

NON-GOVERNMENTAL NON-PROFIT ORGANISATIONS AND FISCAL INEQUALITY

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I propose to discuss inequality of fiscal treatment to which non-governmental non-profit organisations for the public benefit, NGOs for short, are subject within the European Community.¹ I shall be dealing with direct taxation only, and shall not touch on VAT.

My concern is with two kinds of inequality. First, there is the inequality that stems from the lack of uniformity of exemption-practice amongst Member States; second, there is the inequality that stems from discrimination by Member States in favour of their own NGOs - or donors to them - as compared with those that reside (i.e., have their *siège*) in other Member States.

Lack of Uniformity

Let us take the lack of uniformity first. The scope of exemptions varies. For example, some states exempt religious organisations, some do not; some exempt sporting bodies, some do not. There are sometimes quantitative limitations - the permitted size of gifts qualifying for exemption, either absolute size or size as proportion of the donor's income, varies from state to state; and some states grant partial exemption only where other states would grant total exemption.

As our single market without frontiers becomes a reality, we should, I am sure, all wish to see greater uniformity of treatment of NGOs, provided, of course, that uniformity is obtained by enlarging exemptions rather than by reducing them.

If we are to achieve that goal, it will be at the cost of some reduction of tax revenues; but tax revenue is the life-blood of the state, and no state is eager to give it away. Furthermore, because control of taxation is the means by which parliaments control governments, that control is one of the foundations of democracy, and parliaments grow sensitive about external interference with it. So, our task is not going to be easy.

There is, of course, the temptation to hope that Europe will come to our rescue, make some legislation that will compel Member States to harmonise their tax-treatment of NGOs. That hope is vain. A unanimous vote would be required, and I see no prospect of it. There is no magic from Europe, or from anywhere else, that will do what we want; but there is a piece of help that is on the way. DG XIII's famous White Paper will spell out the facts about this and much else; it will display more clearly

¹ This paper was originally an intervention at 3rd Conference of the Social Economy held in Lisbon in April 1992.

than ever before the divergent practices of the Member States. It will then be for the associations in each Member State to draw the attention of their government to these divergencies, and to urge it to improve its practice in line with the best examples elsewhere. Do not despair. The task is not impossible. The associative sector has, when it organises itself well, great political influence. I believe that convergence of tax-exemptions will come about, as a result of pressure from within each Member State, and that the process is likely to gather speed when once it starts.

Discrimination: More Favourable Treatment to Resident NGOs

The second form of inequality arises where a state grants more favourable treatment to its own resident NGOs, or to donations to them, than it does to NGOs resident elsewhere and to their donors. With a few exceptions, this discrimination is normal practice. I take a simple example. There is an NGO which runs a radio station at Strasbourg, diffusing broadcasts of classical music to an audience partly French, partly German. Because it is on the French side of the border, its French subscribers enjoy tax-exemptions which are denied to their German counterparts, and this seems unfair. It also seems un-European.

We should wish, should we not, every Member State to grant to foreign NGOs the same fiscal privileges as it grants to similar NGOs resident in its own territory, in respect of gifts, legacies, income or property held or arising within its jurisdiction; and we should wish every Member State to grant to its residents the same tax-exemptions for their gifts to NGOs in other Member States as for their gifts to similar NGOs at home. To put it shortly, discrimination should cease.

Now, as we know, some forms of discrimination are contrary to the Treaty, and action against them can be taken on the European scale. Does that apply here? That is a question for the Commission in the first instance. It is a difficult and complex question, and we cannot be sure of a favourable response. Failing that, how are we to make progress?

The general difficulty of persuading states to give up revenue remains with us, but in an exacerbated form. Even if a state can be persuaded to give up tax revenue in favour of an organisation that works for the benefit of its own subjects, it is another matter to give it up for the benefit of subjects of other states. Some states indeed define 'the general interest' or 'the public benefit' as stopping at their national frontiers.

It is almost inevitable that states should make reciprocity an essential condition of any progress - why, for example, should France be helpful to British NGOs and donors unless Britain is helpful to French NGOs and donors? Reciprocity, however, in turn presupposes some uniformity of practice. Taking the same example, we cannot expect France to be more helpful to a British NGO than Britain would be to an exactly similar French NGO. Uniformity of practice is at present, as we have already noted, sadly lacking.

Fraud and Malpractice

Another problem is the prevention of fraud and malpractice (which become easier when funds pass from one jurisdiction to another). Governmental arrangements for regulation of the associative sector vary greatly, both in form and in the rigour with which they are enforced. A state is not likely to grant tax-exemption on funds passing

to a state where they may be misapplied.

Solutions

Nevertheless there are reasons for hope. Most governments seem to find it possible in specially approved instances to exempt from tax donations going to charities in other countries, as, for example, to UNICEF, or to disaster funds. Thus what we seek may be seen as no more than the widening of an already existing practice. Again, France already permits some exemption from tax (e.g., inheritance tax) to foreign NGOs in approved instances, and subject to reciprocity. I believe that Italy makes some similar concession. These examples might be followed.

The double-taxation convention between the UK and Ireland contains provision for the exemption by each contracting state of approved NGOs in the territory of the other and of donors to them. Similar agreements have been made in other parts of the world. It should be much easier to achieve a similar agreement between two Member States of similar traditions and culture than to achieve it immediately and directly for Europe as a whole. A network of agreements could gradually be built up.

Many states permit an exempt NGO to pursue its approved purposes beyond their national boundaries. It may do so by supporting the work of a similar foreign NGO. This can easily, and without formal change, develop into an arrangement whereby the first NGO acts as a conduit through which donors can make tax-exempt gifts to the foreign NGO.

Might we take this idea further, building on the concept of the Charities Aid Foundation and the Fondation de France? Can we conceive of the establishment of an NGO whose principal purpose would be to receive tax-exempt funds from donors or from investments and to transmit them, either at its discretion or at the request of donors, to approved NGOs in other jurisdictions?

Thus, while there is no magic that will at one stroke achieve our purpose, no supranational authority that will achieve harmonisation of relevant provisions (even if harmonisation, in the strict sense of the term, were regarded as desirable, which is not necessarily the case), even so there are real possibilities of progress if we are prepared to undertake the slow and patient work that will be necessary, and to organise ourselves.

The involvement in NGOs of citizens, citizens with votes, is throughout Europe statistically on a massive scale. We have great potential political strength, but it is yet largely unstructured, and therefore ineffective. Over the next few years, given the development of such organisations as CEDAG and ECAS, we should be able to improve our collective effectiveness, and to work together for such purposes as I have described.