 42 countries analysed by the Johns Hopkins Project in 2010, not-for-profits employed nearly 56 million full-time workers, or an average of 5.6% of the economically active population of these countries. This, noted the project participants, exceeded the workforce of many sizeable industries in the surveyed countries, such as utilities, construction, transport and communications.

Volunteering for CSOs worldwide also has an impact on markets and economies. Recent estimates calculate that, in a typical year, nearly 1 billion people across the globe volunteer their time through public, non-profit, or for-profit organisations (approximately 36%), or directly for friends or neighbours (64%).<sup>28</sup> In OECD countries an estimated 31% of the adult population volunteers, either directly or through organisations, compared to less than 20% in middle and low income countries.

It has been estimated that if 'Volunteerland' existed as a country, home to all the world's volunteers, it would have the second largest adult population in the world, behind only China. Its workforce (as of 2005) would be valued at US\$1 348 trillion. This is enough to make 'Volunteerland' the seventh largest workforce in the world, behind the US, Japan, Germany, China, the UK, and France, but ahead of Canada, Spain, and Italy.<sup>29</sup>

## 1.2 Civil society organisations and the public sector

CSOs are closely related to the public sector, at both national and supranational levels. This relationship has grown stronger over recent decades, with governments and public institutions increasingly delegating functions and tasks to the private sector, including CSOs.

<sup>28</sup> See Salamon, M., Sokolowski, S. W., Haddock, M. A., *Measuring the Economic Value of Volunteer Work Globally: concepts, Estimates, and a Roadmap to the Future*, 82 *Analysis of Public and Cooperative Economics*, 2011, p. 217.

<sup>29</sup> See Salamon, M., Sokolowski, S. W., Haddock, M. A., *Measuring the Economic Value of Volunteer Work Globally: concepts, Estimates, and a Roadmap to the Future*, 82 *Analysis of Public and Cooperative Economics*, 2011.

One important example is that of **public-private partnerships** (PPPs). PPPs describe a broad and varied spectrum of cooperative relationships between public actors (governments, agencies and international organisations, or a combination thereof) and private actors.<sup>30</sup> The latter also include CSOs. Because of the beneficial outcomes expected from PPPs, they have increased in number across the world over the past decade.<sup>31</sup>

PPPs, however, are not the only example of cooperation between the public sector and CSOs. At supranational level, one may take the examples of the World Bank (WB), the World Trade Organisation (WTO), the UN, and indeed the EU institutions. Since the 1970s, the WB has consulted and collaborated with thousands of members of CSOs throughout the world. The WTO has also put considerable effort into enhancing cooperation with CSOs. Since the Ministerial Conference held at Doha in 2001, the WTO has adopted a new approach towards the engagement of non-state actors in the formulation of its policies.<sup>32</sup> Within the UN, the involvement of civil society actors has also gained importance over the years, and has been reported as the foremost endeavour of former UN Secretary-General Kofi Annan towards civil society.

The EU is no exception to this pattern. Already in 1997, the European Citizens' Action Service estimated that **between 5% and 10% of lobbying activities targeting the Commission was for public rather than private purposes**. With Brussels becoming an important centre of decision-making power,<sup>33</sup> advocacy by CSOs has proliferated. CSOs aim to be involved in EU policy-making, especially in policies that are considered crucial for their activities (including agriculture, trade, food safety, and public health).

#### 1.2.1 Stronger partnership, stronger funding, stronger criticism

The increased involvement of CSOs in policy-making comes with two important consequences in terms of funding. The first, and main, consequence consists of increased possibilities for CSOs to access public funding. A whole array of estimates of CSO access to public funding provided at the national and international levels is available. For example, according to an estimate published in the magazine of the International Red Cross (IRC) a few years ago, between 1990 and 1995, total relief expenditure by official donors to the IRC rose fourfold from under US\$500 000 to nearly US\$2 billion.<sup>34</sup> The research explained this growth in official relief aid as the consequence of the increased importance of the role of NGOs in emergencies, particularly in conflict situations.

<sup>30</sup> According to the latest estimate available, no fewer than 31 countries worldwide have operational PPP units. Europe leads the infrastructure PPP market, concentrating more than 45% of the nominal value of all PPPs worldwide. For an overview of PPPs, see Sgueo, G., [Addressing conflicts of interest in public-private partnerships \(PPPs\)](#), European Parliament Research Service PE 545.722, 2015.

<sup>31</sup> See Istrate, E., Puentes, R., *Moving Forward on Public Private Partnerships: US and International Experience with PPPs Units*, Brookings-Rockefeller, 2011.

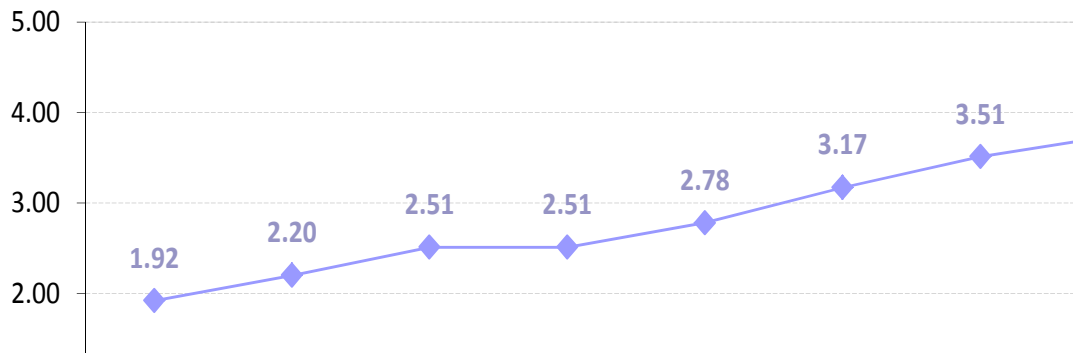
<sup>32</sup> More recently, the WTO has emphasised the importance of open fora for communicative interaction and negotiation with NGOs in the formulation of policies. Following this, the WTO developed the concept of 'adaptive governance'. Adaptive governance responds, as far as possible, to the values, interests, and concerns of all stakeholders in order to produce better outcomes.

<sup>33</sup> A well-known 2002 study assessed the amount of national legislation produced by Member States following European initiatives at 80%. See Guéguen, D., *Governance and the Role of Associations in Economic Management: A Response from an EU Public Affairs Practitioner*, in *The Effectiveness of EU Business Associations*, Greenwood, J. (ed.), Basingstoke, 2002, p. 47.

<sup>34</sup> See Macrae, J., *NGOs: Has the "N" gone missing?*, in The magazine of the International Red Cross and Red Crescent movement, 1996.

One may take as a further example the growth in EU funding for NGOs illustrated in the following graph.

**Figure 1 – EU budgetary impact of funding for NGOs in the past 10 years (in billion euros)**



Data source: [European Commission](#).

However, this increase in access to public funding for CSOs does not come without criticism. To begin with, it leads to criticism of the financial accountability of CSOs (and this aspect will be discussed in further detail later). It is also argued that increased public funding for CSOs could develop into a sort of 'dependency' on donors. What critical voices assume is that CSOs funded with public money would stop seeking support from (and advocating for) wider societal interests. They also assume that CSOs obtaining public funds would be inclined to align themselves with the dominant policy position in order not to upset those who provide them with money. For example, a 2005 independent review carried out by the Directorate-General for Environment of the European Commission showed that most recipients of funds were increasingly dependent on their funding programme.<sup>35</sup> In other words, explained the review, the recipients had stopped searching for other funding sources.

However, a growing dependency on public funding is not by definition a threat to the independence of the CSOs which benefit from it. Availability of more resources may help CSOs to obtain more recognition, and therefore to pursue their key social mission. Scholars actually argue that the public sector has at least two incentives for supporting CSOs. Both are related to legitimacy. Participation from CSOs helps policy-makers to produce more efficient policy (based on the knowledge and expertise offered by CSOs) and, at the same time, it reduces the risk of contesting decisions after they are taken. This vision is shared at EU level.<sup>36</sup>

### 1.3 From the outset to Lisbon: CSOs in Europe

The following section will describe how the EU has approached the topic of CSOs. Two phases can be identified. From the initial phase – during which the competence of the European institutions in social affairs was limited, and therefore only minor

<sup>35</sup> See AGRA CEAS Consulting, *Mid-term evaluation of the implementation of the Community action programme promoting NGOs primarily active in the field of environmental protection*, (Decision 466/2002/EC), Brussels 2005.

<sup>36</sup> In 2010, 22 members of the European Parliament launched an [initiative on the web calling for stronger civil society involvement in EU policy-making](#), and specifically in financial market regulation. The initiative assumed that many CSOs suffer from a lack of expertise in finance, and therefore could not bring their voice to bear on EU decision-making. The authors of the initiative wished to overcome such deficiencies with a more generous use of EU funds in favour of CSOs.



interventions addressed CSOs – to the current phase, in which the EU has increased effort on topics of interest to CSOs.<sup>37</sup>

### 1.3.1 From the outset to the 'Europeanisation' of social affairs

**In the first phase the European institutions had only very limited competence in social affairs.** The Treaty of Rome explicitly excluded 'social policy' from Community competences. The European Social Fund (ESF), set in place by the Treaty, reflected this understanding of the area of competences allocated to the emerging European institutions. It was essentially an economic programme aimed at promoting employment and at increasing worker's occupational and geographical mobility.<sup>38</sup>

The European Community (EC) entered into the field of social policy only in 1989, with the adoption of the Social Charter. This began a process of 'Europeanisation' of social services. The Social Charter stated that the social and economic dimensions of the Community had to be recognised as equally important. Two years before, based on a report from its Committee on Legal Affairs and Citizens' Rights, the European Parliament adopted a resolution – known as the 'Fontaine Report' after its rapporteur – calling for the inclusion of the third sector in the Community agenda.<sup>39</sup>

### 1.3.2 From Maastricht to Lisbon

Following the recommendations of the Fontaine Report and the process of Europeanisation started in 1989, both the Treaty of Maastricht (1992) and the Treaty of Amsterdam (1997) referred explicitly to the goal of economic and social cohesion, establishing it as one of the three overarching goals of the European project, alongside a single currency and the single market.

The Commission was charged with boosting the role of CSOs. One of the initiatives launched in 1992 consisted of the *proposal to adopt a European Statute for mutuals*,<sup>40</sup> comprising a work programme to support the development of CSOs at the European level. The proposal was *amended by the European Parliament* in 1993,<sup>41</sup> and *discussed*

<sup>37</sup> For a general overview of EU policies on the third sector See Kendall, J., *Third Sector European Policy: Organisations between Market and State, the Policy Process and the EU, 1 Third Sector European Policy Working Papers*, London, 2005.

<sup>38</sup> At present the ESF is one of the main EU structural funds. Over the period 2007-2013, nearly €75 billion was distributed to EU Member States and regions through the ESF, counting for approximately 10% of the EU's total budget.

<sup>39</sup> See European Parliament Committee on Legal Affairs and Citizens' Rights, *Resolution on Non-Profit-Making Associations in the European Communities*, Document A2 - 196/86, 1987. The Fontaine Report took the view that the non-profit sector was an opportunity for the construction of Europe. The Report suggested (*point 4*) that the Commission draw up a proposal for a regulation incorporating a Community-wide statute for associations operating at EU level, or based at national level but wishing to act in concert at EU level; noted that (*point 7*) special tax concessions were justified for non-profit-making associations performing services in the common interest and relying on voluntary work; considered that greater funds had to be made available for the benefit of non-profit-making associations, and that (*point 9*) donations from the public to such associations should be made tax-deductible; finally, it proposed that a fund should be created for financing the growth of the non-profit sector (*point 10*) and that the Court of Auditors would verify if subsidies to non-profit-making associations had been distributed in accordance with the criteria laid down by the budgetary authority (*point 11*).

<sup>40</sup> See European Commission, [Proposal for a Council Regulation on the statute for a European mutual society](#), COM(91) 273 final, 1992.

<sup>41</sup> See Commission of the European communities [COM\(93\) 252 final](#), 1993.

by the Council in 1996,<sup>42</sup> but never got beyond the discussion stage. The idea was renewed in 2002, and in 2012 was renamed as the European Foundation Statute, consisting of a proposal to adopt a statute facilitating foundations' cross-border activities with a public benefit purpose, and making it easier for them to support public benefit causes across the EU.

The recent Treaty on the Functioning of the European Union (TFEU) further enshrined and reinforced the participatory dimension of the European model of governance. The Treaty introduced new powers to the Parliament; it delegated considerable rule-making authority to the Commission; and it promulgated the Charter of Rights. In this framework of action the role of CSOs has been further expanded. At the present moment, there is a wide array of partnerships between the EU and CSOs. These partnerships often include the possibility to access EU funds. Examples are provided by the PROGRESS and the Employment and Social Innovation programmes (EASI). The first was a financial instrument operating until 2013 in support of the development and coordination of EU policy in the following five areas: employment, social inclusion and social protection, working conditions, anti-discrimination, and gender equality. The second is a financing instrument to promote a high level of quality and sustainable employment, guaranteeing adequate and decent social protection, combating social exclusion and poverty and improving working conditions. For the period 2014-2020 the EASI finances, *inter alia*, access to micro-finance and social entrepreneurship (21% of the total budget).

Figure 2 – Timeline of the European Union and CSOs



<sup>42</sup> See European Council, [Amended proposal for a regulation of the European Parliament and of the Council on the statute for a European Mutual Society](#), 1996.

## 2 The financial accountability of the third sector

### 2.1 Accountability: a general overview

As for the debate concerning the definition of the third sector, there are as many descriptive doctrinal labels of accountability as there are scholars who have studied the sector.<sup>43</sup> As a consequence of the disparities and ambiguities concealed by different interpretations of this concept (and of course by the use of different terminology) a shared understanding of accountability, its range of application and its boundaries, has thus far been excluded.

What accountability means for CSOs is subject to even more debate. This may be partly explained as the consequence of the variety of CSOs. Thus, on the one hand CSOs are requested to operate in a manner analogous to profit-making organisations, e.g. by adopting policies on fiscal transparency, and by maintaining financial solvency. On the other hand, CSOs may be associated to public administrations, since they both share the pursuit of public interest. Hence, CSOs may also be required to ensure fairness, equality and participation in decision-making.

In the present analysis, however, some of the complexities of the scientific and institutional debates on CSO accountability are teased apart and a narrower description of accountability is used. Focus is put only on the financial aspect of accountability – which may also be described in terms of 'functional accountability'. Financial (or functional) accountability is based on **four key elements**: (1) compliance with legal obligations; (2) transparency about the use of resources (e.g. publication of reports about revenue and expenditure); (3) sound financial management; (4) wise use of their resources, especially to avoid pursuing activities contrary to the not-for-profit status.

Conceived as such, financial accountability includes internal management practices as well as financial responsibility towards the members of an organisation. Grouped under this overarching heading two distinct (albeit somewhat overlapping) categories may be distinguished. These include 'upward accountability' – i.e. to governments, donors and the public at large – and 'inward accountability', i.e. to partners and beneficiaries. Indeed, each of these stakeholders has a different level of leverage over CSOs. Accountability towards bigger donors, for instance, is generally stronger (because of contractual obligations between the donor and the CSO) than to individuals who donate small sums, and thus generally lack the power to demand that CSOs enhance their accountability.

#### 2.1.1 Concerns about the financial accountability of CSOs

Concerns about CSO financial accountability are widespread. Malpractice and fraud may be involved in a large number of cases, such as: lack of clear information in invoices, poor quality of reports, inflation or duplication of invoices for goods and projects, acceptance of funds from more than one donor for the same project, or even the creation of fictitious CSOs with the sole objective of winning public contracts. It is therefore no coincidence that there is no shortage of examples of CSO misuse of public

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<sup>43</sup> The descriptions in use are so many, and so diverse, that accountability may 'resemble a garbage can filled with good intentions, loosely defined concepts and vague images of good governance'. See Bovens M., *Analysing and Assessing Public Accountability: A Conceptual Framework*, 13 European Law Review, 2007, p. 447.



funds coming from all levels of government.<sup>44</sup> At European level, the European Anti-Fraud Office (OLAF) has conducted investigations in which NGOs were implicated. In 2005, for instance, following several allegations of fraud, OLAF started to investigate the suspected misappropriation of aid funds involving 32 NGOs and charities. In 2011, OLAF investigated alleged irregularities concerning the use of the European Regional Development Fund by an NGO.<sup>45</sup>

Because of these widespread concerns, CSOs are put under pressure to demonstrate that they use the resources they are given in an efficient, accountable and transparent manner. However, this efficiency is challenged by the absence of independent controls on CSO finances and operations. As CSOs are 'private entities', they are not subject to the same integrity mechanisms and norms that apply to public institutions, including internal and external oversight. One of the major consequences of these criticisms is the increasing distrust of CSO activities. In the 2015 'Trust Barometer', respondents were asked how much they trusted four different institutions (namely: governments, the business sector and media outlets, as well as NGOs) to 'do the right thing'.<sup>46</sup> NGOs obtained the highest rating, with 63% of people saying they trusted them. That figure, however, is down from 66% in 2014, the biggest decline in trust compared with other institutions surveyed by the Barometer.

Critical accounts of CSO accountability point to two main issues. First is the fact that many CSOs do not appear to be doing much to address this issue. At best, say critics, they have created loose oversight by external boards, or offered minimalist reports of their activities. Take this example: a 2006 survey conducted with over 400 representatives of NGOs and donor agencies in 20 countries in Europe, Asia, Africa and North and Latin America found that, although NGOs regularly seek the views and feedback of beneficiaries, they only adopted informal mechanisms for review. Basically, surveyed NGOs reported obtaining beneficiaries' views primarily through the course of staff field work (85%) and from partners in the field (70%).<sup>47</sup>

A second criticism is that many CSOs lack experience and capability in monitoring and evaluating their own activities. In the 2010 Blackbaud survey,<sup>48</sup> CSOs responded to the question of whether they had accountability measures in place to allow donors to verify their claims. Only in a few countries did a majority of the respondents report that they had either an audit process or a communication plan in place. Even smaller was the number of countries where, apart from having an audit process in place, CSOs also adopted privacy policies regarding donor information and staff confidentiality.

Even when monitoring is taken seriously by CSOs, documentation presents additional costs and hurdles. In 'State of Evaluation 2012',<sup>49</sup> a survey conducted by the Innovation

<sup>44</sup> See Trivunovic, M., *Countering NGO corruption: rethinking the conventional approaches*, U4 Issue No. 3/2011, 2011.

<sup>45</sup> See OLAF, [The OLAF Report 2013](#), 2013

<sup>46</sup> To compile its report, Edelman ran an online survey in late October and November 2014 of 33 000 respondents in 27 countries.

<sup>47</sup> See Keystone, J. *Downward accountability to "beneficiaries": NGOs and donor perspectives, Survey results*, 2006.

<sup>48</sup> The Blackbaud Index provides up-to-date information on charitable giving. The Index, updated on the first of each month, tracks approximately US\$16 billion in US-based charitable giving. See <https://www.blackbaud.com/nonprofit-resources/blackbaud-index>.

<sup>49</sup> The State of Evaluation project is a United States-based project that collects data from non-profits about their evaluation practices. See <http://www.stateofevaluation.org/>.

Network, it is reported that the vast majority (90%) of non-profit organisations surveyed did engage in evaluation in 2012, and that 100% of those who had engaged in evaluation reported using their evaluation findings. Yet, more than two thirds of the respondent organisations declared they did not have the capacities and behaviours in place to meaningfully engage in evaluation. According to the survey, **47% of the organisations with annual budgets greater than US\$5 million did not have at least one full-time employee dedicated to evaluation.** The survey indicates limited staff time, insufficient financial resources, and limited staff expertise as the most significant barriers to evaluation across the non-profit sector.<sup>50</sup>

### *2.1.2 'In house' solutions to improve accountability: selection of donors and self-monitoring*

To overcome the criticism of their monitoring and evaluation capabilities, CSOs have developed specific 'in house' policies. In spite of the proliferation of these initiatives, thus far only a few studies have endeavoured to test empirically the effectiveness of such forms of self-regulation in CSOs. The survey conducted between 2008 and 2010 by the World One Trust (WOT) remains probably the most accurate analysis on this topic. WOT monitored the frequency and the structure of self-regulation within CSOs, publishing profiles of over 350 initiatives in a Civil Society Self-Regulatory database, and following up with a series of briefing papers providing comparative analysis of initiatives according to regions, strength and structures of compliance mechanisms.

There are various types of self-regulatory – or 'in house' – policies that may be of interest in the scope of the present analysis. The first consists of not soliciting any funds from potential adversaries in business or government in order to limit exposure to donor influence. Typical examples are those of Greenpeace, Amnesty International and Médecins Sans Frontières. The first and the second consider independence from state sponsorship a crucial element in their organisations.<sup>51</sup> Differently to these, other CSOs accept public funds, but only as a minor (almost residual) part of their overall income. Médecins Sans Frontières is among these: 89% of its funding comes from five million private donors, while only the remaining 11% comes from public institutions, mainly the EU and its Member States, as well as other sources.

As a second strategy to overcome criticism of their accountability, CSOs have begun to adopt self-monitoring. Self-monitoring, as the definition suggests, consists of the voluntary adoption of standards of transparency and responsiveness, as well as the commitment to respect, and be evaluated for the respect of, such standards.

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<sup>50</sup> After all, an in-depth financial review may run into thousands of euros (or dollars) and represent an investment out of proportion to the amount of funding received. A recent example of missed evaluation is the public dispute over the distribution of donations to the Haiti earthquake of 2010. A

PBS documentary attributed responsibility for the still inhuman living conditions of many Haitians on the international NGOs who had received funds and were operating on the ground.

<sup>51</sup> According to point 1.2 of Greenpeace's policies 'Greenpeace does not solicit or accept funding or cash donations from governments, corporations, political parties or multi-national governmental bodies such as the United Nations or the European Community'. Amnesty International explains on its website that: 'We neither seek nor accept any funds for human rights research from governments or political parties and we accept support only from businesses that have been carefully vetted'. Actually the only donations accepted by Greenpeace and Amnesty are those provided by individual supporters, or grants from foundations.

### 2.1.3 Standards and codes of conduct

While some CSOs are addressing the issue of accountability individually, as in the cases reported above, many have started to tackle it collectively. CSO actors also try to increase their financial accountability with the adoption of **standards and codes of conduct**. Both have become very common among non-state actors in recent years. Thus not only CSOs, but also businesses have increasingly used such standards to commit to transparency. Cases in point are the statements and charters used in PPPs that aim to resolve any conflict of interests (e.g. the Oxford Alliance on Health and the EPODE European Network) and the alliances to enhance transparency (e.g. The Extractive Industries Transparency Initiative).

With specific regard to standards used by CSOs to enhance their (mainly, but not only, financial) accountability, three examples are particularly meaningful for the scope of the present analysis.<sup>52</sup> The first is the International Non-Governmental Accountability Charter, launched in 2006 by 11 NGOs (including Amnesty International, ActionAid, Greenpeace, Oxfam and Transparency International). This charter defines common CSO values and practices of transparency and accountability. The Charter states that signatories are committed to openness, transparency, and honesty about their structures, mission, policies and activities. The second is the Global Reporting Initiative. The scope of this initiative is to provide a comprehensive framework on sustainability reporting that may be used by companies and NGOs. By using this framework, organisations can measure and report their economic, environmental, and social performance (including, for instance, monitoring and evaluation, ethical fundraising, public awareness and advocacy). The third is the Global Accountability Project, launched in 2001 by the One World Trust. The project targets not only international NGOs, but also international organisations and transnational corporations. A 'Global Accountability Report' was published on a regular basis to assess the accountability of leading organisations to the people they affect. However, the last edition of the report was produced in 2008.

The debate regarding codes of conducts set by CSOs to express self-commitment to accountability in their practices dates back to the early 1990s. A cursory analysis of 35 codes of conduct carried out in 2006 by One World Trust (OWT) revealed that CSOs establish such codes largely out of the fear that criticism of their accountability would hamper their credibility with third parties.<sup>53</sup> According to OWT, the primary aim of codes of conduct is to avoid the consequences of bad publicity (e.g. reduction in the level of public trust, weakening of fundraising efforts). Because of this, in CSO codes of conduct, accountability is primarily defined in terms of having defined standards for internal governance, administration and financial management systems, so as to ensure compliance with reporting requirements, laws and regulations.

According to OWT, codes of conduct are by far the most common type of CSO self-regulatory initiative globally. Out of the 309 initiatives identified in 2009 by OWT, 51% belonged to this category.<sup>54</sup> 'Umbrella bodies' – representing CSOs and NGOs at national and international levels – produce the vast majority of such codes, with a

<sup>52</sup> The One World Trust has set up a [comprehensive database of self-regulatory initiatives](#) across the world.

<sup>53</sup> See One World Trust, *NGO self-regulation: enforcing and balancing accountability*, London, 2006.

<sup>54</sup> See Warren, S. Lloyd, R., *Civil Society Self-Regulation. The global picture*, One World Trust Briefing paper No. 119/2009, p. 9.

share of 75% of the total amount. In the study conducted in 2011 by the European Foundation Centre, a total of 19 codes of conduct/ethical codes were identified among European foundations.<sup>55</sup> Six of the codes surveyed were donor forum initiatives; nine were from national associations of foundations; while four were drawn up collaboratively by informal groups of foundations or non-profit organisations.

### 3 The European legal framework

#### 3.1 EU funding to the third sector: public contracts and financial contributions

The vast array of CSOs operating at national and European levels is a natural target group eligible for a large part of EU funding. Such funding is available through a number of different sources and subject to a complex range of legislative rules and regulations. This section will describe the differences between public contracts and grants (both are possible sources of funding for CSOs) as well as the differences between shared and indirect management.

EU funding to CSOs may take two main forms: (1) public contracts; (2) grants to co-finance specific activities and projects (in recent years innovative financial instruments such as 'blending' have also been increasingly used to fund development cooperation)<sup>56</sup>. Public contracts account for about 16% of public authorities' – at EU, national and local levels – GDP. They are used by the Commission to purchase, on the market, goods and services that are needed to carry out its operations. The providers are selected via calls for tender issued by the relevant bodies of the EU. The legal framework for public contracts is provided by Directive 2014/24 of the European Parliament and the Council on public procurement and the Financial Regulation (FR).<sup>57</sup> While this Directive addresses the issue of financial accountability more than once, the only explicit mention of 'non-profit' entities concerns a case whereby its application is excluded.<sup>58</sup>

As a second means of funding CSOs, the EU provides direct financial contributions of a non-commercial nature in the form of grants. These grants, according to Article 121 of the FR, can be given by way of financial contribution or donation to finance. Article 125 of the FR defines the three general principles applicable to grants: they, (1) shall not have, in general, the purpose or effect of producing a profit; (2) shall not be retrospective (exceptions are admitted, though, as in the case of humanitarian aid); and, (3) shall involve co-financing (unless stated otherwise).

<sup>55</sup> See European Foundation Centre, *Exploring Transparency and Accountability Regulation of Public-Benefit Foundations in Europe*, Brussels, 2011.

<sup>56</sup> See European Commission, [Innovative Financial Instrument](#).

<sup>57</sup> See [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2014/18/EC](#).

<sup>58</sup> Point 28 states that the Directive 'should not apply to certain emergency services where they are performed by non-profit organisations or associations, since the particular nature of those organisations would be difficult to preserve if the service providers had to be chosen in accordance with the procedures set out in this Directive'. Point 28 also clarifies that this exclusion should be extended only in the case of strict necessity (and patient transport ambulance services are explicitly mentioned as a case of non-exclusion of the application of the Directive).

Interested parties may apply for these grants by responding to calls for proposals, provided that their projects are related to the EU's policy aim. Most importantly, such grants can only co-finance or subsidise actions. This means that the applicant is required to find the remaining funds (generally between 25% and 50% of the overall costs) through third-party support or own funds.

Two further distinctions may be made concerning EU grants. The first considers the two types of grants that currently exist; 'Action grants' are aimed at funding projects that are part of EU policy; 'Operating grants' are aimed at funding bodies which 'through their activities make a contribution to the achievement of one or more EU policy objectives'.

A second distinction considers the type of expenditure that EU grants aim to cover. There are two main types of expenditure. The first type is 'operational expenditure', directly linked to the implementation of a project or action. Grants covering such expenditure are awarded to humanitarian and environmental CSOs. The second type includes 'administrative expenditure', consisting of the costs necessary for the functioning of the organisation that have no direct link with the implementation of the project. Both types of grants can only co-finance or subsidise actions. This means that the applicant is required to find the remaining funds (generally between 25% and 50% of the overall costs) through third-party support or own funds.

When analysing how the EU budget is implemented through grants, excluding direct management and management through executive agencies, one should bear in mind that, although the European Commission maintains overall responsibility for implementing the EU budget, it does not have direct responsibility for the management of EU funds. In contrast, tasks are distributed according to two schemes. In the 'shared management' scheme it is up to national governments in EU countries to manage the funds. Under the 'indirect management' scheme, management is delegated by the European Commission to a variety of partners, including decentralised agencies, joint undertakings, national agencies, specialised EU bodies, international organisations and non-EU countries participating in specific programmes.

## **3.2 General rules and sector/programme-specific rules on grants**

Having analysed the typologies of EU funding to CSOs, this section will look at the rules concerning grants. The main legal source of regulation of funding to CSOs is contained in the FR and the Rules of Application of the Financial Regulations (RAP). As previously stated, both were updated in 2012. In spite of this, neither the FR nor the RAP provides for special rules for CSOs, which are treated the same as any other natural or legal persons. This means that CSOs have to comply with the general exclusion and selection criteria applicable to all beneficiaries.

### ***3.2.1 Rules of simplification and financial accountability***

The new FR and RAP provisions, applicable as of 1 January 2013, had, as a key objective, a shift of focus from reimbursement of costs to payments for the delivery of results. They introduced enhanced simplification of procedures. These included the following: (1) 'light documentation requirements' for grants of small amounts; (2) the introduction of simpler rules on purchases made by beneficiaries to implement a grant. The new rules establish that for purchases below €60 000 only two principles are applied to beneficiaries: sound financial management and absence of any conflict of interest; (3) further separation of the submission and evaluation procedures. This is aimed at making it possible to reject, at an early stage, proposals which have no

prospect of being successful; (4) the possibility for applicants to correct errors of a non-substantial nature in their application.

The new FR and RAP also strengthened the rules guaranteeing financial accountability of beneficiaries. To begin with, CSOs are requested to provide financial guarantees. Since this is a complex topic (also contested by many CSOs), the FR and RAP establish that the request to provide financial guarantees may be waived if the grant pre-financing is below €60 000. Moreover, CSOs are required to undergo an external audit. This is required for grants of €500 000 or more for specific projects, and for grants of €100 000 or more for financing costs of organisations.

### 3.2.2 *Rules on conflicts of interest*

CSOs who apply for EU grants are required to avoid conflicts of interest. While a straightforward connection between the issue of conflicts of interest and financial accountability is not necessarily evident, it may be assumed that the latter is influenced by the former. Thus, the EU rules concerning conflicts of interest may also apply to CSOs.

Conflicts of interest involving CSOs may be of differing nature. Broadly speaking, however, they may be internal or external. External conflicts happen when CSOs involved in joint committees or bodies with public entities apply for funds from those same entities.<sup>59</sup> Internal conflicts are the conflicts of interest that concern CSO staff. Four cases may be reported: (1) disclosing confidential information without express prior authorisation; (2) accepting a job from another employer that interferes with the current duties and responsibilities (e.g. becoming a board member in a public office or in a business that relates to the activity of the CSO); (3) gaining profit or deriving direct or indirect interest by influencing a contract award; (4) soliciting or accepting tips, gifts, favours or other forms of gratuities for services rendered in performing duties within the organisation.

A look at the FR rules on conflicts of interest identifies two that may concern CSOs. (1) The first does not directly concern grants, but public procurement. Article 107 of the FR establishes that candidates or tenderers that are subject to a conflict of interest during the procurement procedure cannot be awarded a contract. (2) Specifically on grants, Article 204 of the FR applies a similar rule to the selection of remunerated external experts of the EU (and the same rule applies in cases in which decentralised EU agencies are involved).<sup>60</sup> Finally, in the light of the shared responsibilities between the Commission and national authorities, not only EU rules, but also national rules concerning conflicts of interest may apply to CSOs.

### 3.2.3 *Sectorial/programme-specific rules*

The general legal framework for granting financing to CSOs set by the FR and the RAP is complemented by sector or programme-specific rules. Broadly speaking, these rules

<sup>59</sup> In 2011, for instance, 79 NGOs issued a [statement of concern](#) to the President of the UN General Assembly about the lack of clarity of roles for the industrial sector in the UN interactive hearing for civil society and the UN High-level Meeting on non-communicable diseases. NGOs called on the UN to recognise and distinguish between industry, including business interests, not-for-profit organisations, and public-interest NGOs. They also requested development of a code of conduct to set out a clear framework for engaging the food and beverage industry and managing conflicts of interest

<sup>60</sup> Where non-EU procurement rules and procedures are concerned, Article 38 of the European Commission Delegated Regulation (EU) No 1268/2012 on the rules of application of the FR establishes that those apply, provided that they prevent conflicts of interest throughout the entire procurement procedure.



are aimed at refining the general framework to the specific needs of a programme or sector. The scope of sectorial legislation – explains the Commission – is 'to target the achievement of often highly specified policy objectives'<sup>61</sup>. An example of these rules is those implemented by the Commission's Directorates-General to cover specific funding programmes. In the case of the Directorate-General for Home Affairs, for instance, under the 2007-13 Multiannual Financial Framework (MFF) at least **six sectorial rules** could be found, including rules on the European Refugee Fund, Integration Fund, Borders Fund and Prevention and Fight against Crime. The 2014-20 MFF, however, has reduced this number.<sup>62</sup>

Obviously, while tailor-made rules are beneficial in adapting a funding programme to the needs of its beneficiaries, as well as to the objective of achieving specific EU goals, they also bring the disadvantage of increased complexity. Thus, debate continues among commentators, who disagree as to whether the EU should or should not approve more rules for grant financing tailored to CSO needs. More rules – the criticism goes – would only increase the complexity of regulation and could possibly discriminate between types of grant beneficiaries.<sup>63</sup> The Commission is aware of the fact that such a complex framework may result in beneficiaries misunderstanding or misinterpreting eligibility conditions.<sup>64</sup>

### 3.3 Transparency of EU funding

Transparency is an even more important concept in the activities of the EU institutions. As a general rule, the Treaty on European Union (TEU), Article 11(2), establishes that EU institutions 'shall maintain an open, transparent and regular dialogue with representative associations and civil society'. Article 15 TEU, requires that all EU institutions conduct their work 'as openly as possible' (so as to ensure the accountability of the EU institutions and thus the possibility for democratic control). This section will firstly analyse the topic of transparency about the use of EU funds; then will move to the description of the two main sources of information about EU expenditure on grants, namely: the JTR, and the sectorial databases.

#### 3.3.1 *The European Transparency Initiative and the prevention of terrorism*

Increased transparency about the use of EU funds is one of the major pillars of the European Transparency Initiative (ETI). The ETI commits the EU to respecting high standards of transparency in policy-making, and the allocation of EU funds. Following the ETI, initiatives to strengthen accountability and transparency have spread throughout Europe, both at national and European levels.

Another significant example is the effort of the Commission to enhance transparency in the prevention and fight against financing of terrorism. This topic was first addressed in

<sup>61</sup> See European Commission, *More or less controls? Striking the right balance between administrative costs of control and the risk of error*, COM(2010) 261 final, Brussels, 2010, p. 2.

<sup>62</sup> See European Parliament, Directorate-General for Internal Policies - Policy department D - Budgetary affairs, *EU financing for NGOs in the area of home affairs, security and migration*, 2014, p. 42.

<sup>63</sup> See European Parliament, Directorate-General for internal policies - Policy department D - Budgetary affairs, *EU financing for NGOs in the area of home affairs, security and migration*, 2014.

<sup>64</sup> See European Commission, *More or less controls? Striking the right balance between administrative costs of control and the risk of error*, COM(2010) 261 final, Brussels, 2010, p. 2. Also on this point, former European Commissioner Algirdis Semeta recognised that further simplification of sectorial rules may have a beneficial impact on error rates. See A. Semeta, *Tolerable risk error*, SPEECH/10/275, Brussels, 2010, p. 5.

1989, when the G7 Summit set up a Financial Action Task Force (FATF) with the mandate to propose measures to combat money laundering. After 9/11, the FATF became the leading multilateral institution in developing standards in the fight against terrorist financing. In 2004, the FATF published the first set of (what would later become a series of) Special Recommendations, known as 'The 40 Recommendations'.<sup>65</sup>

As far as CSOs are concerned, '[Recommendation 8](#)' requires them to take into account the issues of financial accountability and transparency. The European Commission followed the FATF in 2005 with a Communication to the Parliament, the Council and the Economic and Social Committee.<sup>66</sup> The Communication called for addressing of the issues of transparency and accountability of CSOs by proposing a code of conduct for all CSOs. The proposal, however, was so heavily criticised by CSOs that the Commission turned its proposal into a further assessment of the, at the time, existing regulatory framework with regard to transparency and accountability. Two studies were commissioned. Both pointed to the need for increased exchange and sharing of best practices among Member States, but did not substantiate the need for an EU-level regulation.<sup>67</sup>

With more specific attention to the topics of financial transparency and accountability of CSOs, in 2007, following the publication of the Green Paper on the ETI, the Commission initiated discussions on the publication of information relating to the beneficiaries of EU funds, involving the Member States, the European Parliament and a wide range of stakeholders.<sup>68</sup> As a consequence of these discussions, consensus was reached about the publication of relevant data and financial rules were modified accordingly. According to the new Article 25 of the FR, the Commission is committed to making available, in an appropriate and timely manner, information on recipients, as well as the nature and purpose of the measure financed from the budget.

### 3.3.2 The Financial Transparency System

The main source of information on EU funding is the Financial Transparency System (FTS). The FTS was created by the Commission in 2007 with the objective of gathering all information on EU funding in a single database. Its legal bases are Article 35, paragraphs 2 and 3 of the FR, and Article 25 of the RAP.

The FTS makes it possible to search data by certain criteria, including the name of the beneficiary, the country of provenance, and the relevant budget line. Users of the FTS are able to download information in spreadsheet format. The FTS, however, still has a

<sup>65</sup> The [Recommendations](#) were revised for the first time in 1996 to take into account changes in money laundering trends and to anticipate potential future threats. More recently, the FATF has completed a thorough review and update of the 40 Recommendations (2003). The FATF has also elaborated various Interpretative notes which are designed to clarify the application of specific Recommendations and to provide additional guidance.

<sup>66</sup> See European Commission, *The Prevention of and Fight against Terrorism financing through enhanced national level coordination and greater transparency of the non-profit sector*, COM(2005) 620 final.

<sup>67</sup> In other words, the authors of the two studies suggested that the EU should assume the role of 'facilitator', or possibly that of a 'qualifier', but not that of a 'regulator' of CSO transparency and accountability. See Matrix, *Study to assess the extent of abuse of Non-Profit Organisations for financial criminal purposes at EU level*, Brussels, 2008; European Centre for Not-for-Profit Law, *Study on recent Public and Self-Regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organisations in the European Union*, Brussels, 2009.

<sup>68</sup> See European Commission, Communication '*Follow-up to the Green Paper: European Transparency Initiative*' SEC(2007)360, Brussels, 2007.



number of issues. To begin with, in the FTS, research on specific categories of recipients is not possible. Data on NGOs, for instance, despite being included in the database, cannot be searched separately from other data. This problem is worsened by the fact that some organisations may have several entries with slightly different names in the FTS. Furthermore, the database attributes the full amount of the commitment to one single beneficiary, which is not necessarily the coordinator of the project. All the other co-beneficiaries are listed in the FTS with a grant of €0. In 2010, the Budget Directorate-General of the Commission stated that no plans were in place to introduce a search function by type of organisation.<sup>69</sup>

More relevantly, not all information on EU spending for the third sector is made available through FTS. This is still scattered across different databases, in which different definitions and data formats are in use, so that a reliable comparative analysis is difficult to obtain. In addition to the above issues, the FTS does not provide information on actual payments, but only on financial commitments under central management by the Commission, its staff in EU delegations and executive agencies. As a matter of fact, no information is available on actual payments, nor on commitments taken under central indirect management by EU agencies, other than the executive agencies mentioned above and specialised bodies or under joint management.

As a consequence of these shortcomings, a precise figure for the overall amount of EU funding through grants to CSOs is not available. One of the most-cited estimates dates back to 2000, when the Commission estimated that €1 billion a year was allocated to CSO projects. Desk research conducted in 2010 by the EP Directorate General for Internal Policies confirmed total funding of €1 billion allocated to NGOs in 2008 and €1.4 billion in 2009. Research led by the Foundation New Direction, a Brussels-based think-tank, estimated that in 2010 the Commission funded NGOs with €1.5 billion in direct grants.<sup>70</sup> Considering that 80% of EU funds are managed by national/regional authorities in EU Member States, and assuming a similar pattern of spending at the national level with respect to the EU level, the research estimated €7.5 billion a year in EU funding went to NGOs.

More recently, a study commissioned by the Directorate-General for Internal Policies of the EP calculated that grants allocated to NGOs under central direct management of the European Commission's Directorate-General for Home Affairs (i.e. in the area of home affairs, security and migration) amounted to about €12 million in 2010, €11.9 million in 2011, and €30.9 million in 2012.<sup>71</sup> According to this study, the average funding per grant over the 2010-12 period has increased from €340 000 in 2010 to €440 000 in 2012. Instead, the Directorate-General for Budget of the Commission in 2014 estimated an average of €3.08 billion a year in EU grants to NGOs.<sup>72</sup>

### 3.3.3 *The Joint Transparency Register*

The JTR is the second source of information on CSOs. Since 2011 – when the JTR became operational, building on previously existing registration systems in the

<sup>69</sup> See European Parliament Committee on Budgetary Control, meeting 15 November 2010, point 4.

<sup>70</sup> See A. Mackonis, Z. Silenas, *Helping Themselves. Six Ways to Reform EU Funding of NGOs*, 2013.

<sup>71</sup> See European Parliament Directorate-General for internal policies - Policy department D - Budgetary affairs, *EU financing for NGOs in the area of home affairs, security and migration*, 2014.

<sup>72</sup> See M. Kraff, European Commission DG Budget, *Budgetary Impact of NGO Funding in the last 10 Years*, Brussels 2014

European Parliament and the Commission<sup>73</sup> – it has gathered registrations from various organisations interested in lobbying towards the EU, including CSOs.<sup>74</sup>

Registration in the JTR is voluntary, i.e. all entities are encouraged to register, but they cannot be forced to do so. As a consequence, JTR coverage is incomplete. It is for this reason that, in 2015, the Commission committed to consider the option of a **mandatory lobby register** for all organisations wishing to contact the members of all three EU institutions – the European Parliament, the Commission and the Council – before the end of 2015.

Opinions on the coverage of the current register diverge. Official numbers say that the JTR has grown at a rate of around 1 000 organisations a year, to include over 7 000 organisations today. Roughly one quarter of the entities currently registered are CSOs, including 1 838 NGOs, 508 think-tanks and academic institutions, 144 trade unions and 41 religious organisations. A 2003 study from the EP estimated that (in 2000) about 2 600 interest groups had a permanent office in central Brussels.<sup>75</sup> European NGOs accounted for 10% of those, think-tanks around 1%. Another study from 2010 estimated at 30% the number of non-registered NGOs engaged in advocacy work at EU level.<sup>76</sup> More recently, a 2013 study estimated that the JTR covers approximately three-quarters of business-related organisations, and around 60% of NGOs.<sup>77</sup>

While there is a general agreement that the JTR has progressed in the quantity and quality of the information provided, other studies have repeatedly expressed critical views of the register. Criticism of the register system dates back to 2009 when Alter-EU, a think-tank devoted to studies on lobbying, criticised the Commission register. According to Alter-EU, only 22.8% of Brussels-based lobby entities (comprising CSOs and the business sector) had registered.<sup>78</sup> With specific regard to CSOs, Alter-EU said that only 25 think-tanks had registered (none of them based in Brussels) and that the 329 registered NGOs represented a minor portion of the many NGOs based in Brussels.<sup>79</sup>

Critical views also point to ineffective oversight. The JTR secretariat monitoring system operates through a system of random checks to verify the correctness of data. According to the secretariat around 800 checks a year are undertaken. Registrants who do not provide the updates required, or do not cooperate, are barred from the system. Again, critical voices maintain that such controls are ineffective. Alter-EU, for instance

<sup>73</sup> The European Parliament had an 'Accredited Lobbyist Scheme' in place from 1996, whereas in the Commission the 'Register of Interest Representatives' was put in place in 2008.

<sup>74</sup> See Manko, R., Thiel, M., Bauer, E., [EU Transparency Register, European Parliamentary Research Service](#), PE 542.170, Brussels, 2014

<sup>75</sup> See European Parliament, Directorate-general for Research, *Lobbying in the European Union: current rules and practices*, Working paper 04/2003 AFCE 104 EN, Brussels, 2003.

<sup>76</sup> See Directorate-General for internal policies - Policy department D - Budgetary affairs, *EU financing for NGOs in the area of home affairs, security and migration*, 2014, p. 50.

<sup>77</sup> See Greenwood, J., Dreger, J., *The Transparency Register: A European Vanguard of Strong Lobby Regulation?*, 2:2 Interest Group & Advocacy, 2013, p. 139.

<sup>78</sup> See Alliance for Lobbying Transparency and Ethics Regulations, *The Commission's Lobby Register One Year On: Success or Failure?*, Brussels, 2009

<sup>79</sup> Similar observations have addressed the register of the Parliament. A study in 2007 estimated at more than 20 000 the number of lobbyists operating in Brussels, including those involved in advocacy for CSOs, and criticised the Parliament register for its limited coverage. See Coen, D., *Lobbying in the European Union*, Briefing Paper. Constitutional Affairs, 2007.

reported in 2012 that at least 120 companies active in EU lobbying, were not registered; and that no less than 50 entries reported spending of just 1 euro per year.<sup>80</sup>

### 3.3.4 Sectorial databases

An additional source of information on CSO funding from the EU is provided by sectorial databases managed by the Commission's Directorates-General. One example is Europe Aid, which manages the database of beneficiaries in the field of external aid. According to the EuropeAid 2014 annual report, the EU committed €14.86 billion to external development assistance in 2013.<sup>81</sup>

A second example is the Commission's Humanitarian Aid and Civil Protection Department (ECHO). ECHO publishes a list of agreements, listed by humanitarian organisation, over a 10-year time span. The list includes reference to the country of operation, the subject of the grant and the amount funded by the EU. In the ECHO 2013 Annual Report it is explained that in 2013 the EU provided substantial needs-based emergency assistance with a total of €1 353 million in commitments, helping approximately 124 million people across 90 countries. The EU Aid Volunteer Initiative, also led by ECHO, is expected to involve around 18 000 individuals in volunteering activities.<sup>82</sup>

## 3.4 The system of controls

To conclude with this analysis of the European legal framework, a few remarks on the system of controls are needed. The EU legal framework has various internal and external mechanisms in place to ensure the legality and regularity of EU expenditure. In what follows, the main mechanisms will be described.

A definition of 'controls' is provided by Article 2 of the FR. This is referred to as 'any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention and detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions'. Thus controls may involve various checks, at various stages of the procedures concerning grants.<sup>83</sup>

As far as the Commission is involved, controls may be broadly distinguished in two categories: *ex ante* and *ex post* controls. (1) *Ex ante* controls are fulfilled before entities or persons are entrusted with tasks of implementing the EU budget. Following Article 61 of the FR, *ex ante* controls can be described as aimed at verifying that the entity or the person has set up rules to control, assess and publish all relevant information on the use of funds. (2) *Ex post* controls concern the reports that the entities or persons entrusted with implementation tasks under the EU budget are required to publish. Such reports account for how the money was spent, and also explain how the audits and controls were carried out.

<sup>80</sup> See Alter-EU, *Dodgy Data*, Brussels, 2010

<sup>81</sup> See Europe Aid, [Annual Report 2014](#).

<sup>82</sup> See European Commission, [Report from the Commission to the European Parliament and the Council on the European Union's Humanitarian Aid and Civil Protection Policies and their implementation in 2013](#), COM(2014) 537 final, 2014

<sup>83</sup> Controls are distinct from 'checks', a term used by the FR to address verification of specific aspects of a revenue or expenditure operation.

Both *ex ante* and *ex post* controls are conducted by specialised personnel, namely an authorising officer and an accounting officer. (1) The authorising officer (Article 66 FR) is responsible in each institution for implementing revenue and expenditure in accordance with the principle of sound financial management. They are also responsible for ensuring compliance with the requirements of legality and regularity. (2) The accounting officer (Article 68 FR), also appointed in each institution, is responsible for a number of tasks, including the proper implementation of payments, the collection of information, the preparation and presentation of accounts, and treasury management.

Article 59 of the FR involves the Member States in the system of controls. According to the shared management procedure, in fact, not only the Commission but also the Member States have to fulfil the control and audit obligations. Member States, in particular, are requested to: (1) ensure that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules; (2) prevent, detect and correct irregularities and fraud. Such controls from Member States may be *ex ante* or *ex post*, and may be conducted through national audit bodies.

Similar rules are applied in the case of indirect management (Article 60 FR). Thus, the entities and persons entrusted with budget implementation tasks are required to set up an efficient system of internal controls, an accounting system that provides accurate and timely information, and be subjected to external audit. Indeed, the prevention of irregularities and fraud is also included among the control-related tasks.

With regard to controls, it is worth mentioning the activities of OLAF, in investigating fraud in EU expenditure, including structural funds, agricultural policy and rural development, direct expenditure and external aid. The fraud investigated by OLAF is of a varying nature. Indeed, fraud can affect grants, contracts, administrative arrangements, external experts, staff recruitment, research, education and culture programmes, environmental funding, training projects, and joint ventures.

In the field of external aid, fraud can relate to funding for NGOs, funds to support national budgets and humanitarian aid. As clarified on the OLAF website, such fraud may concern: (1) use or presentation of incorrect or incomplete statements or documents leading to wrongful payment of funds from the EU budget or budgets managed by, or on behalf of, the EU; (2) non-disclosure of required information with the same effect; (3) misuse of funds for purposes other than those for which they were originally granted. Thus cases investigated by OLAF may vary in nature, as exemplified in the cases reported in the annual activity-reports of OLAF.<sup>84</sup>

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<sup>84</sup> See for instance the OLAF *Sixth Activity Report*, 1 July 2004 - 31 December 2005. It reports an investigation conducted in June 2003, where OLAF was informed that an NGO was manipulating the tender procedures launched in the framework of development and humanitarian aid projects financed by the European Commission. Four months later, OLAF communicated the first results of the investigation to AIDCO and ECHO. These results indicated that although tender procedures had apparently been correctly launched by the NGO, the purchases of goods were concentrated on certain firms which benefited from an unduly privileged relationship.

## 4 Outlook

The problem of financial accountability of CSOs in Europe is a complicated one. Not only does it involve a huge variety of CSOs, but it is also addressed by a fragmented (and sometimes opaque) legal framework. The absence of clear legal definitions, a lack of coordination among EU structures, the permanence of a significant administrative burden, and scarce transparency of the amount (and distribution) of EU funds may counteract the efforts made by the EU to tackle fraud and financial mismanagement by CSOs.

CSO efforts to certify their accountability through self-regulating tools are equally frustrated. At best, CSO codes of conduct, standards and internal policies are considered an effort towards (not a solution to) the accountability issue. More often than not, however, such tools are not given any relevance in assessing CSO financial accountability.

This issue may resemble a 'dialogue of the deaf'. On the one hand, EU institutions' reforms have been postponed, or have not produced the outcomes expected, or have been fiercely opposed by CSOs. At the same time, the self-regulatory tools developed by CSOs to enhance their financial accountability are not officially recognised by EU institutions (and perhaps also considered ineffective), and are also subject to criticism. The concluding remarks of the present analysis will look at the proposals for improving the financial accountability of CSOs that are currently being debated at EU level. While over the years a few proposals have been translated into legal rules (e.g. the rules on simplification) others have remained only on paper. Even fewer are the number of regulations that, after being implemented, have offered an effective solution to the issue of financial accountability of the third sector.

### 4.1 A standard definition of the third sector

As explained in the initial part of the present analysis, a standard description of the third sector is still lacking at EU level. The absence of clear definitions causes confusion and constitutes an obstacle to full disclosure of information. As reported, some progress on this point has been made however, and a few more steps towards a clear taxonomy of the third sector are expected in the months to come.

More recently, further steps towards a working definition of the third sector at EU level have been made under the Seventh Framework Programme (FP7) for research, technological development and demonstration. Under grant agreement No 613034, for instance, a project was financed to provide – inter alia – conceptual clarification of what 'European third sector' means. The project decided to articulate a broad conceptualisation of a 'common core' of the third sector. Five criteria would compose this core: (1) entities must have an organisation;<sup>85</sup> (2) entities must be institutionally separate from governments; (3) entities must be self-governing; (4) participation in organisations must be non-compulsory; (5) finally, organisations must limit the distribution of profits.

### 4.2 The administrative burden

CSO criticisms of the administrative burden related to EU grants date back to the early

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<sup>85</sup> Meaning that they need not be legally registered, but they have to involve groups of people who interact according to some procedures for a meaningfully extended period, quantified as a minimum of seven months.

2000s.<sup>86</sup> When surveyed on this topic, NGOs operating at EU level reported that the complexity of grant application processes was so high that they had to hire specialised consulting firms to assist them.<sup>87</sup> It is not accidental that initiatives aimed at publishing manuals and guidelines to support CSOs in applying for funds have spread. Examples may be found in the guide to support CSOs in applying for funds under the framework of Horizon 2020, or even more general guides aimed at supporting CSOs in all their activities in Brussels.<sup>88</sup>

Following such complaints, and the remarks of the EU institutions (e.g. the ECA),<sup>89</sup> progress has been made, as exemplified by the modifications introduced in the FR and RAP. However, in pursuing the goal of simplification, two counter-arguments may be made to the fact that CSOs would benefit in financial accountability from a reduction in administrative burden. First and foremost is the fact that, administrative obligations are necessary for the objective of guaranteeing a certain degree of financial accountability. It is simply impossible to eliminate all forms of bureaucratic control from EU institutions. A second counter-argument is that a deeper knowledge of the existing rules may even benefit CSOs, at least in terms of competitive advantage.<sup>90</sup>

### 4.3 Transparency towards the public

Enhanced transparency for the public is also a priority on the agenda of activities to improve CSO fiscal accountability. Many solutions have been suggested over time. However, the one that recurs most often suggests that the EU should create a single portal (or, alternatively, a one-stop shop website) for all EU grants. According to Social Innovation Europe, a single portal may bring significant benefits: it may assist applicants throughout the entire application process, it could work as a means to bring more information to the general public, and it could also enhance effective oversight by EU institutions.

Little progress has been made in this direction. In 2010 the EP invited the Commission to establish a public register of NGO-type bodies that receive funds from the EU budget, as well as to harmonise its various databases on beneficiaries from EU funds, and to indicate in its accounting system the 'not-for-profit' nature of the beneficiaries<sup>91</sup>. No further progress has been made.

<sup>86</sup> See Euclid Network, *Consultation on the European financial regulation review*, 2009, p. 14.

<sup>87</sup> See Directorate-General for internal policies - Policy department D - Budgetary affairs, *EU financing for NGOs in the area of home affairs, security and migration*, 2014.

<sup>88</sup> See, for instance, *Civil Society contact Group*, [Making your voice heard in the EU: a guide for NGOs](#), 2006

<sup>89</sup> See European Court of Auditors, *The Commission's management of non-state actors' involvement in EC development cooperation*, *Special Report No. 4*, 2009.

<sup>90</sup> See C. Mahoney, M J Beckstrand, [Following the Money: European Union funding of civil society organisations](#), *Journal of Common Market Studies*, 49:6. The authors surveyed 1 146 CSOs that had received EU funds over a five-year period (2003-07). The survey indicated that only 5.9% of those were registered to the database for Consultation, the European Commission and Civil Society (CONECCS). The CSOs that had registered showed a median funding level 86% higher than those who had not registered. In the authors' opinion, this demonstrated that a deeper knowledge of rules and regulations impacted on the capability to access to EU funds, producing a de facto competitive advantage.

<sup>91</sup> See European Parliament, *Decision on Discharge in respect to the implementation of the European Union general budget for the financial year 2008, Section III - Commission*, SEC(2009) 1089 - C7-0172/2009 - 2009/2068(DEC), 2010, point 248.



Transparency should also be improved through the JTR. As reported above, the entries from NGOs have steadily increased from 28% of total entries in 2008, to 30% in 2010, remaining stable in 2014. Criticism, however, has moved on to the categorisation adopted by the JTR, underlying the fact that under the category 'NGO/think-tank' for-profit associations may also register (e.g. business associations). In consequence, a separate category has been suggested as being more appropriate.<sup>92</sup> In January 2015, a renewed JTR was launched. However, this 'second generation register' does not include new categories of registrants.

#### 4.4 Standards for accessing grants

The increasingly diversified market of CSOs has made it difficult to identify the quality of self-regulatory initiatives by CSOs. It is suggested that developing a fair and flexible regulatory framework may offer a solution to this issue. In particular, many suggest introducing an **EU code of conduct** and making it compelling for CSOs who aim to receive EU funds.

This is, however, a complicated task, since there is no blueprint as such. Not only do European countries demonstrate great differences in the range of legislative and policy solutions for tackling the issue of financial accountability of CSOs through codes of conduct, but CSOs also show differences in structure and scope that may discourage the adoption of a single standard regulatory framework for all. The risk, then, is to impose arbitrary solutions without regard to the organisational context. Previous attempts by the Commission to set a common code of conduct for all CSOs have in fact ended in failure, as shown by the case of the Commission's attempt to introduce a code of conduct in countering financing of terrorism. The latest attempts in this direction date from 2010, when the European Commission committed to putting forward a proposal on a European Foundation Statute by the end of 2011.<sup>93</sup>

Where similar solutions have been tried, the results have been fairly positive. For instance, in Australia only those entities that become signatories of the Australian Council for International Development's Code of Conduct can apply for Australian Government aid programme funds. As an alternative, signing up to codes of conduct may be used as an incentive to obtain certain benefits, as in the cases of the Philippines and Pakistan. Certification by the Philippine Council for NGO Certification, and the Pakistan Centre for Philanthropy's Non-profit Organisation, are considered criteria for NGOs to be granted tax deductibility on their donations.

On the other hand, CSOs regard these attempts as a way to limit their freedom to rely on foreign funding – a phenomenon defined by the ICNL as 'philanthropic protectionism'. CSOs fear that setting standards for accessing funds may encourage national governments to adopt laws that would limit their capacity to receive funding. As reported in 2014 by The Economist, between 2012 and 2014 at least six states passed laws affecting NGOs that receive foreign funds; and around a dozen more countries plan to do so.<sup>94</sup>

<sup>92</sup> See Alliance for Lobbying Transparency and Ethics Regulations, *The Commission's Lobby Register One Year On: Success or Failure?*, 2009, p. 18.

<sup>93</sup> See European Commission, *Communications towards a Single Market Act - For a highly competitive social economy*, 27 October 2010 COM(2010) 608 final; *Single Market Act - Twelve levers to boost growth and strengthen confidence*, 13 April 2011 COM(2011) 206 final.

<sup>94</sup> See The Economist, [Donors: keep out](#), 2014.

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Over recent decades Civil Society Organisations (CSOs) – a term used to capture all forms of collective organisation outside the government and business sectors – have grown in both number and impact on policy-making, both at EU and national levels. In consequence, CSOs have come under pressure to demonstrate that they use the public resources they are given in an efficient, accountable and transparent manner.

A number of proposals to address these topics have been discussed over the years. However, only a few of those proposals have been translated into law; and even fewer of these, after being implemented, have offered an effective solution to the issue of financial accountability of the third sector. The debate between scholars, institutions and practitioners is still ongoing. In the meantime, the third sector at the European level remains regulated by a combination of European norms, quasi-legal tools, and self-regulatory initiatives.

Efforts to tackle financial mismanagement by CSOs are frustrated by the absence of clear legal definitions at EU level, by the opacity of the information available on CSOs through EU databases and by excessive bureaucracy.

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