

**The London School of Economics and Political Science**

**Accountability in the French Nonprofit Sector:  
From the Inside Out**

**Susan Elene Liautaud**

**A thesis submitted to the Department of Social Policy of the  
London School of Economics for the degree of  
Doctor of Philosophy, London, April 2009**

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**DECLARATION**

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## ABSTRACT

The thesis aims to explain increasing accountability in the French nonprofit sector. The qualitative research investigates the hypothesis that engendering trust is the key rationale for increasing accountability. The research also explores inductively other potential rationales for increasing accountability (e.g. corporatisation, integration of international standards of accountability, donor pressure, and the media). US regulatory, self-regulatory, and voluntary models of accountability provide reference standards.

The study targets 45 renowned French NPOs. 33 are members of a national independent accountability accreditation organisation (Comité de la Charte de Déontologie), and 12 comprise a control group. The driving voice is the perspective of the most senior leaders of respondent organisations, almost all executive directors, board Presidents, or board members.

The theoretical framework centres on Henry Hansmann's theory of trust (derived from legal restrictions on profit distribution or the "nondistribution constraint") as an explanation for the origin and on-going efficacy of the nonprofit form. First establishing the relevance of Hansmann's demand side theory in France, the analysis then bridges Hansmann's rationale for the nonprofit organisational structure to analysis of how and why French NPOs supplement the intrinsic characteristics of that structure with accountability. Hansmann might call this organisational effort the "supply side." Finally, the emerging spectrum from Hansmann's trust to Lester Salamon's suggestion that accountability is the modern foundation for trust because the nondistribution constraint no longer suffices also frames the analysis.

The proposed definition of accountability combines a general definition and an operationalised definition (derived from scholarly literature and best practice, respectively). The analysis highlights organisations' strategic assessment of quantitative/non-quantitative considerations in accountability-related decisions, including the impact of specified internal organisational variables and external contextual variables.

The most oft-cited rationale for increasing accountability is ethical, effective management, followed by donor trust. Donor trust proves essential and fragile – irrespective of cited rationale for increasing accountability.

## ACKNOWLEDGEMENTS

It is difficult to thank Jude Howell sufficiently for years of wisdom, advice, patience, and general guidance on enduring the marathon. Most impressive is the number of others working on so many different topics who have said, and are saying, the same thing. Steen Mangen was the ideal secondary adviser: wise, generous with his time, always responsive to the odd question, and sensitive to his role. Julian Le Grand also offered invaluable advice to all of us on the process and ensured a friendly but disciplined program environment. I learned so much from all of you. Also at LSE, a heartfelt thanks to Rowena Macrae-Gibson and Sue Roebuck for professionalism and responsiveness from beginning to end.

I owe a tremendous debt of gratitude to Michel Soublin, a thoughtful, wise, and diplomatic French nonprofit sector leader who has single-handedly spearheaded significant changes in the Comité de la Charte and its 56 member organisations during his term to date as President – while never treading too heavily with his corporate experience. Among his many specific contributions, the election of a majority of independent directors represents a notable achievement and model for the entire sector. Without Michel’s sustained support, insight, contacts, and availability to reconfirm research findings and policy recommendations this study would not have been possible.

I also thank the 45 senior executives and board members of the respondent organisations, each of whom responded to an on-line questionnaire and opened their doors for a long one-on-one interview, revealed detailed confidential information and anecdotes, and demonstrated enthusiasm for the topic and openness to my investigation. This is all the more remarkable given that I had never met any of them personally before and that the control group members were “cold called.”

Henry Hansmann, Lester Salamon, and Susan Rose-Ackerman, the three pillars of the theoretical foundation of this thesis, all generously responded to unsolicited e-mail requests for phone interviews. Their insight, advice, and confirmation of the direction I was taking were a highlight of the experience.

My sincere appreciation goes to my administrative assistant Isabelle Chaigneau for her professional work ethic.

Finally, I could not have even started this endeavour without the support of my family – from the patience with the workload to the practical advice on computer skills to the insistence at various points along the way that I simply could not quit. Alexa, Olivia, Cristo, Parker, and Luca, and Bernard, you made all the difference. This is for you.

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## GLOSSARY OF FRENCH TERMS AND NAMES, OTHER DEFINED TERMS, AND ABBREVIATIONS

### French Terms and Names

<i>administrateur</i>	member of the <i>conseil d'administration</i> (used for French NPOs)
l'ARC	Association pour la Recherche sur le Cancer (Association for Cancer Research)
ARUP	public utility association ( <i>association reconnue d'utilité publique</i> )
<i>assemblée générale</i>	annual meeting of a French NPO
association or 1901 Law association	NPO created under the 1901 Law
<i>bénévole</i>	volunteer donating time without remuneration
<i>bureau</i>	executive committee of <i>conseil d'administration</i> with significant decision-making authority
<i>censeur</i>	Comité volunteer with professional accounting and finance background overseeing accreditation
<i>Charte de Déontologie</i>	Comité's Code of Ethics and Good Conduct applicable to members
<i>collectivité</i>	administrative/geographic area in France with independent legal status
Comité de la Charte de Déontologie or Comité	independent national accountability accreditation organisation (case study organisation)
<i>commissaire aux comptes</i>	external auditors for statutory audit of NPO accounts
Commission d'Agrément et de Contrôle	Approval and Control Commission (independent experts approving eligibility of new Comité members and Comité requirements)
Commission Nationale de l'Informatique et des Libertés or CNIL	French national data protection agency
<i>conseil d'administration</i>	governing body of association or foundation (equivalent to a US board of directors)
Conseil d'Etat	French state body vetting laws prior to ministerial approval
Conseil de déontologie	Comité's ethics counsel (now dissolved into individual volunteers)
Conseil national de la comptabilité	French national accounting organisation (equivalent to US Financial Accounting Standards Board (FASB))

Cour des comptes	French state administrative body overseeing NPO use of donor funds
<i>département</i>	administrative/geographic area in France with independent legal status
FRUP	<i>fondation reconnue d'utilité publique</i> (public utility foundation)
Ministère des Affaires Etrangères et Européennes	Ministry of Foreign and European Affairs
<i>statuts</i>	by-laws or other documents of legal organisation
<i>volontaires</i>	intermediate position between volunteers and employees paid a stipend and benefits (used exclusively in French and distinguished from the English word “volunteers”)

### **Other Defined Terms**

1901 Law	French 1901 Law of July 1, 1901 authorising the creation of associations
Attorney General	highest ranking legal officer of state or federal government (with oversight of enforcement of many NPO matters)
board or board of directors	governing body of US NPOs (used exclusively for US context)
Board Source	US self-regulatory organisation addressing board governance issues serving over 600,000 NPO leaders
Comité Charter	Comité’s Code of Ethics and Good Conduct ( <i>Charte de Déontologie</i> )
Comité Group	respondent group of 33 members of the Comité
Comité Group interview questionnaire	semi-structured questionnaire for in-person interviews of Comité Group senior management representatives
Comité Group self-completion questionnaire	self-completion factual questionnaire (first data collection phase) – Comité Group
Comité/Sofres Survey	2007 study called <i>The Phenomenon of Trust (Le phénomène de la confiance)</i> commissioned by the Comité to study donor trust in fund-raising NPOs
Control Group	control group of 12 organisations outside the Comité
Control Group A	six larger Control Group organisations with many large donors similar to Comité Group profile
Control Group B	six smaller Control Group organisations with smaller number of larger donors

Control Group interview questionnaire	semi-structured questionnaire for in-person interviews of Control Group senior management representatives
Control Group self-completion questionnaire	self-completion factual questionnaire (first data collection phase) – Control Group
controlling persons	persons with the power to influence policies and management via voting rights, board or management positions, contract, or otherwise
Director General	General Director of a NPO (Chief Executive Officer or Executive Director equivalent)
Foreign Affairs Commission Report	2007 Report of French National Assembly Foreign Affairs Commission addressing the 2004 Asian tsunami
Form 990	US Internal Revenue Service required annual filing for NPOs with tax deduction privileges
Hopkins Study	Johns Hopkins Comparative Nonprofit Sector Project (defined in Section 1.3.2)
Independent Sector	nonpartisan self-regulatory “coalition” of approximately 550 NPOS and corporate giving programs
Independent Sector Code of Ethics	Statement of Values and Code of Ethics for Charitable and Philanthropic Organisations published by Independent Sector
Internal Revenue Service	US Internal Revenue Service (tax authority)
Internal Revenue Code	US Internal Revenue Code (Title 26)
interview questionnaires	Comité Group and Control Group interview questionnaires collectively
President	President of a NPO (generally equivalent of Executive Chairman of the Board in the US)
public utility association	see ARUP
public utility foundation	see FRUP
Report to Respondents	February 19, 2008 French language report by author summarising research findings/recommendations
Sarbanes-Oxley Act	US Sarbanes-Oxley Act of 2002
self-completion questionnaires	Comité Group self-completion questionnaire and Control Group self-completion questionnaire together
social economy	<i>économie sociale</i> (defined in Section 1.3.1)
Statement of Use of Funds	<i>Compte d'Emploi des Ressources</i>
Zoe's Ark	l'Arche de Zoé (1901 Law association founded in 2005)

## Abbreviations

l'ADDES	Association Pour le Développement de la Documentation sur l'Économie Sociale (Association for Development of Documentation on the Social Economy)
CNIA	California Nonprofit Integrity Act of 2004
ECHO	European Commission - Humanitarian Aid Office
EU	European Union
EVPA	European Venture Philanthropy Association
GDP	gross domestic product
ICFO	International Committee on Fundraising Organisations
l'IGAS	Inspection Générale des Affaires Sociales (General Inspectorate of Social Affairs)
NGO	nongovernmental organisation (used for any country)
NPO	nonprofit organisation (used for any country)
PEAD	<i>Plan Européen d'Aide aux Plus Démunis</i> (European Aid Plan for the Most In Need)
SEC	United States Securities and Exchange Commission (the primary federal securities regulatory body)
UK	United Kingdom
US	United States of America
VAMs	voluntary accountability mechanisms defined in Section 2.2.2(b) (Other voluntary accountability mechanisms outside the specified list for the research are referred to as “voluntary accountability mechanisms.”)

## NOTES ON PRESENTATION OF DATA

1. **References to Organisations and Comité Senior Management.** Citations to specific organisations in parentheses throughout the thesis are numbered 1-33 (the 33 Comité Group organisations) and lettered A through L (the 12 Control Group organisations) in a non-identifiable pattern to track data while protecting confidentiality. Occasionally organisation codes are omitted (as noted in footnotes) to protect confidentiality due to references in the text linking to information in the appendices that could jeopardise confidentiality. Occasionally Comité senior management representatives are referred to as “Comité senior management call/interview” to protect the confidentiality of the individual.
2. **Percentages.** Percentages are used throughout only where useful to communicate results. For example, percentages are added where the comparison of absolute numbers between the Comité Group and Control Group does not indicate the significance of the related difference in percentage between the two groups, to indicate the extent of change over time, or to convey extremes in responses.
3. **Numerical Statements.** Numerical statements are intended to support a qualitative panorama and not to offer quantitative statistical analysis. Numerical statements throughout the discussions of the empirical findings may not total to the total number of participants in the study as in certain cases respondents did not answer individual questions and/or answers were not usable for various reasons.
4. **References to Regulations and Web Sites.** Due to the frequency of references to the following regulations and web sites, an abbreviated form is used in the in-text citations for readability. These link directly to the sections in References noted:

Comité (Comité de la Charte: References Section III. Comité de la Charte References)

French Government (French government bodies enacting laws, decrees, and ordinances: References Section II. Regulatory References – French Government Regulatory References)

US Government (United States Government: References Section II. Regulatory References – US Federal Regulatory References)

USGDT (United States Government Department of the Treasury: References Section II. Regulatory References – US Federal Regulatory References)

USGDTIRS (United States Government Department of the Treasury Internal Revenue Service: References Section II. Regulatory References – US Federal Regulatory References)

5. **Use of Translations.** French terms are used (and defined in the glossary) for frequently used terms with specific legal meaning. Translations into French are provided in the text for less frequently used terms with a specific legal meaning or use in the French nonprofit sector context.
6. **Conflicts of Interest.** The author has been a member of the US Advisory Board of Doctors Without Borders/Médecins Sans Frontières for seven years (but not any governing or advisory body of the French organisation that participated in the study and not involved in any of the decisions or accountability matters cited). Fidesco has been a pro bono consulting client of the author periodically on governance matters for approximately four years. The author began pro bono consulting for Amnesty International France six months after completion of the interviews. Finally, in early February 2009, the nominating committee of the *conseil d'administration* of the Comité de la Charte suggested the author's candidacy as an independent expert *administrateur*. Election occurred March 26, 2009. Prior to this suggestion, there had been no other discussion of this topic or interaction with the *conseil d'administration* of the Comité during the study. None of these arrangements had any effect on the research process or findings

## Chapter 1

### Introduction

“This [increasing accountability] is part of the normal evolution of things, in particular in an era when accountability is on everybody’s mind” [author translation] (Organisation 29).

“...I have offered, in essence, a positive theory of consumer demand. That is, I have argued that nonprofits tend to produce particular services, those characterized by ‘contract failure,’ because consumers prefer to deal with nonprofits in purchasing those services...based upon a feeling that nonprofits can be *trusted* [italics added] not to exploit the advantage over the consumer resulting from contract failure. This trust derives its rational basis from the nondistribution constraint that characterizes the nonprofit form” (Hansmann 1980, 896).

“... *it takes supply as well as demand* [italics added] to make a market; to understand the nonprofit sector in full, one must know not only the circumstances under which patrons will seek the services of nonprofits, *but also the factors that determine whether and how the nonprofit organizations will develop to meet that demand* [italics added]...I have focused heavily on the demand side, primarily because this seems the best way to illuminate the general role served by the nonprofit form. *Questions of supply response have been touched upon only briefly, and much remains to be said* [italics added]” (Hansmann 1980, 897).

In the increasingly global and competitive nonprofit environment at the beginning of the twenty-first century, nonprofit leaders struggle with how best to ensure financial sustainability, successful service delivery, and loyalty to the organisational culture. Increasing attention to accountability has emerged as a fundamental common concern among leaders and organisations across a range of sectors of activity, geographic reach, profile of leader, legal and financial structures, and cultural contexts (Salamon 2003, 5). Indeed, as several respondents in my survey began their respective interviews, “accountability is on everybody’s mind”... “it’s in the air (*l’air du temps*)”... “just the way things are in today’s world” (Organisations 29, J, and H, respectively).

While accountability is often loosely defined as demonstrating how, and how effectively, a NPO has used resources available to it, the range of financial, cultural, regulatory, and ethical overtones, as well as more specific measures of accountability relevant to each NPO, vary widely. Nonetheless, NPO leaders’ reflection on the type of organisational behaviour necessary to succeed in the current environment may be traced back to the origins of the nonprofit form. In particular, key common intrinsic NPO characteristics – most importantly, the restriction on distribution of profits – underlie the analysis of accountability even in 2009 and even across national legal systems and the

wide variety of NPOs.<sup>1</sup> Seminal scholarship on the nonprofit sector, such as Hansmann's 1980 article on trust, also focuses on the importance of the restrictions on profit distribution or "nondistribution constraint" as a basis for donor trust and, therefore, financial stability (Hansmann 1980, 838).<sup>2</sup> Hansmann developed theories of the types of organisations best suited to donor behaviour, the types of services NPOs deliver, and the relationship between donors and beneficiaries as resting largely on trust derived from intrinsic NPO qualities (1980).

In the current nonprofit sector environment, the question has evolved as to whether a different kind of organisational behaviour, in addition to the intrinsic elements of the nonprofit form, is necessary for sustainability. Specifically, how does the broad concern with, and evidence of, increasing accountability at the time of this thesis relate to the common origins of the nonprofit form and an updated analysis of the characteristics and behaviour of NPOs essential for success in the early twenty-first century? How should accountability be defined for purposes of answering this question? How and why is accountability related to trust, again across legal systems, cultural contexts, and other organisation-specific and environmental variables?

Trust has been the centrepiece of the US nonprofit theoretical, regulatory, self-regulatory, and voluntary accountability framework (Hansmann 1980; United States Government 2002; Independent Sector 2002; Anheier and Kendall 2000, 2, respectively). Most recently, extensive fall-out from for-profit and nonprofit scandals called into question the role of trust and reinforced attention to accountability.<sup>3</sup> A range of regulatory, self-regulatory, and voluntary accountability efforts aim to engender trust through both general and highly specific accountability policies and mechanisms. The adequacy or even on-going relevance to donors of trust based on intrinsic NPO characteristics in a newly complex, competitive nonprofit market is under increasing scrutiny (Salamon 2003, 25). Rather, accountability has become increasingly important to earning trust (Reiser 2004, 6; Salamon 2003, 24-6; Anheier and Kendall 2000, 5 (on other approaches to trust)). Moreover, accountability in the nonprofit sector has begun to parallel increasing attention in the for-profit world, including in response to scandal (Keating and Frumkin 2000, 1 and 5-6; Reiser 2005, 559-60).<sup>4</sup> At the extreme,

<sup>1</sup> See e.g. Hopkins Study definition of NPOs (Section 1.3.2).

<sup>2</sup> See the discussion of Hansmann's theory (Section 2.1.2).

<sup>3</sup> See e.g. Section 3.1 on the Enron, WorldCom, and Red Cross scandals.

<sup>4</sup> See also e.g. Light (2003, 6-7); United States Government 2002; Independent Sector 2004b; Independent Sector and Board Source 2006; Lloyd (2005, 2).

increasing pressure to evaluate and improve performance shifts the burden further from intrinsic NPO qualities to accountability as the basis for trust (Lloyd 2005, 2; Salamon 2003, 25).

Accountability is also increasingly a high priority in the French nonprofit sector and the focus of the present investigation – generally and among leaders of major French NPOs more specifically. The evolving relationship between accountability and trust, and the role of trust as a central foundation for NPOs, has become important as a result of several parallel developments. First, a series of major nonprofit sector scandals in France, most importantly l'ARC (Association for Cancer Research) dating back to the late 1980s, focused attention on trust and the potential need to reinforce trust with accountability.<sup>5</sup> Second, the French nonprofit sector looks increasingly to US models of nonprofit accountability targeting trust, including the influence of for-profit organisation practices. This calls into question the basis of trust and the need for accountability efforts (as defined in Section 2.2.2(b)) to support trust. Similarly, in France parallel increasing emphasis on accountability as a tool for ethical, effective management and to meet increasing competition and enhance strategy (hereinafter referred to as “ethical, effective management”) challenges the relevance of trust to accountability-related decisions.

This thesis investigates the reasons for recently increasing accountability in the French nonprofit sector in terms of both increased stated interest in accountability and actions taken to increase accountability.<sup>6</sup> The focus of the study is a group of 45 renowned French NPOs. 33 are members of a pioneering independent French accountability accreditation organisation called the Comité de la Charte de Déontologie (hereinafter referred to as the “Comité”).<sup>7</sup> 12 comprise a control group of equally renowned organisations outside the Comité. Against an empirically verified panorama of widely acknowledged increasing accountability in France, I examine how the respondent organisations individually, and the Comité as an independent organisation, demonstrate increasing interest in accountability and efforts to increase accountability. The thesis then analyses the primary rationales for this increasing accountability, including inductive assessment of the importance of trust within a mix of other possible

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<sup>5</sup> See Section 7.2.1 for a discussion of l'ARC.

<sup>6</sup> Reflects Howell comments on thesis draft (e-mail September 17, 2008).

<sup>7</sup> The Comité de la Charte de Déontologie is technically translated as the Ethics Charter Committee. However, a more functionally accurate translation would be Accountability Accreditation Committee. See Appendix 1-A for a complete list of respondent organisations and the legal status of each. See also Section 1.2.1 for case study structure.

rationales. The analysis includes prioritising the rationales, explaining the major driving forces behind those rationales, and exposing the vehicles through which NPOs increase accountability within each. Finally, the discussion broadens to consider respondent leaders' perceptions of, and reactions to, increasing accountability and potential challenges to accountability in the French nonprofit sector.

The analysis offers as a cross-national frame of reference the regulatory, self-regulatory, and voluntary accountability models that underlie the comparatively more successful US nonprofit sector in terms of giving to NPOs and advanced levels of accountability.<sup>8</sup> Accountability for purposes of this thesis includes both a general obligation to answer for one's behaviour and an operationalised set of specific voluntary accountability mechanisms (hereinafter referred to as "VAMs") that closely reflect US best practice as the sector models.<sup>9</sup> VAMs facilitate comparison – among French NPOs and with US regulations and best practices. VAMs also offer a range of organisational and financial approaches to the theoretical and practical aspects of accountability and trust. This in turn allows broader inductive insight into potential explanations for increasing accountability other than as a tool to enhance trust.

The analysis also considers the application of Hansmann's trust theoretical framework in the French context. Hansmann suggests that the restrictions on NPOs' distribution of profits (the so-called "nondistribution constraint" characteristic of NPOs) permit increased trust by minimising opportunity for management or the board to engage in inappropriate or illegal behaviour (e.g. misuse of funds) (Hansmann 1980, 838). Similarly, the larger "contract" of the "organization's legal commitment to devote its entire earnings to the production of services" offers a basis for trust (Hansmann 1980, 844). Nonprofit trust, in turn, compensates for the intrinsic "information asymmetry" and "contract failure" in dealing with NPOs (Hansmann 1996, 252; Hansmann 1980, 845 and 896, respectively). Trust is also critical to a NPO's capacity to compete effectively in an increasingly demanding nonprofit environment (Hansmann call 2008; Salamon call 2008).

The driving focus of the thesis is the respondent leaders' perception of, and words and actions relating to, the increasing accountability. First, the analysis

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<sup>8</sup> See Note 77, *infra* for examples of comparisons in giving in France to the US and other European countries. See Sections 3.1 and 3.2 and Chapter 4 for a comparison of key elements of US and French accountability regulation and best practice.

<sup>9</sup> See Section 2.2.2 for a two-pronged general and operationalised definition of accountability used throughout the thesis and related terms. Voluntary accountability mechanisms outside the specified list of VAMs are referred to as "voluntary accountability mechanisms."

establishes the relevance of Hansmann's originally US-based trust theory as an explanation for the nonprofit form in France in the early twenty-first century and starting point for the research on increasing accountability (the demand side). The thesis then builds on this analysis to ask how organisations behave with respect to accountability matters in the current nonprofit sector environment. Hansmann might call this to some degree the "supply side": "...one must know not only the circumstances under which patrons will seek the services of nonprofits, but also the factors that determine whether and how [NPOs] will develop to meet that demand" (Hansmann 1980, 897). The thesis therefore bridges Hansmann's analysis of why the nonprofit form is the likely attractive organisational structure to how and why NPO leaders question the need to supplement the intrinsic characteristics of that organisational form with increasing accountability to succeed in an era of rising competition and globalisation. The analysis takes as a given donor giving tendencies (as Hansmann assumed within his original theory). The thesis does not address actual or probable donor perception or actions except insofar as leaders' perceptions of the issues integrate their views of donor perception, which would reflect individual perception and not proven data.<sup>10</sup>

Second, the analysis addresses theoretical extensions of Hansmann's theory relevant to the analysis of increasing accountability. Susan Rose-Ackerman proposes the notion of investing in accountability to "signal" trustworthiness (Rose-Ackerman 2001, 6).<sup>11</sup> The related weighing up of the strategic choices linked to an investment in VAMs and other voluntary accountability mechanisms to strengthen that "signal" underlies the theoretical and empirical analysis.<sup>12</sup> In addition, the analysis explores Lester Salamon's suggestion that trust derived from the nondistribution constraint no longer suffices and that accountability (particularly performance evaluation) has become the prerequisite for earning trust (Salamon 2003, 25). These extensions and other criticisms of the theory addressed in the thesis establish a basis for understanding the relationship between the empirical findings and the theory as the theory has evolved since Hansmann's seminal 1980 article (Hansmann 1980).

The thesis challenges the fundamental assumption in Hansmann's work, and later Rose-Ackerman and Salamon's work, that accountability reflects organisations'

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<sup>10</sup> See Section 1.2.5.

<sup>11</sup> See Section 2.1.5 for an explanation of "signalling."

<sup>12</sup> The discussion of Rose-Ackerman's cost-benefit analysis in terms of strategic choice emerged from a call with Bradshaw on contingency theory (Bradshaw call 2008).

response to a demand for trustworthiness. The empirical research aims to understand how organisations think and why organisations act the way they do with respect to accountability – i.e., how and why they supply accountability. Critically, the findings show this process to be more complex than a demand for trust (i.e., organisations positioning themselves within the spectrum from Hansmann's nondistribution constraint based trust to Salamon's accountability-based trust).

The analysis also explores inductively alternative explanations of increasing accountability (i.e., rationales for increasing accountability other than trust). Most importantly, accountability has emerged as necessary for ethical, effective management. Additional forces potentially expected to drive increasing accountability that fall within the larger donor trust or ethical, effective management objectives from respondents' perspective add further depth to the analysis. In the case of ethical, effective management, these include corporatisation, the integration of international standards of accountability, and accountability requirements imposed by governmental/corporate/institutional funders (each as defined in Chapter 5 Introduction). In the case of donor trust, these include pressure from donors, membership in the Comité, and the media (each as addressed in Section 6.3.2). Finally, the analysis considers interrelationships among explanations.

As noted above, throughout the thesis, attention is given to the process of NPOs weighing up the strategic choices relating to accountability and the implementation of accountability mechanisms. This process involves evaluating the qualitative and quantitative costs (both financial and other resources such as senior management and volunteer time) and benefits (in terms of reputation, managerial efficiency, financial sustainability, strategic value, and development of an ethical culture). This process also includes how respondent leaders consider both key internal and external variables on accountability decisions. For purposes of the empirical research, the internal variables examined include organisational size, level of international engagement, and initiative and profile of leader (hereinafter collectively referred to as the "internal variables").<sup>13</sup> The external contextual variables examined include two regulatory variables (accountability regulation and the tax system) and two non-regulatory variables (the

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<sup>13</sup> The description of the size of organisations throughout this thesis, for example as "small" or "large," refers to revenue level. Size based on revenue is also a common measure in other theories considering organisational variables such as classic contingency theory (Donaldson 2001, 119). See Appendix 1-E for a breakdown of respondent organisations by revenue. Data on numbers of employees, another common measure of organisational size, did not directly correlate with revenue and was influenced by a range of factors unrelated to accountability.

welfare state environment and scandal (defined as mediatised failure of accountability within a NPO) (hereinafter collectively referred to as the “external variables” and, together with the internal variables, the “variables”). While the study investigates a finite group of organisations, certain trends regarding the importance of these variables emerge. This process of weighing up, qualitatively and quantitatively, the various organisational priorities, the driving forces behind increasing accountability, and the internal and external variables in making decisions relating to accountability matters is hereinafter referred to as “strategic assessment.” Strategic assessment underlies all respondents’ approach to increasing accountability – irrespective of the cited rationale for increasing accountability. Finally, the organisation-driven process of increasing accountability, including through strategic assessment, is referred to interchangeably as “inside out” or “bottom up” (as opposed to top down imposed by regulation).

## 1.1 Additional Rationales for the Research

The research on accountability and the relationship to trust could further explain, and offer concrete vehicles for improving, accountability in the French nonprofit sector – both nationally and within a changing global nonprofit accountability environment (Goetz and Jenkins 2005, 4-5). First, in distinguishing organisation-driven accountability efforts, weaknesses in national policy emerge. The analysis could offer new approaches to policy even within the existing explanations of increasing accountability. Second, VAMs are generally objectively assessable, and individual NPOs control the selection and implementation of VAMs and other voluntary accountability mechanisms. Therefore, the operationalised definition of accountability based on VAMs offers insight into practical applications of accountability. In addition, there is greater flexibility for affecting organisational and sector change in response to the findings through individual, organisation by organisation implementation of VAMs and possibly self-regulatory policy than exclusively through changes in national or local government policy relating to accountability matters. (The policy recommendations in Chapter 8 address elements of both.) Third, irrespective of the positioning of trust in the empirical findings, the analysis represents a step forward in understanding accountability in the French context given the importance of the trust theory and related

accountability policies and practices to the most important international nonprofit accountability model in France: the US.

## 1.2 Case Study Structure, Hypothesis, Research Questions, and Comité Background

### 1.2.1 Case Study Structure: Comité de la Charte

The thesis explores a case study of the Comité as a stand-alone organisation, together with a group of 45 organisations individually. 33 are Comité member organisations (hereinafter referred to as the “Comité Group”). 12 are French NPOs outside the Comité functioning as a control group (hereinafter referred to as the “Control Group”).<sup>14</sup>

The Comité Group includes 60% of the 56 member associations and foundations (approximately one-half of the Comité’s target market of national non-religious associations and foundations with annual revenue in excess of €500,000) (Soublin meeting November 2006; Soublin e-mail January 2009; Comité 2008j).<sup>15</sup> Comité Group members have in common both eligibility criteria and on-going compliance with the Comité requirements yet offer diversity of sector of activity, size (above the Comité eligibility threshold), international engagement, initiative and profile of leader, level and type of political affiliation, and approach to management.<sup>16</sup> The sample size of 33 was considered adequate upon confirmation of representation of this range of characteristics.

The Control Group comprises 12 French associations and foundations with similar renown to the Comité Group organisations. Six are large organisations with broad funding from individuals and other sources (and a profile similar to the majority of the Comité Group organisations with respect to fund-raising) (hereinafter referred to

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<sup>14</sup> See Appendix 1-A for a complete list of the respondent organisations and legal status of each. See Appendix 1-B for a panorama of sector of activity between the Comité Group and Control Group.

<sup>15</sup> See Section 1.3.1 for a definition of the terms “association” and “foundation” in the French legal context. By way of comparison, One World Trust’s 2007 Accountability Report (and earlier reports) survey a total of 30 organisations, ten international governmental organisations, ten international NGOs, and ten transnational corporations (Lloyd, Oatham et al. 2007, 7). Tchernonog notes that of the approximately 1.1 million associations, only 2% (approximately 22,000) have an annual budget of €500,000 or more (2007b, 32). See also de Tricornot (Le Monde.fr) 2008.

<sup>16</sup> See Appendix 1-F for revenue level by categories of revenue source within the Comité Group and Control from self-completion questionnaire-derived data. See Appendix 1-G for a list of respondent organisations in order of revenue level. Revenue level proved the most consistently important size-related influence on respondents’ decisions to implement accountability mechanisms. See Note 13, *supra*.

as “Control Group A”). Six are smaller organisations, most with higher level donors at or above the €10,000 per year range and/or more significant corporate funding (hereinafter referred to as “Control Group B”). A list of potential Control Group members was chosen on the basis of variety in sector of activity, size, international engagement, initiative and profile of leader, level and type of political affiliation, and approach to management.<sup>17</sup> The purpose of the Control Group was sampling organisations not subject to the Comité accountability requirements to compare to Comité-based findings. The Control group also samples smaller organisations with different donor profiles but still engaged in fund-raising from the general public.<sup>18</sup> The sample size of 12 was considered adequate upon confirmation of representation of this range of characteristics and balance of funding.

Both the Comité Group and Control Group organisations represent a sample of the most well-known associations and foundations in France and in many cases internationally (e.g. the Red Cross France, Doctors Without Borders/Médecins Sans Frontières, UNICEF France, Amnesty International France, Greenpeace France, World Wildlife Fund France, Action contre la Faim (Action Against Hunger), and Médecins du Monde). Among both groups there are three Nobel Peace Prize winners.

Most interviewees representing the organisations were Presidents or Directors General, with a few Treasurers, *administrateurs*, or other senior fund-raising positions.<sup>19</sup> The Presidents are almost all full-time volunteer positions combining classic US Chairman of the Board and Chief Executive positions (Friedman 2000, 99 and 103, respectively). The Director General and Executive Director positions are generally classic Chief Executive and Chief Operating Officer combinations (Friedman 2000, 103).

This is the first study of this level of French NPOs and the first study of the Comité directly that I am aware of and that Michel Soublin (President of the Comité), the Comité management team, the interviewees, and outside nonprofit sector experts consulted during the course of the study had heard of. In addition, none of the participants knew of any studies of sector leaders at the senior level and renown of the interviewees, particularly involving in-depth in-person interviews.

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<sup>17</sup> See Appendix 1-B for sectors of activity.

<sup>18</sup> See Appendix 1-A for the Control Group participants. See Appendix 1-F for a breakdown of 2006 revenue by sources.

<sup>19</sup> See Appendix 1-C for a breakdown of interviewees’ positions within the respondent organisations.

### **1.2.2 Hypothesis**

The overriding objective of this thesis is to explain the evidence of increasing accountability in the French nonprofit sector. The key hypothesis is that increasing accountability is explained primarily by a growing recognition by French NPOs of the need to support trust in NPOs (as defined by Hansmann) through implementation of accountability mechanisms as the global nonprofit environment becomes increasingly competitive and focused on accountability. (This hypothesis is hereinafter referred to as the “trust hypothesis.”)

### **1.2.3 Research Questions**

The core research question is how and why the French nonprofit sector is demonstrating increasing interest in, and organisational efforts to increase, its own accountability.<sup>20</sup> The key corollary question related to the trust hypothesis is whether, how, and why Hansmann’s originally US-based trust theory, as updated with criticisms and extensions (the demand side), applies in the French context as a springboard for assessing the rationale(s) for NPOs’ increasing accountability (the supply side). This leads to questioning the relative importance of both donor trust and other potential “supply side” rationales unrelated to a demand for trust to explain the increasing accountability.

### **1.2.4 Comité Background**

The Comité was founded in 1989 by 18 large social service and humanitarian associations and foundations (Comité 2006e and 2008d).<sup>21</sup> One key incentive for founders of the Comité was an attempt to protect member organisations from a long-lasting, sector-wide crisis in trust in NPOs as a result of the scandal involving fraud by the founder and then President of the nationally famous l’ARC beginning in the late

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<sup>20</sup> Reflecting Le Grand’s advice and Howell comments (Le Grand meeting February 2007; Howell e-mails 2008).

<sup>21</sup> See Appendix 1-D for a list of the founding Comité organisations, including a listing of those participating in this study.

1980s.<sup>22</sup> The Comité is a 1901 Law association (as defined in Section 1.3.1 below) independent from government and industry.

The Comité is first and foremost a control organisation. Its statutory mission is to promote donor trust or “giving with trust” (*don en confiance*) through rigorous accountability requirements. Potential members include French associations or foundations that act in the interest of the general public (*d'intérêt général pour le grand public*), fund-raise from the public (many primarily soliciting individual donors), and collect a minimum of €500,000 per year in donor revenue (Soublin interview 2007).<sup>23</sup>

The Comité accreditation process involves two parts. First, a stringent eligibility assessment by the Comité’s Commission d’agrément et de contrôle (independent commission) grants membership. Second, once the Comité grants the Comité seal of accreditation (hereinafter referred to as the “logo”) in recognition of an organisation’s compliance with eligibility requirements, the Comité verifies on-going compliance (including triennial audits) (Soublin interview 2007; Cohas-Bogey interview 2007).

The Comité’s mission specifies four areas of best practice: first, operations in accordance with the *statuts* (by-laws) and management without conflicts of interest; second, rigorous management; third, quality of communication and fund-raising activities; and fourth, financial transparency (Comité 2006d and 2008h). Any proposals for changes in Comité requirements must be approved by the Commission d’agrément et de contrôle and the *conseil d’administration*. The Comité does not assess member organisations’ performance or appropriateness of activities to the organisation’s stated mission (Comité 2008k). The Comité does, however, require organisations to commit to implementing mechanisms for performance evaluation and to assess proper use of funds for activities within the statutory mission (Soublin e-mail April 2008; Comité 2008k; Comité 2008n, No. 2).

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<sup>22</sup> See Sections 7.2.1 and Chapter 7 Introduction for details on the l’ARC scandal and a more thorough definition of the term “scandal,” respectively. Technically the Comité was founded prior to the major legal events relating to l’ARC in anticipation of the consequences (Soublin call December 2008). See also Comité 2008q for other advantages to member organisations that the Comité highlights.

<sup>23</sup> The Comité does not publish the number on the web site. This number and lack of public disclosure was reconfirmed with Soublin (Soublin call January 2007).

## 1.3 Definitions Relating to French and US NPOs, Nonprofit Sector, and Donors

Definitions of the terms relating to the various forms of French NPOs and the French nonprofit sector are essential for contextualising the research both in France and in comparison with the US for international perspective. The definitions also establish a foundation for tracking throughout the thesis certain structural aspects of the French nonprofit sector that relate to policy recommendations. The membership structure of associations and the emphasis on freedom of association (*liberté d'association*) that hinders independent oversight in accountability matters prove particularly important. With respect to the organisations, the definitions of the terms “association” (*association*) and “foundation” (*fondation*) underlie the analysis and policy recommendations. With respect to the external environment, the definitions of the terms “civil society” and “nonprofit sector” provide the crucial understanding of the sector for positioning the organisation-based research and assessing the broader implications of largely internally-generated accountability efforts. Definitions used for the US and international context outside of France offer a basis of comparison. Finally, definitions of different types of donors clarify the donor trust analysis.

### 1.3.1 French Organisations and Sector: Associations (1901 Law and Public Utility) and Associative Sector; Foundations

The Comité Group and Control Group respondents comprise associations and foundations.<sup>24</sup> The primary rationale for including both associations and foundations in the research is that all Comité Group and Control Group associations and foundations solicit funds from the general public and, therefore, should have similar accountability priorities and at least one significant common basis for assessing the trust hypothesis and increasing accountability.<sup>25</sup> Moreover, the inclusion of both in the case study was important to assess the Comité as an organisation.

Associations and Associative Sector. The two most important categories of “associations” are declared associations subject to the 1901 Law (hereinafter referred to as “1901 Law associations” or “associations”) and public utility associations granted

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<sup>24</sup> See Appendix 1-A for a complete list of respondent organisations and the legal status of each.

<sup>25</sup>This differs from many US foundations that function primarily through endowment. Respondents and Comité senior management widely concurred on this reasoning.

special charitable status and tax/financial privileges through a complex approval process by the Conseil d'Etat (e.g. the French Red Cross) (hereinafter referred to as "ARUPs") (French Government 1901b, Articles 1 and 10, respectively; Archambault 1997a, 112 and 113, respectively; Binder 2005, 122-4 and 127-9).<sup>26</sup> The Comité Group and the Control Group each include both types of associations.<sup>27</sup> Associations are one of three types of French social economy (*économie sociale*) organisations – along with cooperatives (which engage in commercial activities and distribute surplus to members through price reduction mechanisms – hereinafter referred to as "cooperatives") and mutual enterprises (which provide insurance services to complement French state health and welfare benefits – hereinafter referred to as "mutuals").

Of the two categories, 1901 Law associations are by far the most common form and the most closely resembling the Anglo-Saxon common usage of the terms "NPO" or "NGO" or fulfilling the Hopkins Study categories (defined in Section 1.3.2) (Archambault 1997a, 113, and 125; Salamon, Wojciech Sokolowski et al. 2004, 9-11). The 1901 Law defines associations as a contractual commitment through which two or more members (*membres*) share their knowledge or an activity with no legal prohibitions other than the legally unspecified "*goal other than to share profits*" they determine (French Government 1901b, Article 1).<sup>28</sup> Members must be permanent, not subordinate to the organisation employees, and not paid. Members of an association generally pay a membership fee that varies greatly depending on the type and size of association. This definition incorporates both the notion of permanence in the Hopkins Study and the Hansmann nondistribution constraint. Like Hansmann, this definition does not specify charitable purposes as the US Internal Revenue Code does (French Government 1901b; Hansmann 1980, 839; USGDTIRS 2006a, Section 501(c)(3) and

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<sup>26</sup> I eliminate the third category of "association" – the undeclared associations – from the research analysis as they are impossible to identify, frequently sole-purpose offshoots of religious or neighborhood organisations, temporary, and/or so unstructured and irregularly governed that systematic research would prove inconclusive (Archambault 1997b, 5 and 36). Undeclared associations may exist without criminal or administrative penalties but do not have formal legal status (Binder 2005, 124). Edith Archambault was the Hopkins Study coordinator for France.

<sup>27</sup> In 2001, a new form of NPO was added to the French social economy called cooperative interest associations (*sociétés cooperatives d'intérêt collectif* (SCIC)) to bridge a gap in social entrepreneurial structures. These remain too few (approximately 109 as of July 2008) to contribute to valid research findings (Lindsay and Hems 2004, 265; Scic Inter-Réseaux Scic 2008).

<sup>28</sup> See French Government 1901a for the decree of application setting out the administrative details of the application of the 1901 Law.

2008(c).<sup>29</sup> The 1901 Law encompasses a wide range of sizes, operating, advocacy, religious, and secular organisations (unlike the Comité and US Internal Revenue Code 501(c)(3) that limit religious organisations) (Comité 2008g, 9; USGDTIRS 2006a 2008c, 25).<sup>30</sup> 1901 Law associations benefit from various tax exemptions and recently improved tax benefits to donors (Binder 2005, Part 7, 249-274).<sup>31</sup>

Key issues for purposes of the analysis of increasing accountability are the “relatively light” regulatory framework and emphasis on freedom of association [author translation] (Tchernonog 2007b, 1, 5, and 8, respectively). Founding members of associations need only complete simple forms and declare the association to obtain government status (Archambault 1997b, 60). The 1901 law does not address management requirements (French Government 1901b). Rather, the structure of President, treasurer, secretary and other such practices have developed solely incrementally through tradition. Politically the freedom of association and membership structure is fiercely defended, partly as a reaction to the prohibition on freedom of association during the century prior to the 1901 Law and to some extent on-going as a means of separation from the welfare state (Tchernonog 2007b, 8).<sup>32</sup> Most importantly for purposes of accountability, the membership structure results in members’ controlling the election of *administrateurs* and having oversight of many accountability policies.

This broad legal definition of the terms “members” and “association” and limited legal constraints have exacerbated the establishment of an unwieldy number and variety of associations from the perspective of ensuring adequate accountability standards and regulatory oversight (Tchernonog 2007b, 5; KPMG-Observatoire 2007, 7). There are currently more than 1.1 million 1901 Law associations in France with a range of objectives from bowling clubs and neighbourhood watch associations of low rent apartment buildings to national groups providing housing for the handicapped and the French Red Cross (Tchernonog 2007b, 31).<sup>33</sup> In addition to the considerable number of non-charitable associations (e.g. sports clubs), the multiplicity of commercial

<sup>29</sup> See also UK Charities Act 2006 requirements, which include a “charitable purpose” requirement (United Kingdom Government 2006, Part I, Section 2) and The Charity Commission for England and Wales 2008.

<sup>30</sup> Borderline cases include work councils and housing associations (Archambault 1997a, 124).

<sup>31</sup> See Section 3.2.2. Associations are taxed on profits deriving from commercial activities in order to prevent unfair competition with for-profit enterprises. See also French Government 2006c for a general overview of tax regulation applicable to the nonprofit sector.

<sup>32</sup> See also Sections 2.3.1, 5.3.2, and 6.6.1 on freedom of association.

<sup>33</sup> A high percentage of the 1.1 million comprises small associations: approximately 40% with fewer than 50 members; only 16% with paid employees; and 24% sports based (compared to only 3.7% humanitarian focused) (Tchernonog 2007b, 50, 32, and 33, respectively).

NPOs (i.e., NPOs that earn a significant percentage of income from charging for services but still function as NPOs and do not distribute profits) creates confusion (Hansmann 1980, 846).<sup>34</sup> The last 35 years has seen a significant growth in the number of associations (Tchernonog 2007b, 38). While admittedly this level of association activity suggests a thriving democracy, the differing incentives, experience, and available resources with respect to voluntary accountability mechanisms leads to uneven levels of accountability among similar organisations.<sup>35</sup> Most importantly, particular weaknesses in the French accountability regulatory framework exacerbate the accountability concerns in France, for example compared to the more extensive accountability oversight for smaller NPOs in the US.<sup>36</sup>

The term “associative sector” refers to all types of associations. “Association” and “associative sector” relate specifically to the French legal and social policy context (Archambault 1997a, 112-13).<sup>37</sup> The term “French nonprofit sector” includes associations, ARUPs, foundations, and FRUPs.<sup>38</sup> These terms include the broadest number of organisations comparable to US notions of NPO to facilitate comparison, while excluding the market economy components of the French social economy (i.e., cooperatives and mutuals) (Archambault 1997b, 4-5).<sup>39</sup>

Foundations. The Comité Group and Control Group also include foundations and public interest foundations (FRUPs). Foundations are significantly less common in France than elsewhere in Europe and in the US (Archambault 2003, 1 and 11; Fondation

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<sup>34</sup> As noted in Section 1.3.2, by comparison, the English word “charity” as used in Internal Revenue Code Section 501(c)(3) defines a goal, whereas the French 1901 Law term “association” defines a vastly inclusive legal form.

<sup>35</sup> See Section 3.2.1 for the regulatory implications of the multitude of 1901 Law associations.

<sup>36</sup> See also Section 3.2.1 on the relationship between the multitude of associations and French accountability regulation. Note that in the US, the Form 990 (addressed in Section 3.1.2) must be publicly filed for organisations with \$25,000 or more in revenue – thus a much lower threshold of regulatory review than the *commissaires aux comptes* requirement of €153,000 in France (USGDTIRS 2006b, Section 6033(a)(1); USGDTIRS 1983, Section 2.05; French Government 1987, Article 4-1; French Government 2006b; French Government 2005, Article 7).

<sup>37</sup> The term “charity” is used only with respect to the US and UK.

<sup>38</sup> Archambault adds health and social establishments run by mutuals and school and housing cooperatives (Archambault 1997b, 9).

<sup>39</sup> Economically French cooperatives and mutuals increasingly reflect commercial and for-profit characteristics and thereby fail to qualify for the Hopkins Study definition of civil society or NPO in Section 1.3.2. Accordingly, they are excluded from the research because the profit-making aspect alters the incentive structure sufficiently to skew potentially the accountability/trust analysis (particularly in Hansmann’s nondistribution framework) and comparison with US NPOs given the public purpose requirement in Internal Revenue Code 501(c)(3) (USGDTIRS 2006a). Associations and foundations reinvest income in excess of expenses in the organisation, whereas mutuals and cooperatives often distribute profits to members/clients and “have no public interest purpose” (Archambault 1997b, 8). See also Salamon and Anheier 1997, 19.

de France 2006b, 2).<sup>40</sup> Foundations must be “for the general interest and not for profit” (*d'intérêt général et à but non lucratif*) (French Government 1987, Article 18; French Government 1991b; Mémento Pratique Francis Lefebvre 2006-07, Section 77255).<sup>41</sup> A key difference with associations potentially for analysis of accountability is that foundations do not have members. The *conseil d'administration* of foundations is generally a self-perpetuating body and not democratically elected (Binder 2005, 143).<sup>42</sup> In terms of financial weight, most are operating foundations such as the Institut Pasteur. In terms of number of foundations, the large majority is grant-making foundations (Fondation de France 2006a, 3; Archambault 1997b, 182). French foundations are legally entitled to similar tax privileges as ARUPs.

### **1.3.2 US and International Organisations and Sector: NPO and Nonprofit Sector, and Civil Society – The Hopkins Study Definitions**

**NPO and Nonprofit Sector.** For comparability purposes, the Hopkins Study definitions of nonprofit sector and NPO are used when referring to the US and countries other than France. The Hopkins Study defines the terms “NPO” and “civil society organisations” through a “bottom up, inductive approach” or “structural-operational definition” – empirically verified in the context of approximately 36 different countries rather than ideologically driven (Salamon, Wojciech Sokolowski et al. 2004, 9-11). The Hopkins Study’s analysis captures the range of institutions commonly considered within “civil society” or the “third sector,” excluding business and government but including government-funded NPOs (Salamon and Anheier 1998, 9; Salamon, Wojciech

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<sup>40</sup> Relative to other European countries, the European Foundation Center shows 2,109 foundations in France in 2001, compared with 8,800 in the UK in 2001 and 14,000 in Denmark in 1999, out of a European Union total of approximately 200,000 (European Foundation Centre 2005, 2). Prior to the 1970s, there were only approximately 250 French foundations, compared to approximately 15,000 in the US (Fondation de France 2006b).

<sup>41</sup> The Fondation de France (a study participant) is a large charitable grant-making foundation in France, housing its own assets, corporate foundations, and individual and family foundations (Fondation de France 2007; Archambault, Boumendil, and Tsyboula 1999, 194). The Fondation de France was founded in 1965 with the goal of comparing with and potentially importing US philanthropic practices to the French philanthropic context (Fondation de France 2006b). The Fondation de France continues to play a pivotal role in the sector as a grantor, manager of foundations, and voice on issues (Archambault 2003, 8; Soublin interview October 2007; Charhon meeting 2005 and formal interview for thesis study 2007 (Appendix 1-A)).

<sup>42</sup> For FRUPs, the *conseil d'administration* comprises representatives of founders, government representatives in the field, and occasionally independent directors with appropriate skill levels.

Sokolowski et al. 2004, 9-10).<sup>43</sup> The five required structural/operational characteristics within the definition of “civil society sector” include: “organizational permanence and regularity” (whether or not legally registered and/or formally structured); “private”; “not profit-distributing”; “self-governing”; and “voluntary” (Salamon, Wojciech Sokolowski et al. 2004, 9-10).<sup>44</sup>

Importantly for purposes of comparison with France, the Hopkins Study definition includes community-based, public purpose cooperatives (e.g. anti-poverty) but excludes private businesses and the French model of more commercially functioning banking and insurance cooperatives and mutuals (Salamon, Wojciech Sokolowski et al. 2004, 9).<sup>45</sup> Critics consider the Hopkins Study’s exclusion of cooperatives and mutuals as reflecting the American nondistribution constraint approach (as opposed to the European “limits on private acquisition of profits”) (Evers and Laville 2004, 13).<sup>46</sup>

*Civil Society.* The relationship between NPO and civil society is important to understanding the potential impact of the French welfare state context on the nonprofit sector and analysis of increasing accountability.<sup>47</sup> The Hopkins Study international view distinguishes civil society from family, business, and government but conflates it with the civil society institutions (Salamon, Wojciech Sokolowski et al. 2004, 9). In the

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<sup>43</sup> See also Institut Montaigne on the 1901 Law characteristics, many of which mirror the Hopkins Study definition (2004, 65).

<sup>44</sup> The Hopkins Study’s internationally applicable definition of NPO deliberately avoids specifying “public purposes” to incorporate country-specific social, cultural and economic perspectives. In contrast, the most commonly used Anglo-Saxon definitions of NPO focus on public purposes (e.g. the IRS Code exemption of NPOs from federal income tax and tax benefits to donors if “organized and operated” for charitable, religious, educational, public safety and other related purposes (generally excluding political activity)) (USGDTIRS 2006a and 2008c). Similarly, the United Kingdom Charities Act of 2006 permits organisations with “charitable purposes only” (United Kingdom Government 2006, Part 1, Sections 1 and 2).

<sup>45</sup> The Hopkins Study statistics reaffirm the French government-dominated system (i.e., welfare state context explored in Chapters 2 and 7), even excluding cooperatives and mutuals (Salamon, Wojciech Sokolowski et al. 2004, 32).

<sup>46</sup> Hansmann’s trust theory is based on the nondistribution constraint characteristic of NPOs. (See Section 2.1.2) The other “somewhat distribution constrained” organisations in the French social economy – cooperatives and mutuals – operate on more market-based mechanisms (including some which reduce the information asymmetry rendering the nondistribution constraint and resulting trust rationale for turning to NPOs less important). Hansmann concludes that cooperatives are economically closer to regulated firms (e.g. public utilities) than NPOs because the “consumer’s inability to judge the quality of service is generally unimportant in the formation of cooperatives” – in part because cooperatives often provide standardised services and goods (Hansmann 1980, 889-890). Hansmann analyses mutuals as likely when impersonal market mechanisms suggest greater control over management is desired. As a result, I am not concerned for purposes of this research that Evers’ and Laville’s criticism of the Hopkins Study definition hinges on the exclusion of cooperatives and mutuals because Hansmann globally separates these more market-based forms from donative NPOs in the basic trust theoretical framework (e.g. Hansmann 1980, 842).

<sup>47</sup> See Section 2.3.

common Anglo-Saxon notion, civil society comprises a sort of “space” between the individual and the state – often expanding beyond institutions to include individual action.<sup>48</sup> Finally, the French definition aligns more closely with the US in that the nonprofit sector comprises only a segment of the social economy, which, in turn is narrower than civil society.

### **1.3.3 Donors: Individual and Governmental/Corporate/Institutional**

The term “donors” refers to individual donors. The most common donor profile among respondent organisations in both groups is significant numbers of individual donors at a low giving level.<sup>49</sup> The term “donor trust” refers to increasing/maintaining/engendering trust of donors in NPOs (including individual and governmental/corporate/institutional donors (as defined below)). Donor trust does not include trust of volunteers or the general public (i.e., non-donors) (addressed in Section 6.3.2).

The term “governmental donor” includes the French state, any French state entities (e.g. *départements*, *collectivités*, and city funders), Ministries such as the Ministry of Foreign and European Affairs, and the EU and EU donors such as ECHO and PEAD. The term “corporate donor” includes corporations and corporate foundations, whether or not specifically part of a corporate social responsibility program. The term “institutional donor” includes non-governmental, non-corporate private foundations, international aid agencies, and other institutional grantors other than family foundations.<sup>50</sup>

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<sup>48</sup> Note that Carothers and Putnam warn against equating civil society with NGOs as civil society encompasses entities from trade unions to professional associations (so-called “interest groups”) (Carothers 1999-2000, 3; Putnam 2000, 21).

<sup>49</sup> See Appendix 1-E for self-completion questionnaire-derived data on sources of 2006 revenue informing donor profile of respondents. Even the Control Group B organisations soliciting larger gifts focused primarily on individual donors.

<sup>50</sup> See Appendix 1-F for a breakdown of importance of different revenue sources among respondent organisations. See Section 5.3.3 for a discussion of funder accountability requirements (as defined in Chapter 5 Introduction).

#### **1.4 Field Research and Methods: Overview, Case Study, and Rationale for Profile of Respondent Organisations and Focus on NPO Perspective**

The research began after formal approval by the Comité's *conseil d'administration* of my project proposal in December 2006 (Soublin meeting December 2006). The core of the research was conducted between June 2007 and May 2008.

The research involved a qualitative empirical study to research the trust hypothesis and inductively investigate other possible explanations for the increasing accountability among French associations and foundations. An institutional case study involving an iterative process of two methods of data collection (written questionnaires for each group (hereinafter referred to as the “self-completion questionnaires”) and confidential interviews described in Section 1.5) was used with a focus on best practice (Hakim 2000, 68 and 69).<sup>51</sup> Analysis and verification steps are addressed in Section 1.5 and Appendix 1-I. The preliminary factual background information obtained through the self-completion questionnaires provided context for the interview design and some factual evidence for *how* accountability is increasing (e.g. VAMs adopted). The qualitative interviews, the core of the research, supplemented the “*how*.<sup>51</sup> The interviews also elicited each organisation’s views on the subjects covered with respect to the organisation, the Comité, and broader implications for the sector to untangle *why* accountability is increasing (“motivations and other connections between factors”) (Hakim 2000, 36).

The Comité itself is an effective case study of accountability “best practice,” both through the member organisations and as an object of interest itself as the pioneer in French nonprofit sector accountability efforts (i.e., not simply a background environment) (Hakim 2000, 68). Accordingly, the unit of analysis is the individual Comité Group/Control Group association or foundation, with the added perspective of both the Comité as an independent organisation and the senior executives of the respondents and the Comité interviewed (Hakim 2000, 159).

The question of increasing accountability and trust was approached from the perspective of the largest and most well-known associations and foundations to maximise research efficacy. First, the largest and most renowned French NPOs are more

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<sup>51</sup> I adopt the definition of case study as a research “strategy” involving the “empirical investigation of a particular contemporary phenomenon within its real life context using multiple sources of evidence” (Robson 2002, 178).

likely to set standards for the industry. The respondent group has the sophistication, organisational structure, programmatic diversity, and resources to dedicate to accountability efforts and are more likely to be consulted as models. Similarly, possible alternative explanations for increasing accountability (e.g. government “trickle-down” accountability from government budgets to government-funded associations, media attention, or transfer of international standards) would be most likely to surface among large, well-known NPOs (Lambert 2003).

Smaller organisations are more likely to limit accountability efforts due to more limited resources and/or the belief that smaller structures protect trust with lower standards of accountability (Putnam 2000, 288-9 (“fellow bowlers”)).<sup>52</sup> Organisation size also matters within Hansmann’s trust theoretical framework, in part because the smaller NPOs have less profit potentially to incite management misappropriation of funds or other such misbehaviour (Hansmann 1980, 870 and 876).<sup>53</sup> Smaller organisations would also be too numerous and influenced by local variables to obtain a meaningful sample for a PhD thesis.<sup>54</sup> Nonetheless, there is sufficient variation in size among even Comité Group respondents (and even above the specified Comité eligibility threshold), particularly with the smaller Control Group B organisations, to observe the importance of size as an internal variable within the study.

Finally, the thesis research deliberately focuses on the Comité as a case study and the individual Comité Group and Control Group organisations’ perspectives as opposed to donor perspective for several reasons.<sup>55</sup> First, accountability derives from organisational decisions and actions on the basis of a much broader series of influences than donor response. The implementation of accountability mechanisms requires understanding and initiative of management and/or the *conseil d’administration*. Hence an in-depth understanding of the nuances of senior level views from sector leaders is essential. The importance of leadership to increasing accountability was subsequently

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<sup>52</sup> See Section 2.1.3.

<sup>53</sup> Both the Comité Group and the Control Group B include some smaller organisations for comparison. See Appendix 1-G for revenue levels of respondent organisations.

<sup>54</sup> For example, there are approximately 48,160 associations with between €50,000 and €200,000 in revenue (all with paid employees) (Tchernonog 2007b, 32).

<sup>55</sup> Even the large-scale surveys in France reviewed do not address extensively the importance to donors of implementation of voluntary accountability mechanisms (e.g. Fondation de France-Observatoire de la Fondation de France/TNS Sofres 2003, 2004 and 2008; Fondation de France-Observatoire de la Fondation de France/Wei Etudes qualitatives 2005a and 2005b; and Malet 2005). Organisational response to even well-respected donor surveys in the US, UK, and France is unclear (IPSOS Mori Social Research Institute 2008; Comité de la Charte/TNS Sofres 2007; Comité de la Charte Conference 2008).

reinforced through the empirical findings.<sup>56</sup> Second, VAMs and other voluntary accountability mechanisms reflecting best practice studied for this thesis generally incorporate at least the sector leaders' perception of donor response.<sup>57</sup> For example, US national self-regulatory organisations such as Independent Sector guide NPOs' accountability choices with the belief that donors select NPOs based on trust in proper execution of mission and stewardship of resources (Panel on the Nonprofit Sector 2007, Preamble, 2). Finally, a range of diverse subjective factors colour donor response and risk interpretational inaccuracies. Examples include donors' incentives and resources to investigate a NPO's accountability practices; ability to understand complex disclosure and the relevant nonprofit sector context (e.g. the distinction between knowledgeable, incentivised large grant-makers and inexperienced smaller donors) (Reiser 2005, 605); and ties between a donor's personal experience and the NPO's work (e.g. illness and a medical services NPO) (Keating and Frumkin 2000, 2 and 7-8).<sup>58</sup>

This focus on NPOs' perspective and the Comité also links to the theoretical framework.<sup>59</sup> Hansmann did not address the reasons for donor reactions in his seminal 1980 article (1980, 897-8). Rather, taking as a given the willingness of donors to give in a defined set of circumstances, he explored the attractive organisational structure to which donors would give (1980, 898).<sup>60</sup> Considering the NPOs' perspective extends the question of the appropriate type of organisation/organisational behaviour in the early twenty-first century as noted above.

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<sup>56</sup> See Sections 4.4.2, 5.4.3, and 6.5.

<sup>57</sup> See Section 2.2.2(b).

<sup>58</sup> See also KPMG study on transparency showing that few donors invest the effort to research actively accountability information even if they do generally wish to receive information (KPMG-Observatoire 2007, 32). Moreover, the diversity and subjectivity of donor situation and response, together with the number of donors that would be necessary to generate adequate data, renders such data unmanageable in the PhD context. See also Pratten meeting 2006.

<sup>59</sup> See Sections 2.1.2 and 2.2.1.

<sup>60</sup> Some such circumstances are predictable (e.g. separation of donor and beneficiary), and others are less so (e.g. "contribut[ing] voluntarily toward the financing of a public good") (Hansmann 1980, 846 and 897-8, respectively). See Section 2.1.2.

## 1.5 Data Collection and Analysis<sup>61</sup>

The following summarises the data collection process within the case study and reasons for the choices.

*Background Data.* Phase One involved a compilation of background data based on publicly available information and the French language self-completion questionnaires. All Comité members were invited to participate through a detailed e-mail explaining the purpose and benefits of the study, the research process, and the form of reporting results to participants. Control Group members were contacted “cold” through substantially the same e-mail as used for the Comité Group but tailored to the individual organisation. The confidential self-completion questionnaires were distributed on-line to all Comité Group and Control Group respondents following agreement to participate in the study in response to these preliminary unsolicited e-mail invitations.<sup>62</sup> The Comité Group and Control Group self-completion questionnaires were identical except that the former focused on reasons for joining and current comments on the Comité, whereas the latter addressed the Comité’s reputation as perceived by non-members and potential membership. Zoomerang, a professional confidential on-line survey service, was used for the questionnaire process.<sup>63</sup>

The background data analysis allowed compilation of basic factual background and context for thorough preparation for the interviews (Robson 2002, 179). The data collected included information such as: sector of activity; size; international engagement; profile of leader; geographic scope; revenue amounts and sources; donor profile; management structure; VAMs and other voluntary accountability mechanisms implemented; commitments and restrictions relating to funding; volunteer statistics; and other information that potentially influences the organisation’s accountability practices. The self-completion questionnaires also highlighted areas for verification during the interviews. This preparation demonstrated to the senior level respondents in-depth knowledge of their organisations, the Comité, and the sector and resulted greater willingness to explore candidly nuances in the responses and confidential matters.

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<sup>61</sup> See Appendix 1-I for method of data analysis.

<sup>62</sup> See Section 1.2.1 for a discussion of selection of respondents and Appendix 1-A for a list of respondent organisations.

<sup>63</sup> Zoomerang 2006-08. See Appendices 1-H-1A through 1-H-1D for the self-completion questionnaires and English translations.

*Senior Executive and Comité Interviews.* Phase Two involved one-on-one 75-90 minute confidential interviews with the Presidents, Executive Directors, Treasurers, engaged *administrateurs*, or in a few cases other representatives of senior management of the Comité Group and Control Group organisations particularly knowledgeable about accountability matters. In addition, this phase included similar interviews of the President, Executive Director, and representatives of Comité senior management. The interviews were designed using the semi-structured method (including open questions) in order to ensure coverage of specific topics while maintaining flexibility to encourage more detailed, subjective comments (Robson 2002, 270; Bryman 2004, 319-21).<sup>64</sup>

The interview comprised six major categories of questions: first, increasing accountability within the organisation (including the relationship to donor trust and a range of other possible explanations); second, increasing accountability within the French nonprofit sector generally (including the relationship to donor trust and a range of other possible explanations); third, the Comité (with different approaches for the Comité Group and the Control Group); fourth, the relationship between governmental/corporate/institutional donors and increasing accountability and donor trust; fifth, external context – in particular, various aspects of the welfare state, accountability regulation, and the French tax system; and sixth, social policy objectives and recommendations. Across these categories, the more specific questions covered issues including: organisation-specific practices and policies; pressures for, and benefits of, accountability; international models; importance of trust to different stakeholders (donors, beneficiaries of services, employees, volunteers, and the general public); the relevance of internal and external variables to the French nonprofit sector; the relationship between accountability and the French state; and value and practical considerations of VAMs and other voluntary accountability mechanisms. Respondents also shared a range of confidential unique organisational situations and nuances that potentially affected their perspective on, and practices relating to, accountability and trust.

Certain aspects of the interviews were standardised (e.g. length and type of location of interviews and general order of topics), but flexibility was maintained to allow for spontaneous comments, greater depth into areas of priority for the individual respondents, and questions outside of the interview topics. This flexible approach was

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<sup>64</sup> See Appendices 1-H-2A though 1-H-2D for senior management interview questionnaires and English translations.

important to the inductive effort to assess alternatives to the trust hypothesis. In addition, allowing some freedom contributed to the understanding of where the authority to make and implement accountability decisions lies – in particular, the importance of the philosophy and management style of the respondent organisation leaders.<sup>65</sup>

In the absence of a direct, formal translation of the word “accountability” it was important to establish common understanding for purposes of the interviews and identify potential areas of confusion.<sup>66</sup> None of the professional translators consulted in the preparatory stages of the study or respondents could offer a translation into French of accountability other than the term “responsibility” (*responsabilité*), generally adding “such as governance structures/practices, accounting controls, ethics and transparency.” Soublin, the President of the Comité, simply declared that “the word does not exist” (Soublin interview 2007). One respondent and Comité management called the absence of a French word “symptomatic” of the lack of attention to accountability generally until recently (Organisation 25; Comité senior management calls/interviews 2007). However, none of the respondents questioned the meaning of the English word “accountability” together with the descriptive phrase above and an explanation of the definition for this thesis (Section 2.2.2). Nor did any respondents demonstrate difficulty understanding the concepts, or the overall intent of the research or individual questions – either initially or as manifested in their responses to interview questions and additional comments. Certain respondents’ understanding was reconfirmed through their responses to the Report to Respondents (described below) (Liautaud 2008).<sup>67</sup>

As noted in Section 1.2, all respondents said that they had never been involved in a study of this level (in terms of both calibre of organisations and level of seniority of interviewees). Everyone but one Comité Group member expressed interest in the interviews once commenced even in cases of difficulty scheduling the interviews. Many responded to my post-interview thank you e-mails that they found the experience interesting. Throughout the face to face interview process respondents were open,

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<sup>65</sup>With respect to initial agreement to participate, approximately 55% of the Comité Group responded quickly to my request. Most of the others required intervention by Soublin (a phone call or e-mail resending my proposal). However, once Soublin made the introduction, all but a few participated readily despite the difficulty of scheduling senior level respondents.<sup>65</sup> The Control Group was overall responsive and expressed immediate interest in the topic of accountability generally. For some I worked my way through chains of contacts.

<sup>66</sup> See definition of accountability in Section 2.2.2.

<sup>67</sup> See Section 1.4.

including revealing confidential anecdotes and even politically sensitive information.<sup>68</sup> Six sent personal hand-written notes in response to the Report to Respondents, almost all citing interest in specific recommendations (Liautaud 2008).<sup>69</sup>

Full interview notes were typed and maintained. Interviews were not recorded as preliminary test interviews and discussions with Comité senior management indicated that culturally recording would either be refused or severely hinder candid discussion. Research assistants were not used in relation to the interview process due to the need for personal contact before, during, and with follow-up given the senior level of interviewees.<sup>70</sup> A 24-page French language Report to Respondents detailing the empirical findings and related recommendations (both specific to the Comité and Comité members and more generally applicable) (hereinafter referred to as the “Report to Respondents”) was distributed to all respondents in February 2008 (Liautaud 2008). The Report to Respondents offered an additional opportunity for comment and verification.

*Relationship of Data to Research Question.* The data collected offered evidence as to *how* and *why* accountability is increasing (i.e., the validity of the trust hypothesis and inductive assessment of other explanations for the increasing accountability). The self-completion questionnaires and interview data were studied with a view to identifying possible common themes (e.g. with respect to relevance of the internal and external variables on decisions to implement accountability mechanisms). The data were also analysed to consider broader implications for the sector, including whether and how accountability and trust relate to the external variables welfare state and scandal.<sup>71</sup> Finally, certain trends emerging from the data inform government policy and self-regulatory recommendations.<sup>72</sup>

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<sup>68</sup> Only two interviews were telephonic, in both cases to accommodate interviewee travel. There was no difference in the quality of the interview.

<sup>69</sup> See also Section 4.1 for relevance of response levels to interest in accountability.

<sup>70</sup> Administrative assistants were only used to collect (e.g. to print, purchase, or locate alternative sources for) publicly available back-up data that I had already found myself and/or that was mentioned in interviews to double verify the sources.

<sup>71</sup> See Chapter 7.

<sup>72</sup> See Sections 8.2 and 8.3, respectively.

## 1.6 Overview of the Thesis

The thesis comprises eight chapters, including this introduction. Each chapter links the analysis to the theoretical framework and from the outset highlights potential policy implications. The empirical, theoretical, and policy elements all support and reflect the over-arching themes: increasing accountability in the French nonprofit sector through internal, organisation by organisation inside out accountability; the individual, organisation-specific strategic assessment of accountability efforts, integrating the variables as individually appropriate; and the difficulty of linking organisation-specific accountability to the sector.

Chapter 2 establishes the theoretical framework. Chapter 2 also derives from the literature foundational definitions of the key research terms “trust” and “accountability.” Finally, Chapter 2 explores the literature on the French welfare state relevant to the interpretation of the empirical findings on increasing accountability and trust. The combined theoretical analysis, definitions, and external context situate the research within the theoretical framework and reveal gaps in the literature that the empirical research and policy objectives and recommendations target.

Chapter 3 provides relevant background on both the US and French accountability environments essential to interpreting the empirical findings. The discussion of the US regulatory framework and best practice supports the theoretical framework established in Chapter 2 and provides a basis of comparison for the discussion of the French sector regulation (in Section 3.2) and the empirical findings (in Chapters 4 through 7). The analysis of the two regulatory external variables – accountability regulation and the tax system – assesses gaps in the French system and analyses the empirical findings on the importance of regulation to respondents’ strategic assessment of accountability.<sup>73</sup>

Chapter 4 explores the empirical evidence for the assumption of increasing accountability in France that underlies the research question and trust hypothesis. The chapter provides a nuanced understanding of *how* accountability is increasing. The focus is on the defined set of VAMs and the underlying cultural, legal, and organisational issues they raise in the French context that relate to organisations’

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<sup>73</sup> Chapter 7 explores the two key non-regulatory external variables, the welfare state environment and scandal, including the definition of scandal in the Introduction.

strategic assessment of increasing accountability. In particular, the findings highlight the importance of the balance between regulatory and voluntary accountability in both the US and French systems that is fundamental to the strategic assessment process and to explaining increasing accountability and the trust theory.

Chapter 5 explores the most frequently cited rationale for increasing accountability: ethical, effective management. The chapter begins by defining the concepts underlying ethical, effective management and the relationship between ethical, effective management and donor trust. The chapter then analyses the empirical findings with a focus on the three most important vehicles of achieving accountability in furtherance of the ethical, effective management objective: corporatisation, the transfer of international standards, and funder accountability requirements (each as defined in Chapter 5). Finally, the chapter explores the theoretical implications of ethical, effective management.

Chapter 6 analyses the empirical findings on the trust hypothesis, the second most frequently cited rationale for increasing accountability. As with ethical, effective management, the chapter considers the potential driving forces behind increasing accountability in furtherance of the donor trust objective: donor pressure, the media, and Comité membership. The analysis of trust as a rationale for increasing accountability extends to volunteer trust and public trust (each as defined in Section 6.3.2). The chapter also assesses the importance of trust independent of accountability and the theoretical implications of the empirical findings.

Chapter 7 broadens the analysis to consider the relationship between the organisations' perspective on increasing accountability and the two non-regulatory external variables: the welfare state environment and scandal arising from failure of accountability within an organisation. The focus is on the relevance of the welfare state environment and scandal to organisations' strategic assessment of accountability and, conversely, the potential for increasing accountability within individual organisations to affect positively welfare state challenges and scandal. The analysis includes relevant aspects of the three most significant NPO scandals – the l'ARC fraud scandal, the attention to accountability for use of funds following the 2004 Asian tsunami (hereinafter referred to as the “tsunami”), and, most recently, the Zoe's Ark scandal involving the alleged trafficking of children by a small, previously unknown NGO under the guise of international adoption. The chapter brings the analysis full circle

back to the key rationale for the founding of the Comité (first addressed in this introductory chapter).

Chapter 8 concludes the thesis with a critical distillation of the key empirical results, including both theoretical and practical implications. In addition, Chapter 8 offers policy objectives and specific regulatory, self-regulatory, and NPO best practice recommendations based on the outcome of the empirical research. The overriding policy objectives are improvement of independent oversight of NPO accountability and accessibility of accountability-related information to the general public. The related recommendations address government policy, voluntary best practice, and specific suggestions for the Comité's approach to eligibility and compliance requirements for members. All policy recommendations consider regulatory and cultural context.

## Chapter 2

### Theoretical Framework

#### ***Increasing Accountability and Trust: Modernising the Basis for Trust?***

“Thus, for a service of the type [NPOs such as CARE provide]..., it stands to reason that an individual would prefer to deal with a nonprofit firm, because in that case he has the additional protection provided by the nondistribution constraint; he needs an organization that he can *trust* [italics added], and the nonprofit, because of the legal constraints under which it must operate, is likely to serve that function better than its for-profit counterpart” (Hansmann 1980, 847).

“One consequence of the increased competition nonprofits are facing has been to intensify the pressure on [NPOs] to perform, and to demonstrate that performance. The result is a third challenge: the effectiveness challenge....This runs counter to long-standing theories in the nonprofit field that have emphasized this sector’s distinctive advantage precisely in fields where ‘information asymmetry’ makes it difficult to demonstrate performance, and where ‘trust’ is consequently needed instead...In the current climate, however, such theories have few remaining adherents, at least among those who control the sector’s purse strings” (Salamon 2003, 24-25).<sup>74</sup>

### **Introduction**

This chapter establishes the theoretical framework for explaining increasing accountability and the relevance of the trust hypothesis in the French nonprofit sector.<sup>75</sup> The analysis aims to position the research question and hypothesis within the seminal literature on trust and accountability. This includes suggesting a starting point for the empirical research based on where the trust theory (a demand side theory) leaves off, proposing a framework for defining accountability, and establishing gaps in the literature. This juxtaposition of the largely US-derived trust theoretical framework and definition of accountability with the French nonprofit sector background establishes the necessary context for the empirical analysis. The literature review also informs the inductive data analysis of possible explanations for increasing accountability other than donor trust (including mutual causality).

This chapter suggests a theoretical framework for analysing the empirical findings involving two “next steps.” The first step is to ask the relevance of the trust theory in the current nonprofit sector environment both in the French context generally and to increasing accountability in France specifically. In other words, does the US

<sup>74</sup> See also Ryan on competition (1999, 128).

<sup>75</sup> The literature includes both scholarly work and professional reports and analyses from nonprofit sector institutions and participants in the US, the UK, and France.

model apply in France and in an environment increasingly focused on accountability as a starting point for the research? The second step is to develop a response to Hansmann's demand side theory. What do the organisations think, say, and do with respect to increasing accountability and why? How does trust affect the analysis, and what are alternative non-trust based explanations for these efforts to improve the "supply side"? Are organisations responding to a demand for trust that is assumed in the Hansmann, Rose-Ackerman, and Salamon theories (i.e., situating themselves on a spectrum of increasing accountability to achieve trust)? The second step rests on a proposed two-part definition of accountability – combining a general component and an operationalised component derived from scholarly perspectives and best practice, respectively. The second step also rests on the notion of organisations' strategic assessment of accountability mechanisms framed by Rose-Ackerman's work. Both parts beg the further question of the relevance of the welfare state environment in France to the application of a US-based trust theory and models for defining accountability. Finally, the approach from the outset considers potential policy implications.

First, Section 2.1 outlines Hansmann's trust theoretical framework, including a critical evaluation of criticisms and extensions of the theory most relevant to the investigation of increasing accountability (Hansmann 1980, 845; Hansmann 1996, 252, respectively). Rose-Ackerman's emphasis on the reputational importance of "signal[ling]" trustworthiness extends the theory to the strategic assessment of accountability underlying the empirical analysis of respondents' decision-making (Rose-Ackerman 2001, 6).

Second, Section 2.2 exposes Salamon's positioning of accountability (particularly performance evaluation) as the modern vehicle for generating trust and a necessary complement to Hansmann's trust in an increasingly competitive, accountability-driven nonprofit environment. This section then derives from the literature a dual-pronged definition of the term "accountability." An overarching general definition (critically extracting relevant elements of the scholarly literature) is then operationalised through a specific set of accountability mechanisms (selected from US best practice literature). The proposed definition bridges theory and practice, as well as the US and French models of accountability.

Third, Section 2.3 explores relevant literature positioning the French nonprofit sector within the French welfare state context. This discussion grounds respondents' perspectives on the strategic assessment of accountability and the comparison to US

models of accountability derived from a different political, economic, and historical nonprofit context.

Finally, the rationales for increasing accountability, including the relevance of the trust hypothesis and the more recent regulatory and voluntary accountability mechanisms fundamental to the US nonprofit sector, remain a gap in the literature with respect to the French context.<sup>76</sup> Almost all of the literature on trust and accountability is focused on the more dynamic US nonprofit sector (in terms of giving and levels of accountability).<sup>77</sup> The literature on the French nonprofit sector is far less extensive than the US literature and addresses primarily external variables such as the welfare state environment (but even there generally without attention to accountability or trust). A few scholars dominate: Archambault, Laville, and, for statistics, Tchernonog and Kaminski. Little of the literature offers in-depth views of the French nonprofit sector other than works such as Tchernonog's collection of statistics on associations, Archambault's publications and overview work on the Hopkins Study, and the ADDES statistics on associations (Tchernonog 2007b; Archambault 1993; Kaminski 2006, respectively). There does not appear to be a comprehensive discussion of accountability or trust in the France-focused literature or more analysis than occasional references (e.g. Laville and Nyssens 2000, 68).<sup>78</sup> Moreover, even the extensive treatment of the welfare state in the literature addresses in only targeted ways implications of the welfare state environment for accountability.<sup>79</sup> Finally, the statistical data is limited and difficult to

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<sup>76</sup> This thesis does not assess the collective impact on the sector of accountability efforts, for example in addressing sector-wide issues as weaknesses in the regulatory system and scandal, except with respect to respondents' perspective.

<sup>77</sup> For example, a recent report of the French Ministry of Youth, Sports and Associative Life compared giving of €35 million per 1 million inhabitants in France, to €140 million in the UK and €90 million in Switzerland (Lamour 2007, 6). The BBB Wise Giving Alliance estimated 86% of respondents of a 2001 survey give to charity in 2000, and nearly seven out of ten US households gave in 2005 (Princeton Survey Research Associates International 2001, 15; Independent Sector 2008c, 3). Within Europe, the UK leads with 67% regular donors, compared to 47% in France (Fondation de France-Observatoire de la Fondation de France/TNS Sofres 2003, 9). While such sample of statistics is not exhaustive, there were no examples found in the research (including the perspective of respondents and other sector participants interviewed for the study) of French giving or accountability practices exceeding US levels. See Sections 3.1.1 and 3.2.1 for comparative levels of accountability regulation and best practice between the US and France, respectively.

<sup>78</sup> One of Archambault's main works has one sentence on the nondistribution constraint as a "label of trust" (Archambault 1997b, 233). However, this is a general statement rather than a consideration of trust in France.

<sup>79</sup> See Section 2.3.

assess (e.g. Kaminski 2006, 15; Kaminski 2005 (“Présentation générale” and “Conclusion”); Archambault 1997b, 1 and 3; Tchernonog 2007b, 15-16).<sup>80</sup>

The limited technical literature on the two potentially relevant external variables involving French regulation – accountability regulation and the tax system – is addressed in Chapter 3. The literature on French nonprofit sector scandal comprises largely media and government reports and is addressed in Chapter 7.

## **2.1 Trust Theoretical Framework: Hansmann’s Trust Theory; Relevant Criticisms and Extensions of the Theory; Rose-Ackerman and “Signalling” Trustworthiness<sup>81</sup>**

Trust has historically centrally informed a foundational US nonprofit organisational theory (Hansmann 1980; Salamon 2003, 25). Most recently, trust-related concerns have triggered both a wave of regulatory, self-regulatory, and voluntary efforts to improve accountability as a means of reinforcing trust and an intensive discussion of the importance of trust to NPOs and the nonprofit sector generally (e.g. Independent Sector 2004b; Panel on the Nonprofit Sector 2007, 2-3; Light 2003). Anheier and Kendall introduce trust as “one of the most topical issues in current social science” (as of 2000) but note that the literature does not address how NPOs “generate and preserve trust” (Anheier and Kendall 2000, 2). Donor trust appears throughout different types of literature (e.g. Reiser 2004, e.g. 5-6 and 27-8; Light 2003, 1-8; Jackson 2006, 10; Institut Montaigne 2004, 29; KPMG-Observatoire 2007, 32-33).

Section 2.1 traces developments from Hansmann’s original theory through criticisms of the theory particularly relevant to increasing accountability and Rose-Ackerman’s strategic assessment process. This growing attention in the scholarly and best practice literature to the balance between trust based on characteristics intrinsic to the nonprofit form (whether or not as a primary rationale for increasing accountability) and accountability as the modern means of achieving trust (addressed in Section 2.2.1) frames the interpretation of respondents’ views of increasing accountability. The

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<sup>80</sup> Despite accuracy issues with the French statistics, magnitude and trends are relatively clear and consistent among the sources available (Kaminski 2005, 2; Tchernonog 2007a, 3).

<sup>81</sup> See Appendix 2 for a chart of the theoretical framework set out in this section.

assumption that organisations respond to a demand for trust in Hansmann, Rose-Ackerman, and Salamon's work also informs the empirical investigation.

### **2.1.1 Relevance and Overview of the Trust Theory: Trust as an Explanation of the Nonprofit Form and as Essential to Compete**

Several of the most important recent efforts to regulate and improve voluntary and self-regulatory accountability initiatives in the US and France in the for-profit and nonprofit sectors appear to stem, at least in part, from the importance of trust. The key for-profit example, the US Sarbanes-Oxley Act enacted in 2002 in response to corporate scandals, was “intended to rebuild public trust in the corporate sector” (American Bar Association 2007; US Government 2002).<sup>82</sup> One of the most widely respected extensions of the Sarbanes-Oxley Act into the nonprofit sector, the Independent Sector’s Accountability Overview, also highlights trust and the impact of NPO scandals resulting from fraud and other accountability failure:

[P]ublic trust is the charitable community’s single most important asset. Preserving it will ensure that donors continue to give and volunteers share their time and talents. In recent years, the actions by some in the charitable sector have endangered this trust, but the sector as a whole is developing methods that maintain the highest standards of accountability and transparency (Independent Sector 2008a).

Similarly, the Comité’s mission is to promote transparency and rigorous management to permit “giving with trust” (Comité 2006b and 2008n). The list of Comité membership benefits includes potential increase in the number of donors, reassuring public authorities and the press, and improvement of member organisations’ reputation and image (Comité 2008m). However, significantly there does not appear to be a comprehensive treatment of trust in the French nonprofit sector in the literature – whether or not linked to accountability.

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<sup>82</sup> See Section 3.1 for a discussion of the Sarbanes-Oxley Act and an overview of the relationship of nonprofit sector trust to the wave of US NPO and for-profit sector scandals in the 1990s and post-September 11, 2001 terrorist attack. See also US Government 2002, “Introduction” and “Purpose of the Legislation.”

### **2.1.2 Hansmann's Theoretical Framework**

Hansmann's "contract failure" theory has proven a foundation for both explanation of the nonprofit organisational form and the importance of trust to a NPO succeeding in an increasingly competitive global for-profit and nonprofit environment. Hansmann's theory argues that NPOs offer a "reasonable response to a particular kind of 'market failure,' specifically the inability to police producers by ordinary contractual devices" or so-called "contract failure" (Hansmann 1980, 845). Hansmann's theory relies on the "nondistribution constraint" characteristic of NPOs in order to ensure ethical management (Hansmann 1980, 838). While NPOs may *earn* a profit, the *distribution* of profits is prohibited – in the US often by state law, occasionally by the NPO charter documents, and by US tax law Internal Revenue Code Section (501)(c)(3) limitations on organisational purpose (Hansmann 1980, 838-9; USGDTIRS 2006a and 2008c, 25-6). Trust is the lynchpin of Hansmann's "contract failure" theory. Consumers are more attracted to NPOs when purchasing "contract failure" services because they trust that NPOs provide "extra assurance that their funds will be used as the donors wish them to be" (i.e., that the consumer's disadvantage resulting from contract failure will be not abused) (Hansmann 1980, 845; Hansmann 1985b, 7). This trust is largely the result of the nondistribution constraint that reduces management incentive to misuse or inefficiently allocate resources and effectively transforms management into fiduciaries.

Hansmann addresses a particular kind of contract failure – not the type of goods or consumers like many market failure theorists such as Weisbrod (Weisbrod 1998, 48-49; Bryce 2005, 17).<sup>83</sup> Most importantly, Hansmann addresses "asymmetric information" (Hansmann 1985a, 4; Hansmann 1980, 843). Linking efficiency in profit-seeking firms to a consumer's ability to compare products and prices among firms and enter into clear enforceable contracts with the firm chosen, Hansmann suggests that consumers of nonprofit products are often poorly positioned to judge whether goods and services are provided as expected (Hansmann 1980, 843).<sup>84</sup> One key reason involves the separation between the donor and the beneficiary (e.g. overseas aid organisations which

<sup>83</sup> Hansmann distinguishes his contract failure from standard public goods market failure analysis (i.e., free-riding) – the latter addressing the "lack of incentive" to fund public goods benefiting others and the former addressing the "inability to control" a NPO's use of a contribution (Hansmann 1980, 851 Note 50).

<sup>84</sup> Hansmann criticises corporate law as a poor model for regulating NPO fiduciary obligations because the purpose of corporate law and charters is to protect shareholders from management and other shareholders, whereas the purpose of NPO charters is generally to protect the beneficiaries (Hansmann 1980, 845).

involve donors in the US paying for food consumed in India) (Hansmann 1980, 846). Hansmann summarises, “The issue is not whether poor people overseas can afford to pay for better food, but rather, given that Americans are going to pay for the food, what kind of organization will Americans patronize to perform the delivery?” (1980, 880). Similarly, in the case of NPOs privately producing “public goods (e.g. a radio show),” “public goods” diminish donors’ incentive and ability to contribute (Hansmann 1980, 849-50). Voluntary price discrimination (e.g. at arts organisations such as a museum where some might voluntarily pay more than others) is a third example appearing throughout Hansmann’s major articles (Hansmann 1980, 856-9; Hansmann 1981a, 4; Bryce 2005, 18). The signal of a NPO’s trustworthy intentions and motives mitigates information asymmetry (without the “moral hazards” of shareholder value-driven for-profit corporations) (Anheier and Kendall 2000, 4).

The intrinsic trust-based NPO form is not a perfect solution to protection of donors or even beneficiaries of services, the public, or other stakeholders.<sup>85</sup> Hansmann acknowledges that the nondistribution constraint is a “rather crude consumer protection device” or “blunt instrument” reducing incentives for NPO managers to serve beneficiaries and donors (effectively their customers) badly rather than incentivising them to do well (1980, 871; 1987, 29; 1996, 247, respectively). Accordingly, Hansmann expects NPOs to be less efficient than for-profit firms (Hansmann 1980, 844). Hansmann also acknowledges the potential to distribute earnings through inflated salaries or other inappropriate payments to employees (1980, 844).<sup>86</sup> Still, he insists that in situations where consumers are poor judges of services received, any alternative organisational form is “second best” (1980, 844).<sup>87</sup> While generally the protection of the nondistribution constraint outweighs the inefficiencies of NPOs, the argument is sometimes less compelling for commercial NPOs selling private goods and services for purchaser consumption (e.g. some patrons of nursing homes) because consumers have

<sup>85</sup> Hansmann notes that even in the most compelling cases for choice of the NPO legal form (i.e., organisations where the separation of the donor and beneficiary is clear such as with overseas aid NPOs), the NPO form is generally not “necessary or even appropriate” in all cases (Hansmann 1980, 847).

<sup>86</sup> Steinberg suggests that a “necessary corollary” of the nondistribution constraint would require a “fair compensation constraint” (Steinberg and Gray 1993, 302). Today this might be the equivalent of benchmarking salaries and non-cash compensation to other equivalent NPOs and part of board oversight responsibility suggested as a VAM. See Section 2.2.2 Table 2-1 item (vi).

<sup>87</sup> Compare for-profit businesses, which are held accountable by consumers and the board of directors, and government agencies, which are held accountable by elected representatives and voters (Salamon, Hems et al. 2000, 9). Note that market disciplines are often “sufficiently weak” as to reduce the efficiency delta between for-profit and nonprofit producers (Hansmann 1980, 844-845).

greater access to comparative information in such cases (Hansmann 1987, 30 and 31; Hansmann 1980, 871-2).<sup>88</sup>

The advantage of the NPO resides in the “collective contract” between the NPO and all of its patrons as a group mentioned above, in the US enforced by the state.<sup>89</sup> Accordingly, one key question Hansmann’s theory frames is whether, how, and why additional voluntary and/or self-regulatory accountability mechanisms (with or without the legally imposed and structurally integrated nondistribution constraint Hansmann describes and possibly additional regulation) would increase trust to correct adequately the information asymmetry and address contract failure without the need for enforcement mechanisms (Hansmann 1980, 873-4). In other words, what happens when enforcement of the nondistribution constraint fails?<sup>90</sup> Is accountability effective in increasing trust with or without enforcement of the nondistribution constraint? Is all accountability directed at supplementing trust? A related question is the relative importance of voluntary and self-regulatory initiatives in the French context. The comparison to the heavily regulatory-driven yet still advanced self-regulatory and voluntary environment in the US nonprofit sector underlies the analysis (Brody 2002, 475; Jackson 2006, 10-19).<sup>91</sup>

### **2.1.3 Criticisms and Extensions of Hansmann’s Trust Theory Relevant to Increasing Accountability**

The criticisms and extensions of Hansmann’s theory most relevant to the analysis of increasing accountability target four areas.<sup>92</sup> Two relate to the French context: the state law basis of Hansmann’s theory and the “relational goods” aspect of trust. Two relate to the theory: trust as a market mechanism for reducing transaction costs and the relationship between social capital and trust. This selection updates and

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<sup>88</sup> Increases in commercial activities in recent years are due partly to decreasing government support and an environment expecting increasing accountability (Young and Salamon 2002, 424-5 and 429, respectively). Nonetheless, commercial nonprofits tend to work in industries where the patron has incomplete information or must “yield some discretion” such as a hospital – i.e., where there still is an information asymmetry (Hansmann 1980, 873).

<sup>89</sup> See Section 3.1.1 on enforceability.

<sup>90</sup> See Section 3.1.1.

<sup>91</sup> See Section 3.1.

<sup>92</sup>Certain Hansmann critics suggest alternative means of addressing information asymmetries: governance, regulation, consumer protection mechanisms, or technology (Anheier and Kendall 2000, 5-6 (citing e.g. Krashinsky 1986 and Hansmann 1996, 252); Salamon 1987, 36). While all such alternatives have become potential tools for correcting information asymmetries, accountability also addresses and/or supplements these strategies.

refines the interpretation of Hansmann's original theory as a baseline starting point for the research in the current French nonprofit environment.<sup>93</sup> None refutes the continued relevance of Hansmann's trust theory.<sup>94</sup>

First, the criticism of lack of universal equivalent to the state law imposed nondistribution constraint is not valid in the French context (Anheier and Kendall 2000, 7). As noted in Section 1.3.1, French legal requirements also limit profit distribution for both foundations and associations (French Government 1901b, Article 1; French Government 2006b, respectively).<sup>95</sup> Moreover, Hansmann's theory should apply broadly even to unincorporated NPOs and outside of France given the widely understood basic NPO limitation on profit distribution. For example, the Hopkins Study definition includes the "not profit-distributing" characteristic despite absence of an incorporation requirement (Salamon, Wojciech Sokolowski et al. 2004, 9).<sup>96</sup>

Second, the argument that the NPO organisational form allows for greater "relational goods" and therefore may be best suited to attract "investments" from people with interpersonal relationship motives relates to the implications of the 1901 Law membership structure for accountability and trust (Ben-Ner and Gui 2003, 15). In the absence of true owners of equity capital, beneficiary stakeholders may feel more like "members," and NPOs may benefit from a relational link to donors (Ben-Ner and Gui 2003, 16 and 18, respectively).<sup>97</sup> Nonetheless, the challenge of convincing donors to give suggests the importance of implementing accountability systems – either independently or to support the trust required as part of the "relational goods" (Ben-Ner and Gui 2003, 15-16 and 19).

Third, the role of trust as a market vehicle for reducing transaction costs of "more formal coordination mechanisms" such as contracts and bureaucracy also extends

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<sup>93</sup> Note Chanial and Laville's insistence on the difficulty of defining boundaries among the market, state, and social economy in France – and in turn the nonprofit sector (Chanial and Laville 2004, 88-89 and 91). See Section 7.3 on sector-wide implications of the theory.

<sup>94</sup> See also Steinberg and Gray (1993, 297 and 313).

<sup>95</sup> See Section 1.3.1 "Associations and Associative Sector" and "Foundations."

<sup>96</sup> See also Steinberg and Gray on the utility of the nondistribution constraint in various national and cultural traditions (e.g. Greek and Roman and Islamic) citing McGregor-Lowndes (Steinberg and Gray 1993, 298; McGregor-Lowndes 1992). Constraint on distribution of profits remains a fundamental defining characteristic of NPOs across diverse international contexts – perhaps in coordination with other theories but still valid standing alone – despite suggestions that the asymmetric information theories are not "full-on" theories of the sector. (See e.g. Salamon, Wojciech Sokolowski et al. 2004, 9; Ben-Ner and Gui 2003, 4, respectively.)

<sup>97</sup> See Section 3.1.1 "The Sarbanes-Oxley Act and Accountability" on rapidly developing venture philanthropy and other similar donor structures aiming to offer at least the monitoring benefits of shareholding even if without the economic ownership benefits.

Hansmann's theory and relates to strategic assessment (Fukuyama 1999, 4).<sup>98</sup> Fukuyama highlights the importance of "reliable performance of duties" and honesty forming his "radius of trust" (1999, 2 and 2, respectively). People could function without trust-derived social capital, but the cost and reduced flexibility of entering into, "monitoring," and enforcing contracts would be prohibitive – even in modern economies with "formal coordination mechanisms" (Fukuyama 1999, 4).<sup>99</sup>

Fourth, while Hansmann's model does not directly address social capital, the relationship among trust, accountability, and Putnam's social capital theory relates to increasing accountability within organisations individually and the potential for impact on the French nonprofit sector more broadly (Anheier and Kendall 2000, 11; Putnam 2000, 19). Putnam suggests that NPOs rely on and engender trust through "repeated interactions" among members. The extent to which increasing NPO accountability replaces the diminishing Putnam face-to-face interaction as a generator of, or reinforcement for, trust raises the question of the importance of the internal variable organisation size to accountability efforts.<sup>100</sup> Is scandal resulting from failure of accountability within an organisation less likely, and therefore accountability systems less necessary, in Putnam's profile of organisations (i.e., smaller with more personal interaction)?<sup>101</sup> If so, does this imply that policy decisions should be based on the assumption that smaller NPOs require less extensive accountability systems?<sup>102</sup> Or is Rose-Ackerman correct that individually generated trust does not necessarily generate collective trust (as discussed in Section 2.1.5)?

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<sup>98</sup> The impact on monitoring and reduction of transaction costs of the types of accountability mechanisms proposed by the Comité, Independent Sector, and others is beyond the scope of this thesis and difficult to assess, particularly in light of the absence of empirical grounding (e.g. Howell meeting 2006).

<sup>99</sup> Note also Fukuyama's link between trust, volunteerism, and a "dense civil society" and Mayo's comment on "friendship networks between social movement organizations" (Fukuyama 1999, 5; Mayo 2005b, 142).

<sup>100</sup> See Note 152, *infra*, on Putnam's optimism that declining social capital can improve. The proposed framework and definitions designed for international comparability mitigate Anheier and Kendall's valid critiques of the social capital approach as excessively local, portraying NPOs as "incubators" of trust and values necessary to social capital with unclear links to the macro-level (Anheier and Kendall 2000, 14, 14, and 14, respectively). Chapter 7 addresses respondents' perspective on accountability and trust beyond individual organisations into the sector.

<sup>101</sup> In addition, Anheier and Kendall's questioning of social capital due to "undesirable phenomena" reminds that social capital is not necessarily positive if based on civil society as civil society also includes negativity (e.g. Ku Klux Klan) (Anheier and Kendall 2000, 13). See also Fukuyama (1999, 8). See Note 48, *supra*.

<sup>102</sup> See Sections 4.4.1 and 5.4.1 on size and Section 7.2.1 on the Zoe's Ark scandal and implications for the sector.

#### **2.1.4 Scope of Trust**

The scope and application of the term “trust” requires explanation in three categories: first, the subject of the trust; second, in whom the trust is placed; and third, who is trusting (Howell meeting 2007; Brody 2002, 475-6). For purposes of this analysis the concept of trust focuses on *NPOs behaving as expected* (Rose-Ackerman 2001, 1).

First, the proposed subject of trust for this thesis is how accountability policies and practices relate to trust. This includes the expectation that such policies and practices will require a NPO to implement mechanisms to evaluate performance and assure effective execution of the statutorily defined mission but does not include evaluation of performance effectiveness, specific performance objectives, or mission effectiveness *per se*. This approach to the subject of trust aligns with Hansmann’s approach to trust, the Comité’s approach to trust, and the proposed general and operationalised definitions of accountability in Section 2.2.2.

Second, the trust is placed in both the NPO as an organisation and in management and the *conseil d’administration* or equivalent oversight body. Management and the *conseil d’administration* have oversight responsibility over others related to the organisation based on legal obligations and norms regarding the authority of NPO leaders in accountability matters.<sup>103</sup>

Third, the beneficiaries of trust include donors (individual, governmental, corporate, and institutional), beneficiaries of NPO services, and employees and volunteers. Hansmann posits these all as combined “one and the same group” for this purpose (Hansmann 1980, 845; Howell e-mail 2009).<sup>104</sup> As Hansmann notes, US NPO charters protect “patron” interests (as opposed to shareholders) and function as a “collective contract” between the NPO and its patrons replacing inefficient individual contracts. In the US, this contract is enforced by the state on behalf of patrons as a group (Hansmann 1980, 853).<sup>105</sup> In addition, for purposes of the research beneficiaries of trust include volunteers of the NPO. Finally, the public is also a beneficiary of trust, both because the sector provides goods and services essential to modern society and the economy and because the public pays through tax benefits to NPOs and donors in the

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<sup>103</sup> See Sections 3.1.1 and 4.4.2, respectively.

<sup>104</sup> See Section 6.3.2 on volunteer trust (as defined therein).

<sup>105</sup> See Section 3.1.1.

French and US systems (Bryce 2005, 15 and 17, and 75, respectively; Herzlinger 1996, 16-17; Hansmann 1980, 883; Independent Sector 2002, 2; Panel on the Nonprofit Sector 2007, 2; Institut Montaigne 2004, 15 and 23).<sup>106</sup> The public includes, although less directly, other NPOs (i.e., the sector) (Lloyd 2005, 3).

The decision not to exclude certain categories of beneficiaries in the definition of trust reflects the fact that policies and practices relating to accountability and trust do not change depending on the beneficiary. Moreover, the proposed definition of trust parallels the broad definition of accountability in Section 2.2.2.

### **2.1.5 Rose-Ackerman’s “Signalling” Trust and Strategic Assessment of Accountability: A Bridge to Accountability**

Rose-Ackerman’s notion of the importance of “signal[ling]” reliability extends Hansmann’s trust theory (Rose-Ackerman 2001, 6). This internal assessment of how best to “signal” shifts the focus from the intrinsic NPO characteristics to the supply side questions of how organisations evaluate accountability matters that send signals of trustworthiness. For example, organisations might implement a code of ethics with provisions addressing treatment of donor funds as a message to donors of attention to accountability. The strategic assessment of the relevant organisational factors, together with the internal and external variables potentially affecting reputations for trustworthiness, frames the interpretation of the empirical results. Most significantly, the analysis highlights the implementation of voluntary accountability mechanisms.

Two aspects of Rose-Ackerman’s complex treatment of trust are particularly relevant to Hansmann’s theory and the discussion of how and why accountability is increasing: her “one-sided reliability” and her distinction between “generalized trust” and “social capital” (particularly the critique of Putnam) (Rose-Ackerman 2001, 6, 4, and 4, respectively). Rose-Ackerman focuses largely on the democratic state and markets. Nonetheless, Rose-Ackerman’s reminder that “trust implies confidence, but not certainty, that some person or institution will behave in an expected way” and that honesty and trustworthiness are not the same applies in the nonprofit sector (Rose-Ackerman call 2008, Rose-Ackerman 2001, 1). This suggests that accountability might increase the certainty and honesty (the latter through transparency efforts) that is fundamental to trust (Rose-Ackerman 2001, 1). Moreover, her question of how

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<sup>106</sup> See Section 6.3.2 for a discussion of volunteer trust and general public trust (each as defined therein).

institutional reform can be used to limit the need for trust given the difficulty of “producing trustworthiness” also potentially connects trust and accountability (Rose-Ackerman 2001, 2).<sup>107</sup>

First, certain aspects of Rose-Ackerman’s “one-sided” trust relate to accountability because the benefits of a reputation for reliability often factor into a NPO’s willingness to accept the effort and expense of implementing accountability mechanisms (Rose-Ackerman 2001, 5-6; Rose-Ackerman call 2008).<sup>108</sup> Like for-profit market-driven interest in appearing morally good and reliable (in Rose-Ackerman’s for-profit example, the value of integrity – or “signal[ling]” integrity to a car salesman), NPOs are forced by competition for donors, for example, to address at least the signals of integrity to deserve trust (Rose-Ackerman 2001, 6; Keohane and Nye, Jr. 2003, 390).<sup>109</sup> This emphasis on reputation as integral to the strategic assessment of accountability – particularly the strategic assessment of voluntary accountability mechanisms as a means of enhancing trust – appears throughout recent US best practice guidelines and offers a lens for interpreting the empirical findings in France (e.g. Independent Sector 2005).<sup>110</sup>

Second, Rose-Ackerman concludes that evidence does not support linking trust in a particular organisation to generalised trust (Rose-Ackerman 2001, 4 and 5).<sup>111</sup> The extent to which improved accountability within a NPO changes its capacity to generate generalised trust relates to the potential for creation of a context of accountability through the individual and collective effect of individual NPO accountability efforts. For example, Rose-Ackerman’s separation of trust in an individual organisation and generalised trust challenges the efficacy of one NPO’s accountability efforts, and/or the

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<sup>107</sup> See the discussion of accountability as producing trust (i.e., potentially one such institutional reform) in Section 2.2.1 (Rose-Ackerman 2001, 2; Salamon 2003, 24 and 25).

<sup>108</sup> The rise of NPO rating services also exacerbates the attention to accountability efforts to protect reputation (Keating and Frumkin 2000, 15-16). See also Note 133, *infra*.

<sup>109</sup> See also Sargeant and Lee on the relationship between levels of trust and total gifts to a charity in the UK (2001, 82). In addition, the self-completion questionnaires showed competition as an important factor in organisations’ capacity to attract donors for 24 (83%) Comité Group participants in the Comité Group self-completion questionnaire and five (50%) Control Group participants in the Control Group self-completion questionnaire, totaling 29 (74%) respondents from both respondent groups participating in the self-completion questionnaires and 64% of total respondents.

<sup>110</sup> See Sections 2.2.2(b) and 3.1. Accountability is also seen as important to organisational legitimacy or civil society legitimacy (Anheier and Kendall 2000, 5; Keohane and Nye, Jr. 2003, 393). “One-sided trust” also suggests iterative game theory – i.e., the importance of reputation to repeat interaction (e.g. Anheier and Kendall 2000, 5; Rose-Ackerman 2001, 6).

<sup>111</sup> As noted above, in Rose-Ackerman’s case the “generalized trust” refers to democratic state institutions but could apply as well to the nonprofit sector (Rose-Ackerman call 2008; also citing Uslaner (2001, 4; Uslaner 2002, 219)). Note Rose-Ackerman’s more nuanced view of Putnam and separation of trust and social capital (2001, 4-5).

collective impact of individual NPO accountability efforts, in addressing the impact of scandal on the nonprofit sector.<sup>112</sup> While Rose-Ackerman cautions against assuming participation in NPOs generates social capital and generalised trust, others consider trust-based cooperation “perhaps a necessary condition” for NPOs and potentially “reinforcement of social networks” beyond the NPO sector, for example into politics (Rose-Ackerman 2001, 4-5; Ben-Ner and Gui 2003, 19 and 23 (Note 28 (citing Galaskiewicz & Bielefeld (2003)); Galaskiewicz & Bielefeld 2003, 209).

Finally, Rose-Ackerman highlights criticisms of the nonprofit form that also relate to the analysis of increasing accountability and trust. VAMs mitigate many of these trust-related concerns and intrinsic NPO deficiencies.<sup>113</sup> First, Rose-Ackerman cites the lack of financial incentive of nonprofit managers to perform because no one has legal claim to residual earnings (although for-profit managers have room for inefficiency as well). Other relevant criticisms include the prolonged existence of NPOs beyond utility as a result of absence of market discipline and diminishing donor incentives to monitor gifts due to tax deductions (Rose-Ackerman 1996, 717). VAMs facilitate donors’ monitoring of a NPO through financial transparency. VAMs also require effective governance to oversee on-going relevance of programs or the justification for the duration of the organisation itself.<sup>114</sup> Moreover, Hansmann’s trust does not assume or enhance NPO management or market efficiency as noted above.<sup>115</sup> Therefore, these criticisms do not undermine the trust analysis.

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<sup>112</sup> See Section 7.2.2 on empirical findings on the relationship between accountability and scandal.

<sup>113</sup> While the implementation of accountability mechanisms does not resolve intentional efforts to circumvent regulation or good practice, such behaviour should not call into question the validity of the NPO form. Similarly, the potential deliberate circumvention of the Sarbanes-Oxley Act trust-related requirements applicable to for-profit corporations (or indeed the criticised inefficiency of the Sarbanes-Oxley Act) does not call into question the utility of the for-profit corporate form. See Section 3.1.1 for a discussion of the Sarbanes-Oxley Act.

<sup>114</sup> Recent merger and acquisition practices in the nonprofit sector exemplify effective board oversight of the continued independent existence of an organisation, for example in the face of competition (e.g. merger in 2006 of the Silicon Valley Community Foundation) (Silicon Valley Community Foundation 2008a and b). See also Section 3.1.

<sup>115</sup> The base assumption is that the value of the nonprofit form as protection outweighs any inefficiencies (Hansmann 1987, 29).

## 2.2 Accountability Theoretical Framework and Accountability Definitional Framework

### 2.2.1 Accountability: A Supplement to Hansmann's Theory?

*The Modern Basis for Trust.* Having explored Hansmann's original theory and a selection of relevant criticisms and extensions since the seminal 1980 article on trust, this section advances further to the growing emphasis on accountability as an increasingly necessary supplement to the nondistribution constraint as a basis for trust. Accountability has emerged as the modern vehicle for cultivating/maintaining trust through regulatory, self-regulatory, and voluntary approaches (Salamon 2003; Independent Sector 2005 and 2008a). The spectrum from trust as based on intrinsic characteristics of the nonprofit form in Hansmann's original theory to Salamon's suggestion that accountability has become the modern means of engendering trust, and the evolving relationship between the two in the literature, offers a framework for situating the findings on the rationales for increasing accountability.

Examples from Hansmann's early work suggest this potential need to complement trust based on the nondistribution constraint with accountability in certain circumstances. First, Hansmann compares as an example the international NPO CARE to for-profit enterprises. The latter would need greater accounting measures allowing verification of financial propriety in the absence of trust based on the nondistribution constraint (Hansmann 1980, 847). In this example, Hansmann's emphasis on information asymmetry relates to both the relationship among NPOs, donors, and beneficiaries (i.e., the separation of donors and beneficiaries that prevents donors from verifying use of funds) and, more specifically, accountability mechanisms focusing on disclosure of important financial information. Another perspective on this question is how the nonprofit and for-profit forms approach each other through accountability mechanisms. For example, Hansmann suggests that owners of for-profit enterprises could contractually commit to limiting their control over assets. Such contractual arrangements duplicate the legal restrictions on NPO distribution of profits – i.e., effectively transform for-profit organisations into NPOs (1980, 852). However, the patrons would need regular detailed audited financial statements (once again voluntary accountability mechanisms) to confirm respect of the contractual obligations (1980, 853). Finally, Hansmann suggests the importance of “social norms that reinforce the

legal constraints" (defined as "conditioning individual behavior even when the legal restraints are unlikely to be enforced") as a discipline on management from exceeding fiduciary obligations, therefore an additional influence on leaders' strategic assessment of accountability (1980, 875).

More recently, Salamon raises the fundamental question of the continued relevance of Hansmann's theory. Salamon posits accountability – particularly performance evaluation – as the means of engendering trust when the nondistribution constraint derived trust no longer suffices in the current environment (2003, 23-25). Salamon highlights the shift from an emphasis on NPO legal form and mission to a market that "rewards discipline and performance and emphasizes organizational capacity rather than for-profit or nonprofit status or mission" (Ryan 1999, 128; Salamon 2003, 24). "Long-standing theories" such as Hansmann, he notes, have "few remaining adherents, at least among those who control the sector's purse strings" in the current environment focused on accountability (Salamon 2003, 24 and 25, respectively). Large sophisticated donors are most likely to expect the shift to performance evaluation (Salamon 2003, 25). Salamon's analysis reflects recent developments in accountability regulation and best practice. One key example is the US nonprofit sector leadership's emphasis on the link between trust and accountability in advocating self-regulatory and voluntary practices such as the Independent Sector guidelines (Panel on the Nonprofit Sector 2007).<sup>116</sup> The emphasis on performance evaluation takes accountability to the most sophisticated limits of best practice. The Independent Sector guidelines link accountability and trust but do not yet directly include performance evaluation (Independent Sector 2005 and 2008a).

Salamon's portrait of the growing importance of performance evaluation to supplement the nondistribution constraint as a basis for trust highlights the increasing competitive challenges in the NPO world. Salamon still recognises that the nonprofit sector "ultimately depends" on public trust (2003, 79). However, he also considers the increasing pressure on NPOs to marketise or commercialise (2003, 75). The challenge has become reconciling the increasing discrepancy between public expectations of NPOs (more in line with, as Salamon says, the "Norman Rockwell stereotype of selfless volunteers") and market, technology, funding, and accountability realities (Salamon

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<sup>116</sup> See discussion of regulation in Section 3.1 and best practice in the definition of accountability in Section 2.2.2. See also Jackson and Fogarty on trust in board recruiting (2005, 25).

2003, 79-80).<sup>117</sup> This challenge influences respondents' strategic assessment – particularly how they position themselves with respect to the relative importance of Hansmann's trust and accountability-based trust. Thus one way of viewing accountability is as operationalising trust, for example by mitigating Hansmann's information asymmetry.

*Supporting Versus Replacing Hansmann's Trust.* A basic question is why it matters whether accountability is conceptualised as replacing the nondistribution constraint as a basis for trust or supplementing Hansmann's trust (Howell meetings 2007 and 2008). First, pushing the "replacement" view to the extreme would mean that donor trust based on the intrinsic nonprofit form no longer counts. That is, the nonprofit form no longer brings the value of trust as a competing organisational structure. This value might include such cost savings as avoiding the cost of verifying delivery of services to beneficiaries separate from the donor, "shop[ping] around," or "enforce[ing] rigorously the contract" with the organisation (Hansmann 1980, 843 and 844, respectively).<sup>118</sup> In Hansmann's terms, the NPO is no longer the most apt organisational form to fit the behaviour of donors (1980, 898). This is because donors would consider only accountability as would, for example, shareholders in a for-profit setting or purchasers of goods from a store.<sup>119</sup> In turn, a much more draconian approach to accountability might ensue because, while the nondistribution constraint still exists, organisations would be operating from the premise that the trust derived from it is of diminished value.

Second, the question arises as to whether the types of accountability efforts implemented differ if targeting enhanced donor trust versus other objectives (e.g. ethics or management strategy). Accountability mechanisms vary in their accessibility and/or importance to donors. For example, financial transparency is intended for donor perusal, whereas a "dashboard" monthly summary of quantitative results for analysis by the board remains an internal matter.

Third, some might continue to consider trust fundamental to NPO survival but not the rationale for accountability efforts – i.e., two separate parallel tracks. In this

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<sup>117</sup> For example, the Fundraising Standards Board in the UK allows charities to make the "fundraising promise," including accountability, clarity, honesty, and openness (Fundraising Standards Board 2006).

<sup>118</sup> This also recalls Fukuyama's transaction cost theory addressed in Section 2.1.3.

<sup>119</sup> The purchase of goods from a store allows verification and comparison of products and therefore reduces the information asymmetry.

case, it is important to understand both whether other strategies for maintaining trust are necessary and the purpose(s) of accountability other than trust.

*Limitations of Performance Evaluation.* More specifically, the view of performance evaluation as the new basis for trust fails to address a number of issues.<sup>120</sup> First, the difficulty of assessing performance and the circular need for accountability and trust within the performance evaluation process itself limits the utility of performance evaluation (at least alone) in supplementing trust.<sup>121</sup> Second, performance evaluation does not consider the ethics/finance/accounting/governance/transparency issues that trust-focused accountability such as VAMs target.<sup>122</sup> For example, it is possible to demonstrate effective distribution of food to the needy while misappropriating funds. Third, others critique NPO use of performance evaluation as still maturing and “not yet producing accountability,” as well as time and labour intensive (Brody 2002, 491; Hoefer 2000, 176). Finally, even other less complex accountability mechanisms (e.g. other US-derived VAMs) are still evolving, particularly in France. Excessive focus on performance evaluation distracts organisations from more fundamental accountability efforts and ignores the value of increasing accountability efforts other than performance evaluation (both in terms of enhancing trust and independent value).

In addition, performance evaluation must be reconciled with the reality that NPO results are often at least partly intangible. Performance evaluation does not balance the intrinsic yet accepted (if not expected) NPO inefficiency Hansmann acknowledges because NPOs are judged on more than financial results (1987, 38 and 1980, 844). In this light, the cost and effort of a level of performance evaluation sufficient to replace trust would never reach the justifiable benefits with NPOs.

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<sup>120</sup> See also Sections 5.3.1 and 5.5.1.

<sup>121</sup> See e.g. Salamon on the lack of “meaningful bases for demonstrating the value of what [NPOs] do” (1999, 13).

<sup>122</sup> See definition of VAMs in Section 2.2.2(b).

### **2.2.2 Definition of Accountability: General (Based on the Scholarly Literature) and Operationalised (Based on Best Practice Literature)**

The definition of accountability used in this thesis comprises both a general definition and an operationalised definition. The former adopts a broad, internationally applicable perspective in terms of the range of stakeholders and types of accountability based on the scholarly literature. The latter comprises a detailed set of practical accountability mechanisms based on the Independent Sector guidelines. Organisations may voluntarily apply these largely independently of regulatory framework and national context. Therefore, the two prongs of the definition link scholarly and best practice literature, as well as the conceptual and practical aspects of accountability, respectively. This section also considers the importance in the literature of self-regulatory and voluntary efforts that exceed regulation as elements of the definition of accountability.<sup>123</sup>

Two related terms relevant to the definitions of accountability are “accountability efforts” and “increasing accountability.” The term “accountability efforts” refers to steps to increase accountability, such as the establishment of policies, the implementation of VAMs and other voluntary accountability mechanisms, and/or compliance with regulation or self-regulatory mandates. The term “increasing accountability” refers to increasing attention to accountability – a continuum of expressions of interest in, and interventions around, accountability. These might range from general discussions and implementing the most fundamental accountability mechanisms (e.g. disclosing basic financial information to donors) at initial stages to joining the Comité and implementing complex corporate-derived accountability mechanisms (e.g. audit committees or senior executive evaluation procedures) at advanced stages (Howell meeting 2008). Increasing accountability potentially includes one or both of accountability efforts and plans or ideas relating to accountability. The benchmark for assessing increasing accountability within a French NPO or in the French nonprofit sector are the US standards (regulatory and VAMs and other voluntary accountability mechanisms). Due consideration is given to both alternative French regulations and best practice and cultural context. Throughout the thesis a distinction is made between “accountability” generally and “increasing accountability.”

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<sup>123</sup>See Section 3.1 for relevant US accountability context and Chapter 8 for policy recommendations. Policy recommendations target self-regulatory policy in addition to governmentally-imposed policy and regulation.

**(a) General Definition of Accountability.** The general definition of accountability underlying the research is the classic definition of accountability as “*having to answer for one’s behavior*” (e.g. Anheier 2005, 237; Simpson and Weiner 1989, 10). For purposes of this thesis, I also use the operationalised definition outlined in Section 2.2.2 (b) below.

Accountability is defined and debated in a variety of ways in the literature – with different foci on the beneficiaries, the behaviours in question, and the responsible parties (Brody 2002, 472; Anheier 2005; Lloyd 2005, 3; Hoefer 2000, 167). Accountability is also used without specific definition (e.g. Simpson and Weiner 1999, 46). Definitions of accountability comprise three questions: To whom accountability is owed?; For what?; and How? (Brody 2002, 473). The discussion below adds “by whom?”

The main rationale for the broad general definition is to avoid limiting stakeholders and types of accountability, especially across national boundaries and different cultural and legal contexts (Goetz and Jenkins 2005, 14 (“accountability jurisdictions are also in flux”); Institute of Development Studies 2006, 2-3; Lloyd, Oatham et al. 2007, 6). Accountability varies in accordance with institutional and cultural context (Mulgan 2000, 557-8 (“territorial jousting” over definition); Brown and Moore 2001, 4; Lloyd 2005, 3; Charnovitz 2006, 35 (“age of international standards”)).<sup>124</sup>

Accountability is defined in this thesis as a dynamic concept (e.g. Lloyd’s notion of accountability as “pursued on an on-going basis” and a beneficial “agent for organisational change” and Mulgan’s as “chameleon-like”) (Lloyd 2005, 3; Mulgan 2000, 55, respectively). Accordingly, the general definition of accountability as a baseline obligation of “answerability” provides a foundation for the evolving, organisation-appropriate strategic assessment of accountability (Rose-Ackerman 2001, 6-7; Brown and Moore 2001, 3, 4 16, and 28).<sup>125</sup>

***Multiplicity of Stakeholders: To Whom Does Accountability Run?*** This broad general definition encompasses all related to the NPO as beneficiaries of accountability (e.g. funders, employees, volunteers, members of the board/*conseil d’administration*, and beneficiaries of services) in accordance with US best practice (Independent Sector

<sup>124</sup> Also Soublin call October 2007.

<sup>125</sup> See Section 2.2.2 (b). See also updated approaches relating to terrorism (Gibelman and Gelman 2004, 357-8; Howell 2006, 132 and 121; Internal Revenue Service Form 990 (USGDTIRS 2007b, Part IV, Section 14, 15, and 16 (including Form TD F 90-22.1)).

2004c).<sup>126</sup> As with trust, the public is also included because of the public's contributions to NPOs via tax benefits and the importance of social and other services NPOs provide (Brody 2002, 487; Bryce 2005, 15; Lee 2004, 169).<sup>127</sup> The definition does not formally include horizontal accountability to other NPOs or the French or US nonprofit sectors generally but encompasses these in accountability to the public. The approach parallels the indirect inclusion of other NPOs and the sector as beneficiaries of trust (Lloyd 2005, 3).

The challenge of prioritising multiple stakeholders and constituencies with cross-accountability expectations and responsibility appears throughout the literature (e.g. Blagescu, de Las Casas et al. 2007, 1; Lloyd 2005, 3; Brown and Moore 2001, 7; Keating and Frumkin 2000, 7). Moreover, failure in accountability in one area could trigger failure and the ensuing reputational consequences elsewhere (e.g. United Way embezzlement scandal trickling from senior management embezzlement through the board, employees, and outside consultants) (e.g. Jackson and Fogarty 2005, 12 and 113; Glaser 1994, 103-4).<sup>128</sup>

*Included Types of Accountability: Accountability for What?* The different types of accountability also complicate the development of a definition of accountability (Keohane and Nye, Jr. 2003, 388).<sup>129</sup> Accountability for this study focuses on the traditional combination of *ethics/finance/accounting/governance/transparency*, adherence to donor specification, respect of statutory mission (as distinct from mission effectiveness), and public trust (as defined in Section 6.3.2). The Comité's working definition of accountability largely reflects this traditional definition.<sup>130</sup> The proposed operationalised definition based on the Independent Sector guidelines (outlined in Section 2.2.2(b) below) further focuses the type of accountability and connects the general definition to the research methods and empirical findings on strategic assessment.

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<sup>126</sup> However, the Independent Sector Code of Ethics, which encompasses staff, board members and volunteers, does not explicitly include the public or other NPOs (Independent Sector 2004c, Section 1). In addition, this approach contrasts with the more limiting so-called "principal-agent" model where the agent acts through only legal delegation of authority and economic incentives on behalf of the principle (Lloyd 2005, 3). The hierarchical oversight approach and record-keeping approaches are similarly narrow (Kearns 1994, 186 (citing Shafritz (1992, 187); Keohane and Nye, Jr. 2003, 390).

<sup>127</sup> The public is excluded from Anheier's list (2005, 237). See Sections 3.1.2 and 3.2.2 for a discussion of tax systems. See also Lloyd, Oatham et al. on importance of affecting citizens (2007, 6 and 9).

<sup>128</sup> See Section 7.2.

<sup>129</sup> See e.g. financial accountability (Keating and Frumkin 2000, 6-16); financial, mission, and organisational accountability (Reiser 2004, 4-7); and combined legal, governance, ethics, and resource management (Anheier 2005, 239).

<sup>130</sup> See Section 2.2.2(b).

This fundamental “answerability” approach subsumes certain more specific aspects of accountability in the literature relevant to unravelling the relationship between accountability and trust and exploring rationales for accountability independent of trust (Brody 2002, 475-6; e.g. answerability in financial matters (Keating and Frumkin 2000, 28-9)).<sup>131</sup> In particular, Kearns’ combination of compliance with regulation, proactive management, and dynamic adaptation of accountability efforts to internal and external influences relates to a strategic assessment best aligned to the type of NPO and stakeholders (Kearns 1994, 188). Brown and Moore’s two-part approach to the ethical and moral components of accountability (i.e., an abstract ideal of moral good and practical implications of moral behaviour) also relates to ethical, effective management (Brown and Moore 2001, 2, 15, and 27).<sup>132</sup>

*Excluded Types of Accountability.* Several types of accountability are explicitly excluded from my research. Mission effectiveness is excluded because the notion of “mission effectiveness” is conceptually confusing and not widely applicable across types of organisations and national contexts. (For example, does “mission effective” program development mean expected future results yielded? If so, is that effective program development with respect to donors at a particular time? If not, is that an inappropriately short-term analysis?) Mission effectiveness is also a narrow concept, neglecting financial efficacy, governance, and organisational efficacy (Brown and Moore 2001, 15).<sup>133</sup> Second, performance effectiveness is not directly included in the definition for the reasons cited in Section 2.2.1 (KPMG-Observatoire 2007, 52).<sup>134</sup> Rather, in line with US best practice and the Comité approach, the proposed definition treats performance evaluation as within the “board policy” duties of a well-functioning *conseil d’administration* to implement methods of evaluation of performance and mission effectiveness (Panel on the Nonprofit Sector 2007, No. 19, 19; US National Better Business Bureau 2003, No. 6 and No. 7).<sup>135</sup> The definition does not specify evaluation methods or assessment of results of such evaluations. Therefore, Salamon’s

<sup>131</sup> Traditional refers to the classic NPO with a governing board of directors and a prohibition on profit distribution (e.g. Anheier 2005, 231 and Hansmann 1980, 838).

<sup>132</sup> See Section 5.1 on the concepts underlying ethical, effective management, which closely relates to Brown and Moore’s framework. See also Hosmer on moral duty and trust (Hosmer 1995, 381).

<sup>133</sup> See also Section 5.3.1 on the impact of the variation in how rating agencies rate NPOs, in particular how they define effective and whether they consider mission effectiveness (e.g. New Philanthropy Capital 2008; GuideStar 2008; Charity Navigator 2006).

<sup>134</sup> See Section 2.2.1 “*Limitations of Performance Evaluation.*”

<sup>135</sup> This approach does not diminish the importance of respecting statutory mission as part of the proposed definition. See e.g. Sections 1.2.4 on the Comité approach and 7.2.1 on the tsunami and mission “creep.”

focus on performance evaluation is integrated into the definition of accountability through a board obligation to undertake performance evaluation. However, the performance evaluation process *per se* is not included in the definition of accountability in this thesis.

Several specific approaches to accountability unrelated to the trust hypothesis or the ethics/finance/accounting/governance/transparency focus cited above are also excluded. The definition does not include democratic or electoral accountability (e.g. as defined by Goetz and Jenkins) as both are further removed from the investigation of the trust hypothesis (Goetz and Jenkins 2005, 11; e.g. Mayo 2005a, 183 and 2005b, 152). While the broad stakeholder group includes beneficiaries of services, accountability to beneficiaries regarding the quality of services or representative accountability is not included as again too organisation-specific and triggering some of the same issues as mission effectiveness and performance evaluation. Finally, the definition does not include accountability of donors themselves (Kovach 2006, 111-113).

**How? Accountability by Whom?** How accountability is delivered is critically analysed in the discussions of the empirical findings in Chapters 3 through 7. As with trust, the organisations' leaders (i.e., management and the *conseil d'administration*) under French and US law have primary responsibility for establishing policy and implementing accountability practices supporting policy. This responsibility extends to ensuring compliance by all associated with the organisation as appropriate in order to ensure accountability to all beneficiaries.<sup>136</sup>

**(b) Operationalised Definition of Accountability.** The operationalised definition of accountability framing the research includes a specified group of VAMs selected from the Independent Sector definition of accountability (Independent Sector and Board Source 2006; Independent Sector 2005). The Independent Sector defines accountability through a checklist of key aspects of accountability rather than a conceptual definition (Independent Sector 2005).<sup>137</sup> This practical approach, together with the conceptual basis for the general definition in (a), links scholarly literature with best practice based on industry recommendations and provides the foundation for exploring the underlying purposes of the VAMs with respondents. In turn, this functional understanding contributes to identifying for policy recommendations

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<sup>136</sup> See discussion of leadership in Sections 4.4.2 and 5.4.3.

<sup>137</sup> The list includes most of the Independent Sector Checklist for Accountability and some of the Independent Sector's recommendations for the nonprofit sector based on the Sarbanes-Oxley Act (Independent Sector 2004b and 2005, respectively).

functionally effective substitutes for US-derived VAMs and other voluntary accountability mechanisms in the French nonprofit sector context.

The VAMs list addresses, directly and/or indirectly, virtually all of the types of accountability mentioned in Section 2.2.1.<sup>138</sup> Transparency (a distinct concept from accountability referring to publication of adequate, accessible, and understandable information to stakeholders) is integrated into the proposed definition of accountability directly in item (v) of the VAMs list (Anheier 2005, 239; Keohane and Nye, Jr. 2003, 404).<sup>139</sup> Transparency is central to Comité requirements and US regulation and best practice and is indirectly ensured by other VAMs as well (e.g. the conflict of interest policy requirement to disclose conflicts of interest) (Comité 2008a; Independent Sector 2004b, No.1; Anheier 2005, 239; Reiser 2005, 568-579). Independent Sector adds to the VAM list general practice such as ensuring a culture of accountability (by establishing expectations and educating staff, board of directors and volunteers), remaining current with legal requirements, and ensuring adequate board financial expertise (Independent Sector 2005 and 2008a).

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<sup>138</sup> Cultural implications of VAMs are addressed on a case by case basis throughout Chapter 4. The legal framework is discussed in more detail in Chapter 3. See Section 3.1.

<sup>139</sup> See also KPMG report on the difficulty of defining transparency in a pluralistic associative sector such as in France, including the importance of the perception of transparency (KPMG-Observatoire 2007, 7).

**Table 2-1****VAMs Included in Operationalised Definition of Accountability**

<b>VAM</b>		<b>Definition</b>
(i)	<b>Independent Directors</b>	excludes members of the <i>bureau</i> <sup>1</sup> ; persons providing professional services (consulting, legal, accounting, etc.) to the NPO; and persons employed by, paid any salary, fees or other remuneration by, or engaged in any commercial operations with the NPO, any of its employees, or affiliates <sup>2</sup>
(ii)	<b>Audit Committee</b>	overseeing audit procedures and scope/relationship with auditors – comprising independent directors (as defined in Section 4.2.1) and at least one “financial expert”
(iii)	<b>Whistleblower Policy</b>	enabling prompt reporting of all illegal acts or policy violations safely and confidentially <sup>3</sup>
(iv)	<b>Conflict of Interest Policy</b>	written policy addressing both financial and non-financial conflicts (*financial conflicts of interest only)
(v)	<b>Transparency Policy and Practices</b>	including disclosure by publishing on web sites the annual reports, evaluation procedures, financial statements, key policies, and appropriate donor information*
(vi)	<b>Senior Executive Compensation Policy and Oversight</b>	outside Independent Sector checklist but a priority within their governance/ethics principles (Panel on the Nonprofit Sector 2007, No. 13, 15) (*limited)
(vii)	<b>Document Retention Policy</b>	requiring archives and specifying prohibitions on document destruction
(viii)	<b>Code of Ethics</b>	general code – deemed an “indispensable part” (* limited)

Source: Author's selection of VAMs and definitions compiled for the study based on a variety of US law and Independent Sector sources noted in the table and footnotes and considerations outlined in this Section 2.2.2(b). See also Table 3-1.

<sup>1</sup> Items that also appear in the Comité's mandatory Charter (Charte de Déontologie) as requirements for accreditation are marked “\*.” See Table 3-1 for legal and Comité requirements and detailed references to Independent Sector and Comité documents.

<sup>2</sup> US Government 2002, Section 301; Jackson 2006, 54.

<sup>3</sup> Certain aspects of US-style whistleblower mechanisms are illegal in France, but a modified version will be considered in the policy recommendations (US Government 2002, Section 806). See Section 4.2.1.

There are several rationales for this operationalised approach. First, the operationalised definition facilitates comparison (both among French NPOs and with the US). Second, VAMs permit application of the operationalised definition irrespective of national legal systems and cultural and organisational contexts. This list reflects the indicators of accountability prioritised within the US nonprofit sector yet adaptable to French associations and foundations. Even the more US-derived options such as the audit committee and extensive transparency of information relating to accountability mechanisms generally fall within the control of an association or foundation's management and/or *conseil d'administration*.<sup>140</sup> Third, VAMs generate more focused research results helpful in identifying patterns of types of accountability (e.g. financial or programmatic). Fourth, this approach parallels the Comité's internal unwritten working definition of accountability, which combines an obligation to account for (*devoir de rendre compte*), ethical oversight, good governance, transparency, and accountability procedures with a level of specificity comparable to VAMs (Soublin call January 2007). Finally, VAMs contribute to operationalising the dynamic nature of the general definition of accountability as an “on-going” process as noted above (e.g. Lloyd 2005, 3). For example, implementation of specific VAMs comprises a measurable component of medium- to long-term organisational strategic planning.

The two-pronged definition of accountability highlights the trend in the US and in the literature toward increasing emphasis on self-regulatory and voluntary efforts relative to regulation.<sup>141</sup> Both practitioners and scholars emphasise the need to move beyond over-reliance on regulatory frameworks to “voluntarism” and “self-regulation” as key to the NPO form (Anheier and Kendall 2000, 20; Panel on the Nonprofit Sector 2007, introductory letter). Lloyd urges exceeding or complementing ineffective law as key explanations for accountability (Lloyd 2005, 5 and 6). Some argue that the lack of formal enforcement mechanisms hinders the efficacy of self-regulatory efforts, and some suggest enforceable codes of conduct (Lloyd 2005, 7; Edwards 2000, 5, respectively). However, the prevalence of voluntary codes suggests at a minimum their role in standard setting (e.g. Independent Sector 2004c; American Red Cross 2008; Soublin meeting November 2006). The relative lack of attention in French literature

<sup>140</sup> Whether certain of these items would also require *assemblée générale* approval depends on the individual organisation's *statuts*.

<sup>141</sup> While Hansmann signals the need for additional regulation in service of NPO economic needs, he does not address voluntary accountability mechanisms. The latter is not surprising as his original theory dates to before the notion of voluntary mechanisms began to appear widely (Hansmann 1980, 898 and 1981b).

and best practice to self-regulation and voluntary approaches to accountability further refines the gap that the empirical research addresses.

Finally, each VAM in the operationalised definition underlying the research targets accountability as a complement to specific aspects of the trust theory. For example, information asymmetry is addressed through the transparency policy and practices and audit procedures. Management incentives to misdirect funds are addressed through the conflict of interest (both financial and non-financial), whistleblower, and senior management compensation policies and practices; the audit committee; and the code of ethics (particularly provisions addressing board governance and responsibilities). Therefore, VAMs reinforce monitoring of the key intrinsic governance weaknesses of NPOs: limitations on stakeholder rights to question management or the board of directors absent violation of law and limited incentive for individuals to monitor in the “absence of transferable residual claims” (Ben-Ner and Gui 2003, 18).<sup>142</sup> Finally, VAMs, therefore, also contribute to increasing the certainty of individual and institutional behaviour that trust implies (Rose-Ackerman 2001, 1).

## **2.3 France-Focused Literature: Relevance of the Welfare State Environment to Increasing Accountability**

Given the importance of the welfare state environment to the French nonprofit sector generally in the literature, any contribution to the research must consider respondents’ views of the influence of the welfare state on explanations for increasing accountability.<sup>143</sup> This is important for ensuring empirical analysis of the theoretical framework and increasing accountability within the welfare state context. Perceptions of the welfare state influence also further understanding of France in comparison to the US

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<sup>142</sup> This is a fundamental point of distinction with shareholders of a for-profit company. Salamon, Hems et al. conclude that NPOs are more likely to have an “accountability gap,” which may be exacerbated by relatively limited board of directors’ incentive to monitor and the often incorrect societal assumption that the nondistribution constraint means managers will always act in the best interest of the organisation and its beneficiaries (2000, 9). See Section 3.1.1 on the relevance of enforcement of stakeholders’ rights to VAMs. See Note 97, *supra* on US and UK nonprofit sector monitoring developments such as venture philanthropy. French NPO stakeholders are, in general, similarly constrained (Joly e-mail 2008).

<sup>143</sup> Chapter 7 analyses respondents’ perception of the relationship between increasing accountability at the organisational level on the welfare state and scandal.

for policy matters – particularly given the comparison to US models based on a different relationship between the nonprofit sector and government.<sup>144</sup>

Second, as stated earlier, with limited exceptions the literature on the French nonprofit sector does not address accountability and trust. Nor does the literature address the relationship between the welfare state environment or the other external variables (i.e., accountability regulation, the tax system, and scandal) and accountability and trust. Rather, the French literature focuses primarily on the debate surrounding the impact of the welfare state and markets on the size and success of the French nonprofit sector. The empirical research aimed to address this gap by questioning the relevance of the welfare state to respondents' strategic assessment of accountability and increasing accountability more generally. Finally, the separation between the welfare state environment and accountability in the France-focused literature sharpens the contrast with the close alignment in the US literature between the regulatory environment and the advanced US self-regulation and voluntary accountability best practices.

### **2.3.1 Importance of the Welfare State Context to the French Nonprofit Sector and Accountability**

The literature on the importance of the welfare state context to the French nonprofit sector most relevant to respondents' strategic assessment of accountability focuses primarily on four areas: the extensive and largely negative etatist influence; historical developments; the relationship to the social economy; and more recent and current economic and social policy challenges.<sup>145</sup> Within these categories, the evolving balance between government versus NPO social service delivery and financial dependency (analysed in Section 2.3.2) are key sub-issues relating to French nonprofit sector accountability and potentially respondents' strategic assessment.

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<sup>144</sup> Section 7.1 discusses the empirical analysis of the welfare state environment to respondents' strategic assessment of accountability within their own organisations and view of accountability across the sector.

<sup>145</sup> See Section 7.1 for empirical findings relating to the welfare state.

Extensive literature categorises France as a welfare state or “government-dominant” state (e.g. Salamon, Wojciech Sokolowski et al. 2004, 33; Worms 2002, 141; Cohen 2004, 4). Archambault concludes that “etatism is no doubt the most important feature in French history,” and even in the late 1990s France based the “structure of [France’s] civil society...on the dignity and power of the state” (Archambault 1997b, 17; Worms 2002, 137). Worms summarises:

...today, the fact that France has based the foundations of its national identity, the structure of its civil society and the conditions of its sovereignty on the dignity and power of the state is undisputed by critics and supporters of the French republican model alike (Worms 2002, 137).

Freeman suggests that social policy in France is “statist in style, corporatist in form and pluralist in practice” (Freeman 1994, 190).

Certain statistics further reinforce the importance of the state. For example, the French social protection budget at 33% of GDP is second of 12 European countries after Sweden and exceeds considerably 17% in the US, 19% in Japan, 24% in the United Kingdom, and 31% in Germany (Archambault 2006, 2-3; OECD 2007, 42).<sup>146</sup> Moreover, the allocation of NPO income among commercial revenue, government funding, and philanthropy offers insight into both the sector’s landscape generally and identifying potential restrictions on NPOs’ independence to control funds related to the accountability research. In the broader category of the Hopkins Study definition of NPOs, for NPOs in France government funding, commercial fees, and philanthropy comprised 58%, 35%, and 8%, respectively – in line with welfare partner countries but almost opposite the US breakdown of 31%, 57%, and 13%, respectively, and a 32-country average of 34%, 53%, and 12%, respectively (Salamon, Wojciech Sokolowski et al. 2004, 44 and 41).<sup>147</sup>

Several renowned French nonprofit sector scholars portray the etatist welfare state as an overwhelmingly negative influence on the French nonprofit sector, responsible at least in part for the lag in the French nonprofit sector behind the US, the

<sup>146</sup> Note that Eurostat statistics were within 2-3% of OECD figures but cover European countries only (Eurostat 2008, 1). Government support has been expanding in the US as well, including increasing state-nonprofit partnerships (Salamon 1999, 7 and 14, respectively).

<sup>147</sup> See also Tchernonog 2007a, 13. Lindsay and Hems cite the funding of most associations as “predominately through membership fees” (approximately 34.6% of total sector funding) (2004, 268). However, this is not in line with Tchernonog’s selection of statistics (2007b, 76-7). (See also Tchernonog 2007b, 59.)

UK, and other European countries in terms of giving.<sup>148</sup> Worms, for example, believes the state emerges as the frequently cited cause of the “relative weakness of France’s network of associations, compared to other European countries and the United States” (Worms 2002, 141). In sum, the church and state historically prevented citizen involvement and insertion of private initiatives between the central state authority and individuals, with independent voluntary associations “prime targets” (Worms 2002, 141). Archambault contrasts the increasing importance of the French nonprofit sector to French citizens with its “relative official invisibility in the country’s institutional landscape” (Archambault 1997b, 3 and 1, respectively).

The literature broadly dissects the development of the welfare state most relevant to the French nonprofit sector generally, and accountability and trust more specifically, into several key phases. First, from the 1789 French Revolution until the late 19<sup>th</sup> century, the central government suppressed religious, charitable, and workers’ organisations. Second, the 1901 Law represented a “particularly liberal” breakthrough in freedom of association and management of associations [author translation] (Tchernonog 2007b, 1; French Government 1901b).<sup>149</sup> Third, in 1945 the French state established a wide-ranging social security system addressing “illness, old age, unemployment, and family expansion” (followed by more rapid growth in the associative sector as compensation for French state incapacity to meet needs in those areas) (Archambault 1997a, 105; Worms 2002, 146-7; Archambault 1999a, 1).<sup>150</sup> Fourth, the fiscal crisis of the 1970s and 1980s further deepened the relationship between the French state and NPOs (including decentralisation) with “solidarity” policies engaging the French nonprofit sector as a “tool for” or partner in social policy (e.g. Nicholls 2006, 1785; Salamon 1995, 4 and 246; Archambault 1999b, 10 and 13; Salamon 1995, 4 and 246; Archambault 2005, 6). Fifth, thereafter societal tensions began to emerge (e.g. immigration diversifying a formerly homogeneous population) (Archambault 1997a, 103-105 and 118-120). Sixth, more recently some scholars recognise dynamism in the social economy, for example through statistics (Archambault

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<sup>148</sup> See Note 77, *supra*.

<sup>149</sup> As compared to the requirement that NPOs further charitable purposes in US Internal Revenue Code Section 501(c)(3) (USGDTIRS 2006a).

<sup>150</sup> Archambault emphasises the lack of empirical data (Archambault 1999a, 1).

1997a, 125-6; Archambault 2005, 6; Tchernonog 200b).<sup>151</sup> However, the implications for policy remain unclear (Archambault 1997b, 223-4; Worms 2002, 187-8).

One of the essential historical threads in the French nonprofit sector concerns the relationship between the French state and the social economy (Archambault 1997a, 104). The “interdependence” of the French state and the religious and secular associative sector “crucial to understanding the very nature of European welfare regimes” reinforces the continuing, albeit negative, importance of the welfare state context in France (Lewis 2004, 170-171). In addition, the narrower notion of social economy as compared with the US notion of civil society discussed in Section 1.3.2 appears to reflect the welfare state’s occupation of the “space” between government and the individual by providing social services and regulating the social economy sector. The literature suggests the French nonprofit sector may increasingly occupy this “space” but within a persistent welfare state environment (Archambault 1999b, 13). This contrasts with aspects of US governmental-nonprofit sector relationships that affect the context for accountability – particularly the potential influences on interpretation of the transfer of accountability policies and mechanisms from the US to France. Fukuyama, for example, contrasts American civil society with greater “space” and passion for community service as a balance to democratic “excessive individualism” with France’s administrative and political inflexibility (Putnam 2000, 19 and 24; Fukuyama 1999, 4 and 5, respectively).<sup>152</sup> US experts favour government’s deliberate avoidance of certain areas of the sector (as opposed to waiting for NPOs to address a government weakness) (Fleishman 1999, 177).<sup>153</sup>

### **2.3.2 Social Service Delivery and Financial Issues Relating to Accountability**

The implications of allocation and financing of social services within the larger welfare state environment exemplify two elements of the welfare state environment potentially related to accountability. Both reflect the combination of

<sup>151</sup> See also Laville’s “solidarity-based” NPOs as trust-based partners with local actors (Laville and Nyssens 2000, 67, 68 and 71). Lewis notes new EU partnerships among the state, the market, and NPOs, recognising the “economic and political importance of the third sector” (2004, 177). See also press reports on the active associative sector (e.g. Agence France Presse 2005 and de Tricornot (Le Monde.fr) 2008).

<sup>152</sup> Notwithstanding Putnam’s caution that social capital in the US is declining, he appears optimistic that the trend can be reversed (2000, 27 and 25, respectively). See Sections 1.3.2 and 2.1.3.

<sup>153</sup> However, Carothers counters that many French citizens, among other countries, consider their own system with greater governmental control over resource allocation more effective (1999-2000, 4).

“corporatist...form” and “pluralist...practice” referred to above (Freeman 1994, 190). In addition to informing respondents’ general perspective, these two sub-issues issues relate to Hansmann’s question of the type of organisation best suited to particular activities and donor behaviour (1980, 897-8).<sup>154</sup>

First, the welfare state breeds an attitude of dependence on government for social services and the view that social services are largely a governmental responsibility. Recent reports speak of the “strong belief” in France that the French state rather than NPOs should provide social services – as opposed to the importance of NPOs in delivering social services in the US and increasingly in the UK (Charities Aid Foundation 2006, 12). Archambault adds that “...the average citizen still considers that it is up to the government to deal with any civic, social or economic problem” and not to resort to self-help (Archambault 1997b, 17).<sup>155</sup> This general notion that taking care of others is largely the French state’s responsibility is also reflected in the strong French individualist attitude.<sup>156</sup> This individualism negatively influences the French nonprofit sector, seemingly accountability notwithstanding. Fukuyama contrasts de Tocqueville’s remark that “there were not ten Frenchmen who could come together for a common cause” with the US literature emphasising social capital (Fukuyama 1999, 4-5; de Tocqueville 2000, 577-8; Putnam 2000, 27).<sup>157</sup> Thus the empirical analysis requires consideration of these welfare state influences on the French nonprofit sector generally.

Accountability in France is also influenced by the notion of a “widespread welfare *partnership*” developing particularly since the 1980s and involving the state financing welfare services but relying on “private civil society organisations” for service delivery – rather than commonly assumed government provision of services (Salamon, Wojciech Sokolowski, and List 2003, 31; Archambault 1997b, 17). In this so-called “corporatist model,” the state (through the welfare budget) and the French

<sup>154</sup> See Section 7.1.

<sup>155</sup> Note Hansmann’s warning of the potential bureaucracy and inefficiency of governmental accountability that requires a chain of accountability from “individual service organizations” to the governmental authorities (1980, 895). Hansmann notes that such additional costs would be difficult to justify, at least without economies of scale often not seen with the types of services NPOs provide (1980, 895).

<sup>156</sup> The cultural implications and impact thereof on accountability remain unclear but are considered a “serious political challenge” (Worms 2002, 153). See also Institut Montaigne 2004, 6-7; Worms 2002, 159 and 186; Archambault 1999a, 2. Also the French emphasis on discretion in discussing money potentially could affect financial transparency (e.g. Fondation de France-Observatoire de la Fondation de France/TNS Sofres 2003, 9). See Note 432, *infra*.

<sup>157</sup> Soublin and three business leaders and potential high-level donors candidly link the notion of the French state’s responsibility to care for the public to lower levels of giving, voluntarism, and generally associating for, or concerning oneself with, the benefit of others (e.g. Soublin call September 2006; Oddo discussion 2007; David-Weill informal discussion 2006; and Bazin call 2005).

nonprofit sector “cooperate” rather than functioning as “alternative providers” (Lewis 2004, 172-3).<sup>158</sup> This “partnership” includes contractual arrangements linking state bureaucracies and NPOs. Partnerships may result from a transfer of state responsibility to associations, new legislation circumscribing a new area for citizenship involvement, or growth in new areas of interest the state considers as in the associative domain (Worms 2002, 145 and 146). Freeman highlights the “decentralised structure” as key to the “corporatist form,” as well as the conflictual nature of the pluralist system in which officials have legally-based authority but social agencies, professional groups, and even beneficiaries of the social system all exert influence (Freeman 1994, 191).

One example of these “partnerships” particularly susceptible to accountability issues concerns outsourcing French state functions. Such outsourcing arrangements have been interpreted as administrative expansion “in the guise of associative legal status” and often involve creation of a sort of false association (i.e., an association in form but not function) (Worms 2002, 144; Archambault 1997b, 47). These joint arrangements may jeopardise accountability by compromising associative independence, particularly regarding control of use of funds. Such cases reflect partnerships functioning through top down authority (“associationalism from above” or “associative arms of the welfare state”) so that associations become de facto government agencies (Nicholls 2006, 1779, 1780, and 1785; Worms 2002, 147, respectively).<sup>159</sup> Archambault calls nonprofit organisations “more or less quasi-public associations” with a high level of government funding (often through the social security scheme or by local department) and heavily regulated (Archambault 2006, 7).<sup>160</sup>

Second, the complex dependence of associations on government financial support also complicates accountability (e.g. Salamon 1995, 256; Archambault 2005, 16; Archambault 1999b, 5-7, 13-14).<sup>161</sup> Reductions in government support seriously affect NPOs in countries like France with long-standing public funding (Anheier 2002,

<sup>158</sup> See also Alcock and Craig on voluntary sector organisations providing welfare services in the UK (2001, 130).

<sup>159</sup> Note Carney and Ramia’s proposal that government should transfer to civil society some social service delivery, favoring a “republican citizenship” vision for reasons of fairness and greater transparency and accountability (2001, e.g. 28).

<sup>160</sup> Soublin targets this “outsourcing” as a serious accountability issue allowing organisations that are not truly NPOs to benefit from the NPO legal status through various tax and other government advantages (Soublin interview 2007). See also Archambault 1997a, 121, Paris meeting 2005, and Charhon meeting 2005. One organisation specifically recognised some infringement on autonomy but considered themselves independent (Organisation 22). The literature on the French sector did not focus on Craig and Dowler’s point on the UK that the government can call NPOs raising social issues “patronizing” and “insulting” (Craig and Dowler 1997, 115).

<sup>161</sup> See also Paris meeting 2005 and Organisation 22.

4; Archambault 1997a, 120).<sup>162</sup> Foundations are significantly less dependent on state funding, however (Archambault 2003, 12). In addition to the complexity and uncertainty of government funding, the French state involvement in the sector is so culturally engrained that even practices such as state representation on a foundations's *conseil d'administration* (up to a maximum of one-third of the total number of members) are expected quid pro quo for tax benefits (Archambault 2003, 4).

## 2.4 Conclusion

The literature review established the theoretical framework for exploring empirically and explaining the increasing accountability and the relevance of the trust hypothesis in the French nonprofit sector. Hansmann's demand side trust theory was posited as a starting point for the research. The origins of the theory were updated with a critical evaluation of criticisms and extensions of the theory relevant to accountability. None undermines the potential on-going relevance of Hansmann's theory or application in the French context. Rose-Ackerman's suggestion of the importance of "signal[ling]" trustworthiness provides a lens through which to evaluate respondents' individual strategic assessment of accountability-related decisions, thereby linking the trust theory to the accountability research. In addition, Salamon's argument that accountability (particularly performance evaluation) increasingly supplements Hansmann's nondistribution constraint as the means of generating trust suggests a spectrum from trust based on the intrinsic characteristics of the nonprofit form toward trust derived from increasingly complex accountability efforts as a second frame for the evaluation of the empirical findings.

The definition of accountability is also grounded in the literature – both scholarly work (the general definition) and best practice literature (the operationalised definition). The proposed definition bridges theory to practical application for the research. The definition also establishes a base for subsequent policy recommendations.

Finally, the literature review exposes gaps in the literature with respect to accountability and trust that the empirical research targets. The analysis of the French literature also explored aspects of the French welfare state environment essential to

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<sup>162</sup> See Section 5.3.3 on funder accountability requirements (as defined in Section 5 Introduction).

interpreting the empirical findings on increasing accountability and trust (particularly applications of Hansmann's US-based theory and US models of accountability) in the French context. Social service delivery and financial dependency emerged as two key areas of the welfare state background relating to both the theory and empirical analysis to come.

The trust and accountability issues addressed in the US literature, combined with the potential welfare state issues addressed in the France-focused literature, frame the two "next steps" guiding the empirical analysis. First, the gap in the literature regarding increasing accountability and trust in the French nonprofit sector suggests the importance of an assessment of increasing accountability and the relevance of Hansmann's theory as a starting point for the research. Second, the gap in "supply side" responses to Hansmann's demand side theory invites empirical exploration of organisations' perceptions and actions (strategic assessment) relating to trust and non-trust based explanations for increasing accountability and Salamon's challenge to Hansmann's theory. Chapter 3 bridges the discussion of theory, definitions, and French nonprofit sector context in this chapter to the empirical analysis (in Chapters 4 through 7) by establishing the regulatory and voluntary best practice frameworks in the US and France.

## Chapter 3

### Top Down and Bottom Up

***US Regulatory and Voluntary Accountability Models***  
***French Accountability Regulation and the French Tax System***

“To a large degree, the accountability movement within the [US nonprofit] sector is driven from the top down rather than the bottom up” (Brody 2002, 479).

“The French state is like an octopus. It has too many tentacles – it does too much [nonprofit sector regulation] and it does it badly” [author translation] (Organisation A).

“There is enough regulation but not much reflection on governance. The focus is always about democratic issues like members of an association, and this focus on the democratic prevents the imposition of standards of accountability” [author translation] (Organisation H).

“The problem is the many layers of regulation. No one understands it – especially the public – and it has a negative impact on giving” [author translation] (Organisation 21).

#### **Introduction**

This chapter takes the final step toward establishing the foundation for the empirical analysis by linking the theoretical and definitional framework proposed in Chapter 2 to the evolving regulatory environment. Fundamental elements of French accountability regulation and the French tax system are essential context for analysing the strategic assessment process leading to increasing accountability that is emerging as a key theme in this thesis. Hansmann’s trust theory directly links to regulation for the roots and enforceability of the nondistribution constraint. Salamon’s position on accountability reflects an evolving US federal and state regulatory environment. Rose-Ackerman’s strategic assessment of “signalling” accountability through which organisations position themselves on the trust theoretical spectrum between Hansmann and Salamon necessarily includes regulation as an external variable requiring exploration.

Section 3.1 provides relevant historical and comparative background on accountability in the US nonprofit sector. As a more advanced accountability environment, US models of accountability and tax regulation (and the self-regulatory and voluntary fall-out from regulation) serve as a benchmark for assessing the strategic assessment process in France within the proposed theoretical framework and definitions.

Section 3.2 then critically analyses the elements of French accountability regulation and the French tax system most relevant to increasing accountability and the trust hypothesis. This section also analyses the empirical findings relating to the limited importance of these two regulatory external variables to respondents' strategic assessment of accountability. The comparison exposes weaknesses in the French system that will be traced through the empirical analyses in Chapters 4 through 7 and that underlie policy recommendations based on the findings in Chapter 8.

Finally, Section 3.3 relates the regulatory environment to the theoretical framework. Enforceability of the nondistribution constraint is the first link between regulation and theory. The increase in US nonprofit accountability regulation and best practice following the Sarbanes-Oxley Act also calls into question the continued validity of Hansmann's trust theoretical framework. This and subsequent chapters attempt to draw the line on the continuum between Hansmann's trust based on intrinsic NPO attributes, on the one hand, and Salamon's positioning of accountability as a necessary complement to Hansmann's trust in an era focused on performance evaluation, on the other hand.

### **3.1 US Nonprofit Sector Accountability: Regulatory Framework (Federal and State) and Links to Self-Regulation and Voluntary Accountability Mechanisms**

This section reviews the key elements of the US regulatory framework (state law, the Sarbanes-Oxley Act, and relevant US nonprofit tax law provisions) influencing increasing accountability. The section then argues the importance of voluntary accountability mechanisms to balance regulation. In particular, these US regulatory models and related best practice aid understanding of the origins and relevance in the French context of the potential driving forces behind increasing accountability within the larger donor trust and ethical, effective management objectives: corporatisation, integration of international standards, and compliance with funder accountability requirements (as discussed in Chapter 5) and donor pressure, the media, and Comité membership (as discussed in Chapter 6).

While recognition of the importance of accountability in the US may be traced back to the earliest US cultural landmarks and the beginning of the US nonprofit sector,

scholars have noted a particular rise in attention to accountability in the nonprofit sector in the early 1990s.<sup>163</sup> The Sarbanes-Oxley Act and related for-profit Enron/WorldCom scandals and nonprofit scandals prove a pivotal recent accountability development (US Government 2002; Beltran (CNNMoney.com) 2002; Washingtonpost.com 2004, respectively). Adopted less than a year after the Enron scandal broke, the Sarbanes-Oxley Act is widely considered a swift, stern political and legislative response to the wave of corporate and accounting scandals (Hamilton and Trautmann 2002, Chapter 1, Section 101).<sup>164</sup> This heavily regulatory-driven environment triggered, in turn, a self-regulatory and voluntary response throughout the sector (Brody 2002, 475, 479, and 480).<sup>165</sup> The almost immediate migration of Sarbanes-Oxley Act requirements and practices into the nonprofit sector via state law and self-regulatory best practice guidelines reflected a new increase in NPO implementation of accountability mechanisms in response to parallel NPO scandals. Two pivotal examples, the American Red Cross blood and September 11, 2001 Liberty Fund scandals, received particular public attention due to the size and renown of the organisation and the sensitivity and of the timing and subject (American Red Cross/Decker et al. 2001; Mitchell 2002; Jackson and Fogarty 2005, 71 and 69, respectively; Keating and Frumkin 2000, 1 (citing Murawski 1995); Murawski 1995).<sup>166</sup> Trust was an urgent and fundamental concern. As

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<sup>163</sup> Kearns, for example, suggests that notions of accountability in the nonprofit sector dated back more than 200 years since the “third sector” emerged in the US and that scholarship in the 1980s and 1990s abounded (Kearns 1994, 185-187 (citing Hall 1987)). See also Bill of Rights preamble on preventing misuse or abuse of power (United States Congress 1791, Bill of Rights preamble). See also Scott and Lyman referring to “*excuses and justifications*” of behaviour and “bridging the gap between action and expectation” (2005, 224 and 219, respectively).

<sup>164</sup> See also Romano on “emergency legislation” (2005, 2, 3, and 8); Reiser 2005, 559; and e.g. Gertner 2006, 1 from general press.

<sup>165</sup> The Enron scandal, one of the most significant US corporate scandals at the time, involved irregular accounting practices by Enron and its accountants Arthur Anderson ending in criminal prosecution and near bankruptcy (e.g. Washingtonpost.com 2004). WorldCom was the biggest bankruptcy in terms of total dollar amount as of 2002 following business challenges and serious fraud (e.g. Beltran (CNNMoney.com) 2002). Neither company published information regarding the scandals that was available during the research period because neither company existed in the same corporate form. These press articles were consistent with all other reports read. See also Sarbanes-Oxley Act introduction addressing “failures of audit effectiveness and a breakdown in corporate financial...responsibility” (Hamilton and Trautmann 2002, Chapter 1, Section 101).

<sup>166</sup> The Red Cross blood scandal involved large stocks of spoiled, unused blood donations following the September 11 attacks and using the September 11 event as an excuse to restock national supplies (e.g. Suarez 2001 (PBS Online NewsHour) 2001; New York Times 2001). The Liberty Fund scandal involved the Red Cross’ attempted allocation of a significant portion of the \$543 million pledged post-September 11, 2001 New York terrorist attacks (of which less than 1/3 had been spent on September 11 relief efforts) for other projects such as as preparation for future terrorist attacks. See also Keating and Frumkin on United Way (2000, 1); Murawski 1995. This article included commentary from a Red Cross spokesman, New York Attorney General at the time Elliot Spitzer, and Paul Light from the Brookings Institute. See also American Red Cross 2006.

the Red Cross Vice President for Development insisted, “the premium for us is to maintain the trust...This is all about trust, and if it weren’t for the trust, then the American Red Cross” would not be there (Suarez (PBS Online NewsHour) 2001).<sup>167</sup> In France, the l’ARC scandal alone triggered wide-spread fear and the beginnings of serious attention to nonprofit sector accountability.<sup>168</sup>

### **3.1.1 US Regulatory Framework: Accountability Regulation**

The most important sources of US accountability regulation derive from state law and the Sarbanes-Oxley Act. The relationship of both to voluntary and self-regulatory accountability efforts is essential.

Basic US State Law Legal Principles Essential to Trust and the Nonprofit Model. First, the most important legal principle relating to Hansmann’s trust and accountability concerns the authority to hold NPOs accountable. Legally donors (not serving as a trustee) do not have the authority to hold a NPO accountable (i.e., sue for misallocation of donations) after the gift is made (Brody 2002, 477). Rather, the state – generally via the Attorney General – sues to enforce donor restrictions, solicitation, and trustee fiduciary duties (Brody 2002, 479; California Government 2006, Section 12598). In addition, the IRS regulates the tax exemption status through initial and on-going filings (particularly the Form 990).<sup>169</sup>

Second, the prohibition on distribution of profits rooted in state law does not necessarily guarantee the trustworthiness of a NPO or the fact that the state will enforce the prohibition (Brody 2002, 477; Hansmann 1980, 836, 838, 870, and 873; Hansmann 1987, 32). Voluntary NPO boards charged with oversight of accountability are generally bound only by fiduciary duty of loyalty and care (Brody 2002, 477; California Department of Corporations 2007, Section 309). NPOs in the US frequently offer so-called “Director and Officer” (D&O) insurance that protects individual board members from financial liability in the event of legal action against the NPO (Nonprofit Coordinating Committee of New York, Inc. 2007; Grant e-mail March 2008). However,

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<sup>167</sup> See also Light regarding difficulty of healing after scandal (2003, 8) and Suarez (PBS Online NewsHour) 2001, 5).

<sup>168</sup> The L’ARC scandal in France beginning in the late 1980s and investigated into the mid-1990s involved the fraud and misappropriation/mismanagement of funds by the Founder and President Jacques Crozemarie. L’ARC has been widely considered the landmark French nonprofit fraud case and influenced the founding of the Comité. See Section 7.2.1 for a detailed analysis of L’ARC.

<sup>169</sup> See Section 3.1.2.

enforcement is weak due, among other reasons, to regulators' resource constraints and reticence to interfere in NPO management (Brody 2002, 479; Grant e-mail December 2008; Reiser 2005, 598). Accordingly, director liability has not been a significant worry (Lucile Packard Foundation for Children's Health 2005; Brody 2002, 478 and 479). This limited capacity of donors to enforce restrictions on wrong-doing reinforces the importance of Hansmann's donor trust based on the nondistribution constraint and also begs the question how organisations behave in response to inadequate enforcement (Hansmann 1980, 838 and 853).

*The Sarbanes-Oxley Act and Accountability.* The trends in the US nonprofit environment that preceded and followed the Sarbanes-Oxley Act, as well as the implications of the regulation itself, lay an important foundation for the analysis of accountability in the French nonprofit sector. Moreover, the trust-focused purpose of the Sarbanes-Oxley Act raises questions of the relationship between accountability and trust in the regulatory framework and fall-out from regulation in the US and France.

The pre-Sarbanes-Oxley Act period (beginning roughly during early the 1990s) witnessed a combination of crises in the US beginning 2001, all of which affected the nonprofit sector. These crises culminated in the enactment of the law on July 30, 2002 (US Government 2002, Section 101; Hamilton and Trautmann 2002, 3 and 13).<sup>170</sup> The most important factors include the post-September 11, 2001 period of recovery from the terrorist attack and the biggest ever corporate and nonprofit scandals mentioned above. The era also witnessed intensification of numerous fundamental nonprofit sector trends emerging in the second half of the 20<sup>th</sup> century: overall growth in the US nonprofit sector in terms of revenue (Salamon 2003, 50); rising numbers of charitable organisations (between 1987 and 2006 IRS charity registration growing at double the rate of the business sector) (Arnsburger et al. 2008); greater philanthropic sophistication (e.g. Stanford University "think again" campaign) (Meier meeting 2008); increasing commercialisation and competition with for-profit world (e.g. in health care) (Salamon 2003, 68); and the establishment of nonprofit research centres and increased scholarly attention to the field (e.g. Yale University Yale School of Management The MacMillan Center 2007; Salamon 2003, 67).<sup>171</sup> This in turn triggered pressure for corporate social responsibility, even within newer corporate forms such as private equity and venture

<sup>170</sup> See also United States Senate 2002.

<sup>171</sup> The Stanford University "think again" campaign's fund-raising strategy involved a large-scale, nationally performed production of mini-courses by renowned Stanford faculty sampling the University's most innovative curriculum.

capital, that have begun to affect nonprofit accountability practices (Salamon 2003, 38-39). Finally, the end of the 1990s witnessed growing concerns about nonprofit organisations, including “accountability and legitimacy of NGO actors” (Howell and Lind 2009, Chapter 2).

The corporate-focused Sarbanes-Oxley Act proved a fundamental impetus for legislation to regulate nonprofit accountability and influence voluntary best practice standards. The Sarbanes-Oxley Act focuses on “rebuild[ing] *public trust* in the corporate sector” through a range of requirements, most importantly legislating *independent oversight* (US Government 2002, Section 2001 No. 107-205 “Purpose of the Bill”; Hamilton and Trautmann 2002, 159).<sup>172</sup> This independent oversight requires independent directors (as defined in Table 2-1) to provide unbiased governance free of conflicts of interest and is the core of accountability in the US in both the for-profit and nonprofit sectors.<sup>173</sup> The audit committee of the board, comprising independent directors and at least one financial expert, is the primary vehicle for on-going assurance of independent oversight of accountability matters (US Government 2002, Section 301((3)(A)and (B)). The audit committee assures board oversight of both accounting and accountability policies and practices, including the relationship with the auditors, determination of the scope and budget of the audit without management interference, and oversight and investigation of complaints on accountability matters (e.g. National Council of Nonprofits 2002, “Financial Accountability and Audit Committees”).<sup>174</sup>

At present, the only two provisions of the Sarbanes-Oxley Act that apply to NPOs are the whistleblower provision and the document retention requirements (US Government 2002, Sections 806 and 802, respectively; Jackson 2006, 9). The whistleblower mechanism provides employees, volunteers, and board members a formal confidential procedure for reporting inappropriate financial behaviour without risking retaliation on careers. The document retention provisions institute criminal penalties for

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<sup>172</sup> See also The United Kingdom Charities Act (defining the Charity Commission as an organisation with an objective of “public confidence” to “increase public trust and confidence in charities”) (United Kingdom Government 2006, Part 2, Chapter 1, Section 7).

<sup>173</sup> The absence of requirements for such independent oversight, a key weakness in France exacerbated by the membership structure of 1901 Law associations, is addressed in the policy recommendations from this thesis (Section 8.2.2).

<sup>174</sup> Additionally, the Sarbanes-Oxley Act strengthens enforcement standards for financial transactions and internal accounting controls and requires certification by the Chief Executive Officer and Chief Financial Officer of financial information (omitted from VAMs as too new, lacking evaluation, and culturally sensitive for the French nonprofit sector) (US Government 2002, Title IV, Section 404 and Title III, Section 302, respectively). Auditor independence (e.g. prohibitions on audit firms serving as both auditor and consultant for the same entity) is also required (US Government 2002, Section 301: Hamilton and Trautmann 2002, 48).

NPOs that “knowingly [alter] or [destroy]” a document to interfere with investigations within US jurisdiction or in certain other circumstances (US Government 2002, Section 802(a)).<sup>175</sup>

The Sarbanes-Oxley Act has critics in both the for-profit and nonprofit sectors. Executives criticise the lack of efficacy in achieving the desired result and cost of the onerous requirements (e.g. William Zollars of Yellow Roadway claiming 200 employees had to work on the Sarbanes-Oxley Act matters in the fourth fiscal quarter) (Powell 2005). Some believe the politically driven emergency legislative process failed to consider the empirical evidence properly and legislated reforms that had little relation to the failure of firms such as Enron (Romano 2005, 2). Nonprofit experts criticise efficacy of disclosure-based reforms for accountability (as mentioned with respect to the Form 990) (Reiser 2005, 568-572). The combination of the duplicative nature of many proposed reforms, overly optimistic assumptions about compliance (and over-regulating compliant organisations while still failing to regulate intentional fraud), limitations on enforcement, and the cost of compliance diminishes the efficacy of these reforms (Reiser 2005, 561). In particular, disclosure to regulators cannot be the only means of enforcement as state Attorneys General and the IRS lack the resources and capacity even to assess the information they already have (e.g. Bograd 1994, 8-10). In addition, as noted above, public disclosure fails because constituencies are frequently insufficiently motivated or experienced to analyse NPO disclosures (Reiser 2005, 605; Keating and Frumkin 2000, 7 and 8).

These criticisms, nonetheless, fail to reflect the mitigating factors and the intrinsically positive benefit of greatly improved independent oversight for the nonprofit sector. First, each organisation manages the strategic assessment of voluntary accountability mechanisms with a view to efficiency for donors as well.<sup>176</sup> Second, many donors do have the resources to investigate NPOs, particularly the larger and institutional donors. The weighing up of influences on, and costs and benefits of, accountability applies to donors as well. For some lower level donors the effort to assess accountability may not be worth the cost given the size of the gift and other factors. Some may benefit indirectly by relying on the fact that larger donors do verify accountability (so-called “free-riding”) (Hansmann 1980, 848-9). Third, efforts regarding readability and consistent presentation, for example the new Form 990

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<sup>175</sup> See also Section 4.2.3.

<sup>176</sup> See Section 3.3.

revisions, also aim to assist understanding and comparison (USGDTIRS 2007a, 2). Finally, several organisations and experts argue that implementing accountability mechanisms brings value by improving organisational discipline (Organisations 18, 19, B, C, and D: Frotiée and Chartier teleconference January 2008; Charhon meeting 2005; Soublin interview 2007).<sup>177</sup>

The post-Sarbanes-Oxley Act period from late 2002 to the present reflects developments related to the analysis of increasing accountability and trust in France. First, a rapid state legislative response (e.g. the CNIA addressed in Section 3.1.4 below) reinforced the nonprofit regulatory framework and the topdown approach to self-regulatory and voluntary accountability efforts. Salamon also notes the environment of reduced public trust and reliance on traditional NPO reputation and regulations on which he believes “the entire edifice of the nonprofit sector rests” (2003, 29). The intensification of the transfer of market practices and regulation to the nonprofit sector, including a new focus on performance measurement and monitoring, calls into question the role of donor trust and traditional NPO roles and values (Salamon 2003, 29).<sup>178</sup>

*Follow-On to the Sarbanes-Oxley Act in State Law.* Several states and their Attorneys General have taken the Sarbanes-Oxley Act as the “wake up call” the nonprofit sector widely believes it is and launched efforts to protect donors through state legislation (Independent Sector and Board Source 2006, 2; United Way 2008a; California State Senate 2004). The extensive intervention of state legislation contributes greatly to the top down US approach to accountability. Critics argue that the reactions of the state Attorneys General focus excessively on financial accountability, ignoring organisational accountability and mission accountability for a range of political, practical, financial and other reasons (Reiser 2004, 13).

California’s response to the Sarbanes-Oxley Act exemplifies the rapid and thorough response of state legislatures. California signed the CNIA September 29, 2004 for effectiveness only four months thereafter as of January 1, 2005 (California State Senate 2004).<sup>179</sup> The key provisions of the CNIA include an independent audit of

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<sup>177</sup> See Section 7.2.3 on the potential benefit of accountability mechanisms independent of donor response.

<sup>178</sup> See Sections 5.3.1 and 5.3.2 on corporatisation and the transfer of international accountability standards to France, respectively.

<sup>179</sup> See also Gertner 2006, 1 (re hospital lobbying for CNIA exclusion); California Registry of Charitable Trusts 2005; Reiser 2005, 564. See also New York and Massachusetts as models for other states (New York State, Office of the Attorney General 2003, State of New York 2003, and State of New York 2004; Massachusetts (Office of Massachusetts Attorney General Tom Reilly) 2007, respectively).

financial statements and audit committee for charities with gross revenues of \$2 million or more and authorised board committee or full board oversight of executive compensation (Chief Executive Officer and Chief Financial Officer) to ensure compensation is “just and reasonable.” The CNIA also addresses a range of requirements relating to fund-raising (California State Senate 2004, Sections 12586(e)(1), (e)(2), and (g), and 12599, respectively). Despite the seemingly onerous provisions, the CNIA steps up requirements with organisation size, particularly audit committees (Ostrower and Bobowick 2006, 5).

*Relationship Between Accountability Regulation and Voluntary Accountability Mechanisms.*

Mechanisms. The Sarbanes-Oxley Act and state law requirements trickled down to self-regulatory initiatives and voluntary best practice. Nonprofit sector leaders such as the self-regulatory organisations Independent Sector and Board Source strongly recommend the voluntary adoption of a number of Sarbanes-Oxley Act and other provisions related to good governance (Independent Sector and Board Source 2006). The US nonprofit sector has witnessed the rise of a wide range of venture philanthropy firms, consulting firms, and other service providers borrowing optional for-profit accountability expertise for nonprofit challenges (SV2 group meetings 2002-04; Arrillaga e-mail 2008; Social Ventures Partners International (SVPI) 2006).<sup>180</sup>

VAMs and other voluntary accountability mechanisms increasingly prevalent in the US are generally evaluated through the individual strategic assessment, including the impact of internal and external variables on accountability. Some accounting and other internal controls may be complex and costly to implement, requiring significant outside expertise, particularly for smaller NPOs that do not have salaried positions to handle such matters (KPMG-Observatoire 2007, 35 and 37). Most of the other optional items do not involve significant cost (e.g. the conflict of interest policy described in Table 2-1 and Section 4.2.1).

**3.1.2 US Regulatory Framework: Tax System and Accountability – Internal Revenue Code Section 501(c)(3) and Form 990**

The US tax system is heavily focused on accountability and accessibility of information disclosing accountability matters to the public. The Internal Revenue Service functions as the gatekeeper for charitable organisations through the Internal

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<sup>180</sup> See Section 5.3.1 on corporatisation.

Revenue Code Section 501(c)(3) application process that pre-approves charities based on structure, activities (which must be limited to a “charitable purpose”), and commitment to comply with on-going reporting requirements (USGDTIRS 2008b).<sup>181</sup>

In addition, the Internal Revenue Service’s Form 990 (dating in large part back to 1979) is the basic disclosure document through which NPOs in the US report to the Internal Revenue Service annually in order to maintain tax-exempt status and privileges (USGDTIRS 2008a, 1).<sup>182</sup> The Form 990 targets a number of the key accountability issues such as conflicts of interest, independent voting directors, executive compensation, financial disclosure, and control of flow of funds as an anti-terrorism measure (USGDTIRS 2008a, VIB12a-c and Part IV28a-c (Schedules); Part VIA1 and 2; Part VII and VIB 15a and b; Parts I, VIII, and IX; Part IV14a and b and 15, respectively).<sup>183</sup> The Form 990s are on file publicly and available on-line. This regulatory approach enhances comparability. In particular, the Internal Revenue Service’s specially designed web site facilitates searching a master file of approximately 1.3 million individual organisations (including private foundations) (USGDTIRS 2007a, 1; Urban Institute 2006, 1).

Hansmann suggests that early on the Internal Revenue Service may not have been consistent in sanctioning self-dealing (particularly misappropriation of organisation assets for the benefit of controlling persons such as senior management) and other such behaviour. This is in part because the only available sanction – withdrawing charitable tax-exempt status under Section 501(c)(3) – seemed too draconian (Hansmann 1980, 874). The Form 990 offers greater oversight, opportunities for correction, and more moderate sanctioning. Moreover, the Form 990 allows the public to judge the NPO in question, either generally or on specific points of interest.

Some commentators consider the Form 990 the main, but an unsatisfactory, nonprofit sector response to the flurry of NPO scandals in the 1990s (Keating and Frumkin 2000, 1; USGDTIRS 2008a). Recent requirements to publish the Form 990 on the IRS web site for organisations of a certain size, and recent efforts to prepare collective information, do not solve the weaknesses in many NPO accounting systems, or the number of users unmotivated or unable to access the Form 990 and/or unable to

<sup>181</sup> See also USGDTIRS 2008d for a general overview of information on charities and other NPOs.

<sup>182</sup> The Form 990 underwent a significant revision starting in 2007 and implemented in 2009 (relative to fiscal year 2008) primarily targeting increased transparency (i.e., a full picture of the organisation for comparability purposes), promoting compliance for Internal Revenue Service compliance verification, and minimising the burden on organisations (USGDTIRS 2008a, 2).

<sup>183</sup> See also Howell’s discussion of anti-terrorism measures (Howell 2006).

read and interpret financial information (Keating and Frumkin 2000, 2 and 3; Reiser 2005, 602).<sup>184</sup> Rating agencies also fault the number of errors (Nelson 2004, 4). Nonetheless, the common format among organisations and easy, no-charge availability to the public represents considerable progress in transparency, consistency, and availability and comparability of information.<sup>185</sup>

### **3.2 French Nonprofit Sector Accountability: Regulatory Framework and Empirical Findings Relating to the Impact of Regulation on Strategic Assessment of Increasing Accountability**

The French regulation most relevant to increasing accountability in the French nonprofit sector comprises primarily two parts: accountability regulation and the tax system.<sup>186</sup> First, the key elements of the accountability regulatory framework are critically assessed: the requirements of audited accounts; more substantive financial statement requirements; and the Statement of Use of Funds (*Compte d'Emploi des Ressources*). Key comparisons to the US are indicated where relevant to interpretation of the empirical findings and policy recommendations. Second, the analysis dissects relevant elements of the French tax system with a view to assessing the impact of the tax system in driving accountability. Most importantly, while overall the tax system has improved financial incentives for donations to NPOs, unlike the US system the French tax system does not impose or reinforce requirements related to accountability.

The second part of the analysis of French regulation bridges the regulatory framework to the empirical findings. It explores respondents' perception of the limited relevance of accountability regulation and the tax system to the strategic assessment of accountability and the views of the importance of donor trust. In particular, respondents' perceive a separation between these regulatory external variables and their own strategic assessment and accountability efforts – irrespective of de facto increases in accountability through regulatory requirements. Finally, it assesses the empirical

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<sup>184</sup> Donors are using accountability for financial leverage, but the demands for special accountability are limited given the low ratio of institutional donors to less informed, demanding individuals (Keating and Frumkin 2000, 7).

<sup>185</sup> See also Section 8.2.3 on related policy recommendations for France.

<sup>186</sup> The other two non-regulatory external variables – the welfare state environment and scandal – complete the analysis of external variables in Chapter 7.

findings on self-regulation generally and the Comité as a model of a self-regulatory organisation specifically.

### **3.2.1 French Regulatory Framework: Accountability Regulation**

*Key Provisions of Accountability Regulation.* French NPO accountability regulation is less coordinated than the US system. According to several experts and the commonly cited texts, the system comprises the 1901 Law (in the case of associations), the law on giving (*mécénat*) (in the case of foundations), and occasional additional laws and regulations addressing specific subjects enacted from time to time without a coherent structure or guiding strategy (Chartier and Frotiée teleconference January 2008; Berthet call 2008; Binder meeting 2007; Binder 2005, 118; French Government 1901b; French Government 1987). Moreover, unlike in the US where accountability is addressed in both accountability regulation and the tax system, in France the tax system remains separate and does not impose accountability-related obligations or disclosure of accountability mechanisms. Thus a core problem is that the highly inclusive 1901 Law still exists 108 years after implementation with the government adding new laws to address emerging issues in an unstructured, issue by issue fashion (Organisations 20 “haphazardly multiplying controls” and 21 “many layers”). This compares to a coherent system with an overarching goal like the Sarbanes-Oxley Act focus on independent oversight of accountability or the Form 990 emphasis on public disclosure.

First, with respect to enforceability of claims against a NPO, legal experts say that generally the equivalent of a chief prosecutor (*procureur général*) as representative of the French state pursues criminal actions. The important similarity with the US system described in Section 3.1 is the fact that donors would not directly pursue action against a NPO (e.g. for fraud or other violation of accountability regulations) (Berthet, Frotiée, and Chartier teleconference 2008; Joly e-mail 2008). Therefore, with respect to the enforcement considerations relevant to Hansmann’s nondistribution constraint the French system reflects similar processes.

More specifically, there are three primary accountability regulations: audited accounts; financial statements; and the Statement of Use of Funds (counted within the

financial statements but of such significance recently that addressed separately here).<sup>187</sup> Table 3-1 sets out a comparison of the most significant US and French regulations relating to these requirements and other VAMs.

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<sup>187</sup>See French Government 2005, Articles 5 and 7; French Government 2005, Article 8; and French Government 1991a, Article 4, respectively (all explored as relevant in this chapter).

**Table 3-1**

**Regulatory Requirements and Comité Requirements Relating to Key VAMs:**  
**US and France**

VAMs	Regulations	
	US	France
<b>Independent Directors</b> <b>Financial / Accounting Expert Directors</b>	<ul style="list-style-type: none"> <li>• State Law (derived from Sarbanes-Oxley Act)</li> <li>• Independent Sector</li> </ul>	<ul style="list-style-type: none"> <li>• Not legally required</li> <li>• Not required by the Comité</li> </ul>
<b>Audit Committee (US-style)<sup>1</sup></b>	<ul style="list-style-type: none"> <li>• State Law (derived from Sarbanes-Oxley Act)<sup>2</sup></li> <li>• Independent Sector</li> </ul>	<ul style="list-style-type: none"> <li>• Not legally required</li> <li>• Not required by the Comité</li> <li>• Most common practice is some form of finance committee</li> </ul>
<b>Whistleblower Mechanism</b>	<ul style="list-style-type: none"> <li>• Sarbanes-Oxley Act (applicable directly to NPOs)</li> <li>• Independent Sector<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Not legally required</li> <li>• Permitted only in compliance with Data Protection Act<sup>4</sup></li> </ul>
<b>Conflict of Interest Policy (financial and non-financial)</b> • Written • Unwritten	<ul style="list-style-type: none"> <li>• Form 990<sup>5</sup></li> <li>• Independent Sector Checklist</li> </ul>	<ul style="list-style-type: none"> <li>• Only financial conflicts of interest</li> <li>• Comité requirements<sup>6</sup></li> </ul>
<b>Financial Statements:</b> • Balance Sheet • Statement of Use of Funds • Income Statement • Annual Report of Activities	<ul style="list-style-type: none"> <li>• Form 990 (publicly available on-line)</li> <li>• Independent Sector</li> </ul>	<ul style="list-style-type: none"> <li>• Required: a 4-part financial statement package certified by <i>commissaires aux comptes</i> (filed with authorities but not widely publicly available)<sup>7</sup></li> </ul>
<b>Disclosure of Senior Executive Compensation</b>	<ul style="list-style-type: none"> <li>• Form 990</li> <li>• Independent Sector</li> </ul>	<ul style="list-style-type: none"> <li>• Legally required (top 3 salaries in aggregate)</li> <li>• Required by Comité (top 5 salaries in aggregate)</li> </ul>
<b>Document Retention Policy</b>	<ul style="list-style-type: none"> <li>• Sarbanes-Oxley Act (applicable directly to NPOs)</li> </ul>	<ul style="list-style-type: none"> <li>• Required but through non-accountability regulation<sup>8</sup></li> </ul>
<b>Code of Ethics</b>	<ul style="list-style-type: none"> <li>• Independent Sector</li> </ul>	<ul style="list-style-type: none"> <li>• Not legally required</li> <li>• Comité has Charter applicable to members<sup>9</sup></li> </ul>

Source: Author's research and specific sources noted in footnotes.

<sup>1</sup> Closely resembling US-style regulation and practice with independent *administrateurs*.

<sup>2</sup> E.g. CNIA (California State Senate 2004, Section 12586(e)(2)).

<sup>3</sup> The following provisions from the Independent Sector Accountability Checklist (AC) and Checklist for Charities (CFC) (based on the Sarbanes-Oxley Act) relate to the VAMs cited: whistleblower (AC No. 8 and CFC No. 6); Code of Ethics (AC No.2); independent directors (AC No.5); audit committee (AC No. 5 and CFC No. 3); conflict of interest policy (AC No. 3 & CFC No.1); financial statements (AC No. 3 and CFC No. 1); and disclosure of executive compensation (AC No. 6 and CFC No.5).

<sup>4</sup> See Section 4.2.1 "Whistleblower Mechanism" on cultural and legal implications of whistleblower mechanisms in France.

<sup>5</sup> References to Form 990 are to the 2007 version currently in effect. Applicable provisions include Parts V-A; Parts I, II, IV, and VII. The revised draft under consideration extends governance disclosure considerably (USGDTIRS 2008a, Part VI).

<sup>6</sup> Comité 2008a.

<sup>7</sup> French Government 2005, Articles 5 and 7; Conseil National de la Comptabilité 2008.

<sup>8</sup> Chartier and Frotié teleconference January 2008.

<sup>9</sup> Comité requirements may be found as follows: conflict of interest policy (Comité 2008a); financial statements (Comité 2006a, Section IV and Comité 2008a); and disclosure of salaries (Comité 2008a).

The first key requirement is appointment of independent auditors (*commissaires aux comptes*) for all associations and foundations in excess of €153,000 in donor revenue (French Government 1987, Article 4-1; French Government 2006b, Articles 1 and 2; French Government 2005, Article 5, Paragraph II). The primary purposes of the audit requirement are to verify the accounting documents, to compare the practices with applicable accounting regulation, and to certify that the accounts give a valid portrait of the financial reality (Durand call 2007). Under French law, *commissaires aux comptes* are not simply certified accountants but rather also have obligations to report wrongdoing or non-complying accounts to specified state-appointed authorities.<sup>188</sup>

Second, as noted in Table 3-1, financial statements are required. Overall, the financial statements themselves approach US standards except with respect to isolated issues (e.g. disclosure of aggregate versus individual management compensation). However, most significantly NPOs are only required to file financial statements with the local administrative office and not in most cases to make them publicly available as in the US through the Form 990 system (French Government 2005, Article 8).

Third, the Statement of Use of Funds (subject to review by the *commissaires aux comptes*) offers more specific transparency to donors regarding the use of their gift (i.e., sources and uses of revenue from the general public). Recently the Conseil National de la Comptabilité (national accounting authority) implemented requirements to delineate all revenue from fund-raising from the public linked to the financial statements (Conseil National de la Comptabilité 2008). The Comité disagrees with recent changes to the regulation requiring publication of certain ratios (e.g. operating expenses to revenue) on the grounds that different sectors are not comparable (Comité senior management call/interview 2008). These are addressed in subsequent discussions as relevant.

Fourth, it is expected that a decree will be issued within several months of the date of this thesis requiring NPOs to publish basic financial information in the Journal Officiel, the official publication of laws and regulations in France. Soublin believes that donors will not consult the Journal Officiel (as they might, for example, a NPO's web site). However, Soublin speculates that various intermediaries such as the media or rating agencies might (Soublin call December 2008). Moreover, the financial information is limited and unexplained (i.e., numbers without verbal commentary

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<sup>188</sup> The Comité reinforces independence at the level of review of on-going compliance with Comité requirements by prohibiting a *censeur* from acting as *commissaire aux comptes* and *censeur* for the same organisation (Comité 2008o, Part I Section 1.3).

explaining issues not obvious from the accounts).<sup>189</sup> Until the decree is published the value of the requirements for improving accountability (particularly transparency) remains unclear.

The most important regulatory differences with the US and weaknesses in the French system relate to mechanisms for independent oversight of accountability and accessibility of accountability-related information noted above. There is no legal or Comité obligation to have a US-style audit committee, whistleblower mechanism, document retention policy, or independent or financial/accounting expert *administrateurs*. Among the organisations that have some version of a finance/audit/investment committee there is wide variety in responsibility and skill set of the participants and quality and focus of such committee (Chartier and Frotiée teleconference January 2008). In rare cases, organisations' *statuts* do exceed the regulation and provide for independent directors and/or a US-style audit committee (Organisation 11).

*Empirical Findings: Confusion and Criticism Surrounding French Accountability Regulation.*<sup>190</sup> The French accountability regulation generates significant confusion and criticism. A range of issues, including the source of the regulation, the relationship with government, the amount of regulation, and criticisms of efficacy and enforcement, plague the system. Evidence to be presented indicates that respondents do not perceive accountability regulation as an important influence on the strategic assessment of individual organisations. Within this overriding conclusion, respondents from both the Comité Group and the Control Group commented on specific aspects of the regulatory environment most important to their organisations. These comments collectively contribute to an overall qualitative panorama but are not intended to imply that only a small number agree with each of the various elements as interview time did not permit all respondents to comment on all details.

First, unlike the Sarbanes-Oxley Act and the Internal Revenue Service Form 990, the sources of the French regulations are often unclear. 16 (36%) respondents (14 (42%) Comité Group and two (17%) Control Group) harshly criticised the range of sources from the Minister of the Interior, the Minister of the Economy, the Minister of Foreign and European Affairs, and the local authorities, as well as l'IGAS, the Cour des

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<sup>189</sup> See Section 8.4 for a recommendation to the Comité regarding requiring verbal explanations of accounts.

<sup>190</sup> See 5.3.3 for a related discussion of duplication of requirements for French state funding.

comptes, and other authorities, resulting in a lack of understanding of the overall regulatory framework and objectives (Organisations 2, 3, 4, 5, 6, 10, 14, 17, 19, 21 (“no one understands the various layers”), 23, 28, 30, 32, A, and B).<sup>191</sup> 12 (27%) respondents (nine (28%) Comité Group and three (25%) Control Group) criticised overlap among various accountability regulatory requirements, as did Professor Edith Archambault and Soublin (Organisations 7, 11, 15, 19, 20, 21, 22, 23, 33, A, D, and E; Archambault discussion 2008; Soublin call December 2008, respectively). Three respondents specifically noted the absence of one publication outlining all of the applicable laws and regulations (Organisations 7, 25, and 27). Moreover, three of the most well-known and heavily regulated organisations commented on “not seeing” the regulation – meaning that they did not see the *accountability* regulation in the morass of rules and regulatory “holes” between the nonprofit and commercial sectors (Organisations 25, 33, and G).

In addition, the relationship with government authorities is inconsistent. Prior to President Sarkozy, there was a Ministry of Youth, Sports and Associative Life (Ministère de la Jeunesse, des Sports, et de la Vie Associative) and a Ministry of Health (Ministère de la Santé). The Sarkozy government combined these into Health, Youth, Sports and Associative Life (Ministère de la Santé, de la Jeunesse, des Sports et de la Vie Associative 2008a). In addition, the Ministry of the Interior (Ministère de l’Intérieur) has an office regrouping associations and foundations, for example the ARUP/FRUP status. Comité management also observes confusion at the state level with respect to structure as ministries change titles (Comité senior management call/interview 2007). In addition, eight respondents criticised both the failure of the state to consult sector experts prior to legislating and the legislators’ lack of experience and “poor knowledge” of the sector (Organisations 4, 11, 17, 32, A, E, and G, and Organisation 30). Seven respondents (two Comité Group and two Control Group) also complained specifically of government legislation without follow-up evaluation (Organisations 2 and 30 (citing poor process and follow-up with the Foreign Affairs Commission Report of February 2007 and the Cour des comptes reports on the tsunami, respectively); Organisations 4, 11 (“young parliamentarians run off and declare accountability insufficient”), 31, A, and I). Two renowned respondents seeking feedback from the Ministry of the Interior (in one case a voluntary external audit) report lack of responsiveness for accountability-related requests (Organisations 32 and B).

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<sup>191</sup> Almost every respondent indicated less directly the problem of lack of understanding on the part of regulatory authorities and among organisations.

While the Foreign Affairs Commission Report of February 2007 assessing the tsunami indicates the need to listen to the organisations, no respondents had experienced this new attitude (National Assembly Foreign Affairs Commission 2007, 37).

Second, as a general matter, respondents believe that there is a significant amount of regulation and that increasing the amount of regulation would not improve accountability. 14 (64%) Comité Group and four (34%) Control Group respondents from a broad range of sector, size, level of international engagement, and initiative and profile of leader emphatically summarised that there are “*enough*” regulations – even those agreeing that regulation is important (Organisations 9, 11, 13, 14, 15, 17, 18, 19, 22, 23, 24, 25, 26, 27, D, F, G, and H). (This compares to only seven that could imagine a need for more regulation (Organisations 1, 7, 22, 25, 31, B, and E).) Twelve respondents felt they were “*crumbling*” under the various regulations and controls, particularly the large organisations subject to Cour des comptes and l’IGAS review as well (Organisations 11, 13, 14, 18, 19, 24, 25, 31, 33, A, C and D). One insisted that the French state is everywhere but “*getting it wrong*” (Organisation A). No respondent in either group believed that the French state was “*getting it right*.” Two summarised, “*The less I see of the French state the better I feel*,” and “*if we are stricter [with regulation] we die*” (Organisations 17 and 4, respectively). While no one mentioned specific regulation, at least five expressed exasperation that French NPOs are “*getting to a stage of more regulation than listed companies*” and that the trend continues (Organisations 15 and Organisations 11, 23, 27, and 33, respectively). A small Control Group organisation and expert *commissaires aux comptes* both urged a “*big house cleaning*” and improved regulatory coherence (Organisation E; Chartier and Frotiée teleconference January 2008).

Third, a range of respondents from both groups and Comité management felt that the regulation is poorly adapted to the needs of the sector and protection against failure of accountability. Soublin considers that regulation is “*not at all well-suited to the [French] nonprofit sector requirements and issues*” – and needs to improve rather than increase (Soublin interview 2007; Organisations 25, 30, and B). 14 (42%) Comité Group and three (25%) Control Group organisations criticised the pertinence and efficacy of the regulations (Organisations 3, 4, 5, 8, 20, 21, 22, 23 (“*empty administration...formulaic*”), 28 (“*no notion of efficacy*”), 29, 30, 31, 32, 33 (“*heavy and useless*”)), A, D, and E). The failure to target key areas (e.g. the “*fake*” associations that are de facto extensions of state agencies) is also criticised (Organisation 22; Comité

senior management call 2008).<sup>192</sup> The disparate architecture of the regulation noted above (i.e., occasional additions to address isolated issues as deemed necessary) results in “confusion and duplication” (Organisation 23).

Fourth, respondents also expressed concern with the relationship between the number of 1901 Law associations and the efficacy of accountability regulation. In particular, the failure of regulation to target fund-raising organisations (treating “football players and fund-raisers the same way”) and the relationship between freedom of association and the imposition of accountability measures surfaced as key concerns (Organisation 22; Organisations 6, 7, 11, 21, 22, 25, 30, 33, A, B, D, E, and H; Organisations 32 and E, respectively; Soublin and Cohas-Bogey interviews 2007). The unwieldy number and variety of 1901 Law associations from the standpoint of accountability oversight exacerbates the issue, but the “huge melting pot” problem also applies to fund-raising foundations (Organisation 21).<sup>193</sup> Soublin suggests that the diversity of NPOs that the freedom of association has engendered may necessitate greater diversity in the types of controls (Soublin 2007, 245; Tchernonog 2007b, 5.)

Eleven respondents (three (9%) Comité Group and two (17%) Control Group) spontaneously cited the multitude of small associations as the key obstacle to French nonprofit sector progress, including the lack of accountability controls (Organisations 5, 7, 9, 21, 22, 26, 29, 32, 33, I, and E).<sup>194</sup> Approximately 80% of respondents in both groups mentioned more generally the link between poor accountability oversight and the excessively broad 1901 Law coverage. Seven respondents specifically cited the uncontrollable mix and number of associations as the most important factor in delaying French nonprofit sector success (Organisations 6, 9, 25, 29 (“hard to estimate the huge lag in the sector behind other countries because of the uncontrollable quagmire of associations”), 30, B, and I). Given the high percentage of sports, cultural, and social associations (approximately 60% of the total 1.1 million), the separation of these from humanitarian and social service NPOs alone might better focus regulatory authorities on the NPOs most in need of accountability oversight, allocating resources related to accountability measures effectively, and educating the giving public (Tchernonog 2007b, 33).

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<sup>192</sup> See Section 2.3.2.

<sup>193</sup> See Section 1.3.1 “Associations and Associative Sector.”

<sup>194</sup> Note that this number includes only respondents affirmatively emphasising the issue of smaller organisations. All respondents indirectly addressed the importance of size during the interviews.

While these numbers may appear limited, they must be interpreted among the array of other comments. Most importantly, respondents noted the failure to apply regulation given the number of associations, the lack of oversight of member-elected *administrateurs* (further developed in Section 4.2.1), and the greater potential for contagious scandal with so many NPOs in such an opaque, poorly regulated environment (as exemplified by the small, recently founded Zoe's Ark relatively unknown pre-scandal) (Organisations 6 and 9; Organisations 20 and B; Organisation I, respectively). Soublin believes that the number of associations affects accountability, but as part of a mixture of reasons, including especially the welfare state environment (Soublin interview 2007). Finally, the lack of comparable and publicly available Form 990 type of disclosure exacerbates confusion and misinformation for the public and donors. Respondents feel that regulation does not adequately consider size, resulting in impossibility of uniform application and unfair regulatory constraints (Organisations 5, 7 ("danger" of unregulated small associations), 9 ("total confusion for the public"), 21, 22, 32, 33, and E).<sup>195</sup>

Fifth, uneven compliance and enforcement persists (Organisations 3, 4, 5, 7, 8, 11, 28, and 33; Soublin and Cohas-Bogey interviews 2007). The state is criticised for lacking the resources and interest in evaluating programs, particularly outside of France (Organisations 5, 11, 28, and B; Pérouse de Montclos 2005, 613). The Cour des comptes does not have the time or resources to control more than a few organisations per year and controls only the largest organisations (Léo Jégard & Associés Conference 2008; Durand call 2007). Other than in exceptional investigations such as the tsunami, this generally means a Cour des comptes audit every six to eight years, according to Philippe Durand, a tax partner/*commissaire aux comptes* at Landwell & Associés/PricewaterhouseCoopers Paris and Fondation de France board and audit committee member (Pérouse de Montclos 2005, 613; Durand call 2007; Léo Jégard & Associés Conference 2008).<sup>196</sup> The Comité recently rejected four potentially eligible organisations' membership applications due to failure to comply with the most basic legally mandated *commissaires aux comptes* audit requirements that remained undetected by the regulatory authorities for years (Comité senior management

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<sup>195</sup> See Sections 4.4.1 and 5.4.1 on the importance of organisational size. See Section 3.1.1 for an example of a US law linking regulatory requirements to organisational size: the CNIA (California State Senate 2004, Sections 12586 (e)(1) and (e)(2)). Compare the US Form 990 sliding scale approach.

<sup>196</sup> The resource issue occurs in the US and UK as well (Howell e-mail 2009).

calls/interviews October 2007 and 2008).<sup>197</sup> The Comité and four organisations complain that reports submitted relating to state subsidies often go unread (Organisations 19, 28, 32, and I).<sup>198</sup> No respondents spontaneously mentioned useful feedback from the French state. Even the rarely granted public utility (“RUP”) status is infrequently sanctioned.<sup>199</sup>

Sixth, the interviews revealed that the details of the regulation are less important than this overwhelming sense of onerous but unclear regulation that does not inspire self-regulatory or voluntary accountability efforts. No respondents cited regulatory requirements as a rationale for increasing accountability within their own organisations or across the sector, even when prodded in the interviews and even if de facto organisations do implement accountability improvements in compliance with regulation. Nor is regulation believed to increase trust. Thus while regulation is perceived as burdensome and increasing (e.g. recent additions to the Statement of Use of Funds law), respondents do not link regulation to their own accountability efforts.<sup>200</sup>

Finally, no respondents discussed a link between regulatory initiatives and protection against scandal as is so pervasive in the Sarbanes-Oxley Act literature and discussion (e.g. Romano 2005, 2). There was no sweeping, directly linked and publicly clear regulatory response to l’ARC or l’ARC-type scandals.<sup>201</sup> The Cour des comptes involvement in l’ARC was criticised as late and insufficiently thorough to mitigate damage to other organisations and the sector generally (Organisations 2, 4, and B).<sup>202</sup> Even the tsunami reports, although significantly more thorough and the focus of considerable French nonprofit sector attention, had mixed reviews among respondents with respect to longer-term utility as there has been little follow-up after publication (Organisations 2, 30, and B especially critical). Still, experts suggest that the judicial,

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<sup>197</sup> The Comité rejected two others on failure to meet eligibility requirements in 2008 as well (Cohas-Bogey e-mails September 1, 2008).

<sup>198</sup> Note that a limited number of respondents link funder accountability requirements (as defined in Chapter 5 Introduction) with accountability, so a total of four is a significant sample within this group.

<sup>199</sup> As of December 2008, there were 1,967 ARUPs and 556 FRUPs (Lottier e-mail 2009). See also Ministère de l’Intérieur 2008; La revue Associations 2008. Since 2000, only 89 ARUPs and 11 FRUPs have lost the public utility status as the Ministère de l’Intérieur has insufficiently applied the limited sanction procedures, for example to ARUPs no longer active (Ministère de la Santé, de la Jeunesse, des Sports et de la Vie Associative 2008b, 26; Pérouse de Montclos 2005, 613; Lottier e-mail 2009). See Section 8.2.3 for policy recommendations on universal disclosure.

<sup>200</sup> See “*Relationship Between Accountability and Self-Regulatory Initiatives*” below in this Section.

<sup>201</sup> There were calls for French state control of public money because l’ARC (like other charitable organisations) benefited from the French state-granted tax deductions, reinforcing the French state’s position as the top donor in France through the tax system (e.g. Coquidé (L’Expansion) 1996; Organisation 31).

<sup>202</sup> See Section 7.2.1.

financial, and image-related impact any Cour des comptes report can be felt within the organisation(s) controlled and more generally across the sector (Durand call 2007; Berthet call 2008).<sup>203</sup>

As a result of this perception of ineffective regulation, the balance of sources of increasing accountability remains heavily weighted toward organisation up initiatives in terms of the respondents' priorities and views of the source of the most effective, innovative accountability mechanisms. The regulatory discussion was, in every case, short and not an area of interest even to respondents accepting onerous regulation as necessary. This contrasts greatly with the enthusiastic and lengthy discussions of organisations' own voluntary accountability initiatives, interest in learning more about various topics from the author/interviewer, and, in the case of Comité Group respondents, supporting the Comité requirements as useful. This also contrasts with the strong US regulatory framework and the significant top down influence on self-regulatory and voluntary accountability efforts. French accountability regulation has become background, present as part of "*l'air du temps*" but not a direct influence on the strategic assessment of accountability.<sup>204</sup>

*Relationship Between Accountability Regulation and Self-Regulatory Initiatives (including the Comité)*. In general, there was only anecdotal and moderate enthusiasm for industry-wide self-regulatory initiatives such as Independent Sector and Board Source in the US (Organisations 1 and D). No respondents in either group mentioned self-regulation spontaneously.<sup>205</sup> According to respondents, the Comité remains the most important self-regulatory initiative, although with the noted limitations in member organisations and scope of activities.<sup>206</sup> There has not been a sector-wide standard-setting, lobbying or other such group (Soublin call January 2007). Only four respondents mentioned the need to increase self-regulation to be good "sector citizens" for moral and strategic reasons (Organisations 5, 20, B, and D).

The lack of interest in sector-wide self-regulation may reflect the likelihood that regulation perceived as extensive, confusing, and ineffective also trickles down weakly beyond mandatory application – whether due to the disorganisation and lack of

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<sup>203</sup> See also Section 5.3.3.

<sup>204</sup> See Section 5.1 "Normal Practice" on "normal" practice.

<sup>205</sup> Four Comité Group and five Control Group respondents affirmatively spoke out as "against" self-regulatory efforts, one identifying notaries (*notaires*) as an example of failed self-regulation (Organisations 4, 26, 27, 31, B C, G, K, and L). Three respondents said self-regulatory efforts were "ok" but not at the expense of French state controls or the Comité (Organisations H, J, and L).

<sup>206</sup> See e.g. Section 6.4.2.

comprehension, the “enough is enough” factor, or both. This absence of middle level of self-regulation/educative organisation contributes to the organisation upward dynamic. There was no evidence of self-regulatory recommendations based on aspects of the regulation that did not technically apply in certain cases. For example, there were no sector-wide best practice dictates for voluntary compliance with the *commissaires aux comptes* audit for smaller organisations not technically subject to the requirement.<sup>207</sup> This contrasts with the reaction in the US from such sector leaders as Independent Sector to advocate voluntary adoption of certain corporate mechanisms on an organisation-appropriate basis in order to achieve a “balanced system of law and self-governance” and to deter government initiatives to expand regulation (e.g. the audit committee and audited financial statements) (Panel on the Nonprofit Sector 2007, Preamble and Introductory Letter, 3, 11; US Government 2002, Section 302, respectively). Only two respondents noted the importance of self-regulatory efforts as a defensive strategy to forestall additional regulation echoing the Independent Sector policy, one publicly post-Zoe’s Ark (Organisations 3 and 11)

Nine Comité Group respondents raised the issue of the Comité adopting a more formal government-backed (but still self-regulatory) certification process that had been discussed internally at the Comité (Organisations 1, 2, 3, 12, 13, 14, 20, 23, and 32).<sup>208</sup> Such certification would require governmental approval and function like some of the commercial competitors in the quality control business such as Bureau Veritas Quality International, AFNOR, and, although somewhat different, the ISO system (AFNOR Groupe 2008; Bureau Veritas Quality International 2008; ISO 2008, respectively). Almost all felt the Comité lacks the resources to compete effectively and/or has sufficient challenge with current objectives in France.<sup>209</sup>

Approximately four Comité Group respondents suggested that the Comité focus on a rapprochement with the state, while a few repeated the “further away from government they were the better” mantra noted above (Organisations 1, 2, 5, and 25; Organisations 17 and 21, respectively). Government links could include: formal recognition of the Comité as part of the group of control agencies; government

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<sup>207</sup> However, *commissaires aux comptes* from Landwell & Associés/PricewaterhouseCoopers Paris reported recently increasing requests for non-mandatory audits themselves and across the profession (Chartier and Frotié teleconference January 2008).

<sup>208</sup> “Government-backed” refers to official government approval of the Comité as a national certification organisation but does not imply government involvement in the Comité’s activities (Soublin interview 2007).

<sup>209</sup> See also Section 6.3.1.

representation on the Comité *conseil d'administration*; joint efforts with the Cour des comptes; or recognition by the tax authorities in the form of the higher tax deduction on gifts to nonprofit organisations (75%) for Comité members (Organisations 5, 1, 2, and 25, respectively).<sup>210</sup> The disadvantages would include potential infringement on independence and the administrative inefficiency.

### **3.2.2 French Regulatory Framework: Tax System and Increasing Accountability**

The French tax system, particularly as compared to the US tax system, also offers perspective on the rationales for increasing accountability and the organisations' perspective on donor trust. As a regulatory matter, the tax system does not contribute to accountability to donors or the public. In practice, no respondents felt that the tax system affected their strategic assessment of accountability directly or even indirectly via impact on donors through improvements in the tax deduction system.

Most generally, unlike the Internal Revenue Service “gatekeeper” function and on-going reporting system in the US that are heavily focused on accountability and play a pivotal role in ensuring financial transparency and implementation of VAMs, France does not have an entity like the Internal Revenue Service that pre-clears charitable tax-exempt status based on activities and accountability requirements (Pérouse de Montclos 2005, 613; confidential government interview 2006).<sup>211</sup> Moreover, the tax system does not include disclosure requirements or requirements to make publicly available documents required under other regulations (e.g. USGDTIRS 2008a).<sup>212</sup> Therefore, France has no publicly available access to information about NPOs and their accountability systems – other than the occasional, non-systematic, non-objective, and less comparable media coverage.<sup>213</sup> The Comité does not publish data on individual member organisations to compensate for this regulatory weakness in assuring public

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<sup>210</sup> This would match the higher level deduction for limited categories of NPOs, compared to 66% for the majority. See Section 3.2.2.

<sup>211</sup> The author interviewed in person in 2007 two senior representatives of one of the key ministries. However, the conditions of the interview required confidentiality of the name of the ministries and interviewees.

<sup>212</sup> UK regulations also require registration to obtain charity status (including “charitable purpose” requirement) (United Kingdom Government 2006, Part 2, Chapter 3 – Paragraph 9, Section 3A and Part 1, Sections 1 and 2, respectively).

<sup>213</sup> Moreover, the French law and Comité’s disclosure requirements are less onerous, for example with respect to disclosure of financial and non-financial compensation of senior management and unusual financial transactions such as foreign transfers of funds (Comité 2006a and 2006c).

access to information because a number of Comité members specifically wished to avoid the comparability (Comité senior management calls/interviews 2006 and 2007). The extent to which organisation-specific strategic assessment of accountability includes benefits of publicising accountability-related information to the public (guaranteed by the US top down approach) remains variable.<sup>214</sup>

Three aspects of the tax deductibility of gifts to NPOs provide context against which organisations consider the relevance of accountability to donor priorities and more generally. All relate to the welfare state. All also show that while deductibility opportunities have evolved to improve attractiveness of giving to NPOs, the tax system still does not address accountability to donors or more generally (as does the Form 990 in the US). The high level of social security contribution (SSC) (defined as “actual or imputed payments to social insurance schemes to make provision for social insurance benefits to be paid”), the permitted level of deductions for donations to NPOs, and the so-called “wealth tax” of a fixed percentage of worldwide assets (*impôt sur la fortune*) are the most relevant factors (Clegg e-mail 2008; OECD 2001).

First, overall tax rate overrides even tax deductions on donations, particularly in a welfare state country with high SSCs such as France. One recent UK Charities Aid Foundation report concludes that SSC as a percentage of labour costs was found to be inversely proportional to giving (and even more important than income tax levels) as the following figures support: France SSC of 9.6% for 0.14% GDP of giving, compared to UK SSC of 8.2% for 0.73% GDP of giving and US SSC of 7.3% for 1.67% GDP of giving (Charities Aid Foundation 2006, 2, 6, 8, and 9). Only three respondents mentioned high personal tax rates specifically (Organisations 2, 18, and 26). However, this number does not reflect the broader views in the sector (as expressed through the interviews with experts) and may be the result of a number of respondents’ belief that the tax system is not a priority beyond perhaps the level of deduction (Berthet call 2008; Durand call 2007).<sup>215</sup>

Second, the tax system does not address accountability or protection of donors through disclosure. Recent improvements in tax deductibility of gifts since 2003 are not

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<sup>214</sup> See Section 8.2.3 for related policy recommendations.

<sup>215</sup> This is due to a range of reasons, including the belief that Americans pay more attention to taxes than the French when giving (Organisation 4), lack of in-depth understanding of the tax system, and the belief that it is impossible to measure the impact of the tax system. See Note 216, *infra*.

motivated by, or otherwise related to, accountability.<sup>216</sup> The deduction of 66% of gifts to NPOs up to a maximum of 20% of taxable income was reconfirmed in August 2007, along with the higher 75% deduction for certain NPOs providing food and shelter to the needy (Fondation de France 2005, 2; French Government 2008a, Article 200, Section 1(g)1ter).<sup>217</sup> No respondents in either group or the experts consulted connected accountability efforts to the improved tax deduction scheme – either as an impetus for the improvement in the tax system or, conversely, as positively affected by tax changes. Moreover, the process of obtaining tax deductions does not involve the kind of public, thorough disclosure of accountability practices like the Form 990. Rather, donors to eligible NPOs (i.e., officially recognised as of public utility or for the general public interest) obtain tax receipts (*reçus fiscaux*) from the organisation upon making a gift. Donors then send the receipts on to the tax authorities and wait for approval to claim the deduction (French Government 2008a, Article 200, Sections 1 and 5; Berthet call 2008). This exclusively *a posteriori* process of obtaining tax deductions both fails to improve accountability and exacerbates the concerns relating to smaller NPOs because they are less likely to be known by tax authorities assessing the donor receipts for eligibility (Berthet call 2008).

Finally, most recently in 2007 the third key fiscal change – a deduction from the wealth tax of 75% for gifts to FRUPs within a €50,000 annual limit – demonstrates the absence of attention to accountability in the tax system (French Government 2007, Article 16, Section III. Article 885-0 V bis A; National Assembly 2007, Article 6).<sup>218</sup> The French state's objective was to prioritise specified sectors to compensate for areas of state weakness or budget insufficiency (e.g. higher education, research, or projects involving reinsertion of individuals into the mainstream economy) by only granting the

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<sup>216</sup> 19 Comité Group and six Control Group respondents and Comité management reported positive but unmeasured benefits to giving from improved tax deductions (Cohas-Bogey interview 2007). Five Comité Group and one Control Group respondents consider the improved deduction scheme irrelevant. Moreover, respondents widely noted that a significant percentage of donors do not pay taxes and therefore do not benefit from deductions (affecting particularly Comité Group and Control Group A respondents relying on a large number of small gifts) (Organisations 3, 5, and 22; Toullec 2007). See Appendix 6-A for a breakdown of donor profile (size of gift) among respondents.

<sup>217</sup> This 75% exception to the general rate of 66% is the so-called "Coluche Amendment" after the famed comedian's *Les Restos du Coeur*'s (a Comité Group respondent) nationally adored program to distribute food to the hungry ([www.loi1901.com](http://www.loi1901.com) 1999). The previous law of January 1, 2006 allowed a 66% tax credit up to 20% of taxable income (French Government 2003; Fondation de France 2005, 1). See Section 8.2.4 for policy recommendations relating to the wealth tax deduction. By comparison, US rates generally permit, with exceptions, deduction of charitable gifts from income tax up to 50% of adjusted gross income (as calculated according to the Internal Revenue Code) (USGDTIRS 2007d and 2007e).

<sup>218</sup> A more detailed economic analysis that supports the argument of French state priorities being the deciding factor may be found in the report of the General Assembly (National Assembly 2007).

deduction to foundations allocating funds to those specific areas. This again reflects the welfare state influence on social service delivery without concern for rewarding accountability or even generally supporting the French nonprofit sector (Berthet call 2008).<sup>219</sup> As a result, the law excludes associations – even ARUPs with the same high level of government pre-approval and on-going *conseil d'administration* oversight as foundations (Organisation B; Teissier 2008; French Government 2007, Article 16, Section III. Article 885-0 V bis A).<sup>220</sup>

### **3.3 Relationship Between US and French Regulatory Environment and Theoretical Framework**

The juxtaposition of the US and French accountability regulatory and self-regulatory contexts provides a foundation for explaining the applicability of Hansmann's trust theory in the French nonprofit sector as a starting point for the research. The legal basis of the nondistribution constraint and mechanisms of enforceability directly links theory and regulation (Hansmann 1980, 853). The US regulation also targets the "information asymmetry" problem within the trust theory. In addition, Salamon's suggestion that in the current era accountability increasingly complements or replaces trust also underlies the analysis of the regulatory environment (Salamon 2003, 24).

To Hansmann, the state law structure functions like a "collective contract" through which the state Attorney General brings suit to enforce the nondistribution constraint on behalf of donors and potentially other stakeholders (1980, 853).<sup>221</sup> Moreover, the severe limitations on the ability of donors legally to enforce the nondistribution constraint increases demand for trust. Suggestions of rules governing board composition, for example, foreshadow accountability mechanisms as a complement to state law enforcement of the nondistribution constraint (also relevant in France) (e.g. Steinberg and Gray 1993, 302).<sup>222</sup> As noted in Section 3.2.1, the

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<sup>219</sup> See Section 2.3.2.

<sup>220</sup> See policy recommendation Section 8.2.4.

<sup>221</sup> See Sections 2.1.2 and 3.1.1.

<sup>222</sup> However, Steinberg and Gray cite Ben-Ner's suggestion of patrons as board members could be interpreted as similar to the French association practice of electing members to the *conseil d'administration* but does not support the currently emphasised independence of boards (Steinberg and Gray 1993, 302; Ben-Ner 1986, 110). See Section 4.2.1 "Independent Directors."

enforceability aspects of the nondistribution constraint find an equivalent in the French regulatory framework. Therefore, the question of “supply side” in France – i.e., how organisations perceive and act through the strategic assessment process to increase accountability – begins from similar assumptions and foundation with respect to the nondistribution constraint as Hansmann’s US-based theory (including enforceability). Moreover, a key question then becomes, as Hansmann notes, why organisations act as they do with respect to accountability given weaknesses in enforceability of the nondistribution constraint (Hansmann call 2008). Are they positioning themselves within this theoretical spectrum, or are there reasons unrelated to demand for trust?

Regulation also relates to the trust theory by requiring accountability measures to ensure trustworthiness. In particular, regulatory authorities have made the permission to fund-raise from the general public contingent on adopting a range of accountability mechanisms and respecting on-going reporting requirements and audits. Arguably the state is intervening to ensure that individual donors have a basis for trust, in particular financial transparency mitigating the information asymmetry.<sup>223</sup> In other words, in the current era the state no longer considers the nonprofit form alone a sufficient basis for trust. The applicable provisions of the Sarbanes-Oxley Act, as well as the related state law legislative extensions and the Form 990, all support trust of stakeholders in NPOs. In France, the financial statement regulations (particularly the Statement of Use of Funds) function similarly.

This regulatory analysis underlies Salamon’s focus on increasing pressure to prove accountability (including performance), particularly beginning in the post-Sarbanes-Oxley Act period.<sup>224</sup> The suggestion that Hansmann’s trust theory is outdated establishes the spectrum from trust rooted in the nondistribution constraint to trust based on accountability (or both) to be unravelled in subsequent chapters. As seen in the examples in the first section of this chapter (e.g. the Red Cross and Sarbanes Oxley Act focus on trust), in the US trust remains an important focus even within an environment increasingly focused on accountability regulation and best practice.

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<sup>223</sup> Steinberg and Gray emphasise the utility of the nondistribution constraint concept notwithstanding the impossibility of “easy remedies to the problem of asymmetrical information” (1993, 302).

<sup>224</sup> The United Way’s performance evaluation methods exemplify this trend (2008b).

### 3.4 Conclusion

This chapter established the heavily regulatory, top down US accountability environment as a benchmark and key gaps in the French regulatory and tax framework in comparison. In particular, the Sarbanes-Oxley Act and related state law, self-regulatory, and voluntary best practice derivations reflect an emphasis on the relationship between accountability and trust.<sup>225</sup> However, the French accountability regulatory requirements lag behind the US, particularly with respect to independent oversight. Moreover, French tax regulation does not address accountability matters.

The empirical findings highlighted the limited importance to respondents in both groups of the regulatory external variables to the strategic assessment of accountability. This is the first stage of the conclusion of bottom up, as opposed to top down, accountability in France. Neither accountability regulation – widely viewed as sufficient in terms of amount but inefficient, ineffective, poorly adapted, and poorly enforced – nor tax regulation influenced respondents' strategic assessment in either respondent group. The common response levels between the two respondent groups will follow through much of the key findings from the empirical analysis to come.

Finally, the theoretical analysis confirmed the relevance of Hansmann's theory as a basis for the research in France, in particular the similar approach to enforcing the French equivalent of the nondistribution constraint. The chapter also established the theoretical basis for the Hansmann-Salamon trust spectrum that underlies the analysis in subsequent chapters. Chapter 4 extends this first part of the empirical panorama of *how* accountability is increasing and the theoretical implications with a more detailed overview of respondents' views of increasing accountability within individual organisations, across the sector more broadly, and within the Comité.

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<sup>225</sup> See Section 5.3.1.

## Chapter 4

### L'Air du Temps

#### *Increasing Accountability Is in the Air*

“There is some link [of accountability] to outside funding but no pressure...mostly just *staying with the times*” [author translation] (Organisation H).

“There has been a serious evolution in accountability and controls in recent years [in Organisation 11], including a complete reorganisation of information and risk analysis systems and the addition of finance and compensation committees. The main reason is to ‘follow the world’” [author translation] (Organisation 11).

One World Trust recognizes that “...a one-size-fits-all approach to accountability is not possible” (Blagescu, de Las Casas et al. 2007, 8).

### Introduction

This chapter examines the empirical basis for the assumption of increasing accountability that underlies the research question and trust hypothesis. It draws on the findings from the interviews to demonstrate the individual, organisation outward strategic assessment of accountability that leads to increasing accountability.<sup>226</sup> This strategic assessment process underlies the empirical analysis of why accountability is increasing, including the relevance of the trust hypothesis, and/or other explanations unrelated to a demand for trust, in subsequent chapters.

The research revealed evidence of continually increasing accountability within the sample of French organisations interviewed and concerning respondents’ perception of the French nonprofit sector. Nonetheless, as the evidence will show, overall the level of accountability among respondent organisations and across respondents’ perceptions of the sector still lags behind the US in many respects. The over-arching trend reflects an effort on the part of organisations to assess and promote accountability mechanisms individually from the inside out that contrasts with the US heavily regulated top down approach (Brody 2002, 475). Specific VAMs are explored to provide a more nuanced view of weaknesses in organisations’ accountability and respondents’ reasoning with respect to larger issues the individual VAMs raise. The most significant overarching gaps concern the lack of independent oversight of accountability matters by the *conseil*

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<sup>226</sup> Revised in accordance with comments from Howell (e-mail 2009).

*d'administration* and the limited accessibility of accountability-related information to the public already evident in the regulatory analysis in Chapter 3.

The analysis of the empirical findings supports the argument of inside out increasing accountability from two perspectives. First, the interviewees' own perspective and perception of their organisations' perspective confirm individual approaches to increasing interest in accountability and accountability efforts across both the Comité Group and the Control Group. Second, notwithstanding respondents' recognition of sector-wide accountability "in the air" (*l'air du temps*), the extent to which the highest levels of accountability mechanisms appear on an organisation by organisation basis also shows this "air" emerging largely from individually internally-driven efforts. Thus the most relevant "air" reflects the collective effect of individual accountability efforts more than an external, universally applicable phenomenon – particularly compared to the US with the much more extensive and widely applied regulation, self-regulation, and best practices.

The analysis of the most sophisticated voluntary accountability mechanisms provides further evidence of individual priorities within both respondent groups and organisation-driven energy to aim for the highest standards of accountability.<sup>227</sup> Key areas assessed include the relationship to US best practice, priorities for the future implementation of VAMs, and individual accountability mechanisms that exceed regulation, the Comité requirements, and the defined set of VAMs.

Finally, the chapter links the empirical findings of increasing accountability to the trust theoretical framework. Rose-Ackerman's positioning of strategic assessment as the process for determining the appropriate level of "signals" of trustworthiness proves relevant to organisational decision-making in both US and French contexts despite the systemic and cultural differences. The internal variables relate to the strategic assessment of accountability and Hansmann's trust theory. At this stage organisational size and initiative and profile of leader prove most relevant, while international engagement is most important to the discussion of ethical, effective management in Chapter 5. As noted in Chapter 3, the external regulatory variables – accountability regulation and the tax system – prove a much less important direct influence on respondents' strategic assessment of accountability.

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<sup>227</sup> External controls the French state and other governmental agencies impose in their capacity as donors are addressed in the analysis of funder accountability requirements in Section 5.3.3.

#### 4.1 Respondents' Perspective on Increasing Accountability: the Organisations, the Sector, and the Comité

This section addresses how, and the extent to which, accountability is increasing as indicated by VAMs and other accountability mechanisms implemented, as well as those prioritised for future implementation and those implemented exceeding legal, Comité, and VAMs requirements. Respondents were asked to comment on whether and, if so, why and how, there had been increasing accountability in their organisations in the past three to ten years. Respondents were reminded of the definition of accountability (as set out in Section 2.2.2), including various close French translations and examples of VAMs. In sum, overwhelmingly respondents in both groups describe increasing accountability as “in the air” – internally within their own organisations and across the sector.

First, all respondents but one agreed that interest in accountability was without a doubt increasing within their organisations – a “given” as one respondent summarized – irrespective of organisation size, international engagement, initiative and profile of leader, or sector of activity (Organisation 1). There was consistent response type and levels between the Comité Group and the Control Group. Phrases such as “without question,” “no doubt,” “very heavy tendency...on everyone’s mind,” “ever since l’ARC,” “of course,” “highest priority,” a “serious evolution,” and “no longer amateur” were heard throughout the interviews (Organisations 7 and 8; Organisations 8, K, 29, 31, 13, and 11; Organisations E and 10, respectively). Approximately 50% of respondents in both groups said accountability was among their highest priorities. Two specified their efforts to be “beyond reproach” (on Comité themes (Organisation 20) and generally “whiter than white after l’ARC” (Organisation 17)). One expressed a responsibility to justify expenditures “from the first donor euro” (Organisation 4). Even interviewees who had not held their current position within the organisation for more than a year or two specifically mentioned the efforts and opinions of their predecessors as evidencing increasing accountability (Organisations 19 and 30).

The interest in the subject of accountability generally also surfaced during the interview process.<sup>228</sup> Five Comité Group and four Control Group organisations noted their particular interest in the subject when answering the request for an interview

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<sup>228</sup> See also Section 1.5.

(Organisations 4, 7, 17, 18, 19, B, C, D, and E). Two well-known Control Group respondents quickly answered the unsolicited request for their participation in the study with a note on how important the subject was (with no previous contact with these organisations) (Organisations B and D). Almost everyone in both groups commented that they found the project and subject matter useful and a high priority and the selection of questions the relevant combination. None felt that any important issues were omitted when asked specifically at the close of the interview.<sup>229</sup>

The only exception to this level of interest was one Comité Group organisation with a five-person team and volunteer Director General who felt his organisation was so small that they did not have the resources to implement further accountability mechanisms. Still, joining the Comité as a founding member in 1989 and remaining a member offers further evidence of a significant accountability effort, particularly as the Comité does not modify standards for smaller organisations.<sup>230</sup> One Control Group organisation similarly cautioned that resource limitations, but “definitely not lack of interest,” prevented prioritising certain new accountability mechanisms (Organisation H).<sup>231</sup>

In addition, all respondents in both groups recognised that accountability increasingly appears “everywhere” across all sectors (politics, corporate, medical, etc.) and that there was a need to “follow the world” (Organisations J and E; Organisation 11, respectively). However, a crucial distinction is that this general environment does not directly drive the strategic assessment in most cases.<sup>232</sup>

The “sign of the times” discussion included the general sense of an indispensable role of NPO implementation of accountability mechanisms for ethical, effective management in an increasingly challenging nonprofit world.<sup>233</sup> Management changes contributed to the accountability environment – both an evolving profile of nonprofit leader and a growing recognition of the inefficacy of the 1901 Law association member-driven structure in the early twenty-first century.<sup>234</sup> Patrick Frotiée, a partner at Landwell & Associés/PricewaterhouseCoopers Paris specialising in the French nonprofit sector, confirmed that across the sector there are “new waves” of

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<sup>229</sup> Approximately 75% of respondents in both groups requested further discussions about various voluntary accountability strategies at the end of the interview. Almost all the interviews exceeded the allotted 75-90 minutes without complaint to explore further accountability issues either specifically raised in the interviews or otherwise of concern to respondents.

<sup>230</sup> Organisation code is omitted to protect confidentiality.

<sup>231</sup> See discussion of organisation size in Sections 4.4.1 and 5.4.1.

<sup>232</sup> See Chapter 5 through 7 on the rationales for increasing accountability.

accountability. Evidence includes reinforcement of governance, improved *conseil d'administration* functioning, audit committees (even if not as independent as in the US), and acceptance of for-profit level fees to hire outside legal and accounting professionals even beyond the legal minimum (Frotiéé teleconference January 2008).

The “air” also included a range of evidence of increasing French nonprofit sector accountability outside respondents’ organisations that surfaced during the interviews. Comité respondents offered examples such as the use of Bureau Veritas Quality International, an external for-profit certifying agent, at organisations such as the Salvation Army (neither a survey participant nor a member of the Comité) (Organisation 9). Two recognised the number of organisations outside the Comité that voluntarily publish the Statement of Use of Funds on the internet (Organisations 7 and G; Soublin call June 2008). Business schools increasingly focus on the French nonprofit sector, with approximately 120 associations at the top French business school École des Hautes Etudes Commerciales de Paris (HEC Paris) (Organisation 4; Ecole des Hautes Etudes Commerciales de Paris (HEC Paris) 2007). Other examples offered include receiving increasingly detailed pie charts and tables in unsolicited NPO mailings, the emergence of groups such as [jeveuxaider.com](http://jeveuxaider.com) that offers pro bono marketing and communications services to associations, and the strong interest in an accountability group called the CLONG (Comité de Liaison des ONGs de Voluntariat) (Volunteer-Based NGO Liaison Committee) by a range of well-known organisations (Organisations G and E, respectively; [jeveuxaider.com](http://jeveuxaider.com) 2008; CLONG (Comité de Liaison des ONGs de Volontariat) 2008, respectively).<sup>235</sup> Finally, the Comité/Sofres Survey showed a “general and unanimous demand” for publicly available verification of accounts (at a level of *commissaires aux comptes* approval) – an external control emerging as an “indispensable gauge of trust” [author translation] (Comité de la Charte/TNS Sofres 2007, 5).

No one suggested that this era of increasing focus on accountability in many areas such as politics and government, the corporate world, and medical research accountability was a separate issue or somehow a choice they could make to join or reject. Similarly, every respondent in both groups spontaneously mentioned the sector-

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<sup>233</sup> See also Section 5.1.1 “Normal Practice.”

<sup>234</sup> See Sections 4.4.2 and 5.4.3.

<sup>235</sup> [Jeveuxaider.com](http://jeveuxaider.com) is translated literally as “I want to help.com.”

wide impact of the l'ARC scandal in the late 1980s/early 1990s.<sup>236</sup> None of the respondents felt safe from the impact of l'ARC or a l'ARC-type scandal – even if in an entirely different sector of activity, organisation size, management approach, and/or funding sources from l'ARC.

Finally, despite widespread recognition that everyone breathes the same accountability “air” within the French nonprofit sector and beyond, the relevance of the external variables and environment more generally to respondents’ strategic assessment process remains surprisingly limited. The evidence explored in this and subsequent chapters shows that this notion of widespread increasing accountability, particularly at the more sophisticated end of the spectrum, is largely generated internally by the organisations’ and the organisations’ leaders individual efforts to increase accountability in accordance with their own strategic assessment of accountability. The highest level VAMs and other voluntary accountability mechanisms were implemented on an organisation by organisation basis with almost exclusive focus on the needs of the individual organisation according to 23 (70%) Comité Group and seven (58%) Control Group organisations (Organisations 7, 11, 14, 15, 17, 18, 19, 21, 25, 26, 27, 30, 31, 32, B, C, D, E, G, I, and J).<sup>237</sup> Accountability is not inspired by, or fall-out from, regulatory oversight, mid-level self-regulatory or educational organisations, or other external influences.

*Increasing Accountability Within the Comité.* The Comité has also strengthened its own accountability standards, as well as accountability standards applicable to members, during recent years. All Comité Group members mentioned increasing accountability within the Comité itself, although one perceived such changes as “more form than substance” (Organisation 4). Soublin said, “definitely an increase in accountability!” (Soublin interview 2007). Soublin measures the increase largely by the type and intensity of the subjects discussed at the Comité *conseil d’administration* meetings that has affected the whole evolution of the Comité. In addition, for years Comité member organisations chose their own *censeurs*. Now the Comité selects and appoints *censeurs* to ensure objectivity. The Comité has also become more focused on the details of reporting obligations. The Comité offers a leading sector model for the Statement of Use of Funds (even for non-Comité members) and was invited to

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<sup>236</sup> See the discussion of scandal in Section 7.2.

<sup>237</sup> Further evidence includes the variety of voluntary accountability mechanisms that exceed the law, VAMs, and Comité requirements listed in Appendix 4.

participate in the on-going intensive government debates involving reforms to *commissaires aux comptes* certification of the Statement of Use of Funds (Soublin call April 2008).<sup>238</sup> Cohas-Bogey, the Executive Director of the Comité, concurs that the “definite” increase in accountability appears in such matters as growing working groups on accountability-related subjects like the role of *censeurs* and requirements for effective disclosure of financial ratios (Cohas-Bogey interview 2007; Comité 2008f).

Most importantly, the Comité shifted in early 2008 from a *conseil d'administration* comprising solely representatives of member organisations to a balance between organisation representatives and independent *administrateurs* expert in accountability matters (Comité de la Charte Conference 2008). Almost all respondents in both groups considered this move to independence essential to the Comité. Four Comité Group members urged “going as far as possible” – even beyond the majority seven out of 13 total *administrateurs* elected (Organisations 7, 21, 23, and 25). This modification places the Comité ahead of many of its members on this point and at the forefront of one of the key areas of progress in introducing accountability measures still lagging behind US practice in most French NPOs. Moreover, the prior lack of independence of *administrateurs* surfaced as an insurmountable reason why three of the most well-known Control Group respondents resolutely refused to consider Comité membership (Organisations B, C, and D).

Finally, the *censeur* review has become increasingly intensive in some cases. However, relatively few respondents criticised the increasingly picayune inspections by *censeurs*, for example *censeur* visits to an organisation’s small remote sites and in one case requests for detailed information potentially resulting in sanctions or expulsion in the event of failure to comply (Organisations 1, 8, 21, 22, 24, and 28; Organisations 27 and 32, respectively; Comité 2008n, 2).

#### **4.2 Empirical Findings: VAMs Implemented by Respondents**

This section analyses some of the most globally relevant VAMs as more specific empirical evidence supporting the assumption of increasing accountability. The selection offers insight into the variety of VAMs, key concerns relating to the strategic

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<sup>238</sup> See also Section 4.2.2 “*Financial Transparency*.”

assessment, and the extent of respondents' individual voluntary accountability efforts. While the individual nature of the strategic assessment process prevents one-to-one matches of respondents between the groups, overall, there was no significant difference between the Comité Group and Control Group in terms of general implementation of VAMs, ideas as to priorities for the future, or the importance of the variables. Finally, gaps between the US models and current French practice inform the development of policy recommendations.

Respondents were asked to comment on the defined set of VAMs. Many of these are considered the most important in the US, but only a few of these appear in France. Respondents were asked whether they had each VAM, if not why not (e.g. an affirmative decision not to adopt them, a lack of resources, inappropriateness for the organisation's context, *conseil d'administration* or senior management objection, political objection, or another reason). Comments were also solicited on the efficacy, utility, required resources, and cultural issues of both those VAMs already in place and others they had not adopted. Many VAMS that are voluntary in the US are tied to the regulatory framework, but not necessarily regulation addressing accountability matters, in France. However, few addressed in this section are Comité requirements. Table 4-1 below sets out the VAMs respondents and the Comité have implemented. Explanations follow in the text.

**Table 4-1****Key VAMs Implemented by Respondents and/or Comité (as an Organisation)**

VAMs	Respondents/Comité Implementation		
	Comité Group	Control Group	Comité
<b>Independent Directors</b>			
<b>Financial / Accounting Expert Directors</b>	none formally	none formally	yes
<b>Audit Committee (US-style)<sup>1</sup></b>	6 (18%)	1 (8%)	no
<b>Alternative to Audit Committee (finance-type committee)<sup>2</sup></b>	22 (67%)	6 (50%)	yes
<b>Whistleblower Mechanism</b>	2 (6%) considering <sup>3</sup>	1 (8%) has US-type version <sup>4</sup> 1 (8%) considering	no
<b>Conflict of Interest Policy (financial)</b> • Written • Unwritten <sup>5</sup>	9 (27%) 15 (45%)	3 (25%) 5 (42%)	no
<b>Financial Statements:</b> • Balance Sheet • Statement of Use of Funds • Income Statement • Annual Report of Activities		as required by law	
<b>Evaluation of Director General and Senior Management (formal procedures)<sup>6</sup></b>	19 (58%) do 13 (39%) do not	11 (92%) do 1 (8%) does not	no
<b>Disclosure of Senior Executive Compensation<sup>7</sup></b>	1 (3%) (individual salaries)/others as required by Comité	1 (8%) (individual salaries)/others as required by law	as required by Comité <sup>8</sup>
<b>Document Retention Policy</b>	25 (76%)	10 <sup>9</sup> (83%)	no
<b>Code of Ethics</b>	0	2 <sup>10</sup> (17%)	Comité Charter
<b>Documents functioning in part as an alternative to a Code of Ethics (operations manuals, internal guidelines, and charters governing field work)</b>	10 (30%) only Comité Charter 21 (64%) related documents	4 (33%) none 8 (67%) related documents	N/A

Source: Author's research data. See also notes to Table 3-1.

<sup>1</sup> See Note 1 to Table 3-1.

<sup>2</sup> Closely resembling US-style regulation and practice with independent *administrateurs*. (Organisations 7, 32, 19, 27, 25, and 11; Organisation D). The self-completion questionnaires showed that 17 (59%) Comité Group respondents and seven (60%) Control Group respondents participating had some form of audit, finance, or investment committee thus relatively consistent with the live interviews.

<sup>3</sup> Organisations 25 and 31.

<sup>4</sup> Organisation C. A third has a confidential mechanism but only at the regional (*département*) level (Organisation 14).

<sup>5</sup> Vigilance varies considerably among unwritten policies in terms of content and enforcement.

<sup>6</sup> A few are informal and lacking specific procedures. The exception is a governmental secondment arrangement paid by the French state (Organisation J).

<sup>7</sup> Organisations 18 and C.

<sup>8</sup> Comité 2008a. See Table 3-1.

<sup>9</sup> One other organisation labelled document retention a "top priority" (Organisation D).

<sup>10</sup> One based on Independent Sector Code of Ethics (organisation code omitted to protect confidentiality) and one a much shorter version (Organisation C) (Independent Sector 2004c). See Section 4.2.3 "Code of Ethics." Organisation E implemented the Code of Ethics as while working with the author as a pro bono consulting client prior to commencement of the study.

#### **4.2.1 VAMs Focused on Independent Oversight of Accountability**

The following VAMs target independent oversight of accountability issues: independent directors, audit committees, the whistleblower mechanism, and management of conflicts of interest. These reflect both the core of the US model and key aspects of the policy recommendations (addressed in Chapter 8).

***Independent Directors.*** Independent oversight of accountability matters, particularly through independent directors, is the lynchpin of the US accountability system. Independent directors (as defined in Table 2-1) provide the basis for the audit process and audit committee, the whistleblower mechanism, and financial transparency more generally.<sup>239</sup> The notion of independent *administrateurs* does not exist in the member-driven 1901 Law association context (Soublin interview 2007). None of the foundation interviewees in either group mentioned independent *administrateurs* either, however, even though de facto some of them have *administrateurs* who are to some extent independent.

The member-driven election strategies in 1901 Law associations for selecting the *conseil d'administration* may compromise governance and independent oversight of accountability. Most generally, member-elected *administrateurs* often represent their own interests or the interests of small groups and/or lack the experience and sense of responsibility for independent oversight. Examples include members electing unqualified friends or beneficiaries of services of the organisation (e.g. the parents of a sick child for a health services association). Another example is members using a NPO to further a political agenda by electing members of a political party so that the party exerts influence within a powerful, international NPO potentially able to influence politics (such as health legislation or an environmental agenda). The most notable, but often negative, exception is the requirement that ARUPs and FRUPs appoint at least one French state (Conseil d'Etat) representative as *administrateur*.<sup>240</sup> Complaints relating to this requirement include lack of experience with the “realities” of the French nonprofit sector, biased government intervention, and failure to participate actively or provide serious oversight beyond the “rubber stamp” role (Organisations 12, 13, and L, respectively).

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<sup>239</sup> Independent oversight is also the foundation for policy recommendations of this thesis. See Section 8.2.2.

<sup>240</sup> See Section 1.3.1 “Associations and Associative Sector.”

This member-driven election process in turn affects the level of independent oversight generally, as well as potentially the ability of *administrateurs* to bring unbiased strategic oversight to the organisation individually. One commentator notes that “[u]nder the guise of freedom of association,” “few people” other than the “NGOs themselves” verify accounts [author translation] (Pérouse de Montclos 2005, 613). Within this protection from state interference, Soublin emphasised the difference between *administrateurs* and US-style trustees, the latter instilled with responsibility for acting on behalf of (literally “in trust for”) donors and beneficiaries both strategically and financially (Soublin call December 2007). As the examples above show, the system also results in an entrenched highly political member-driven process whereby the most vocally represented candidates rather than the most competent to oversee governance become *administrateurs* (Soublin call December 2007; Archambault discussion 2008; Organisations 14, 25, 30, C, D, and L).

Associations bemoan the trickle-down impact of the 1901 Law member structure on lack of independent oversight of both management and governance. Several nationally dispersed organisations experience difficulty controlling “unwieldy” delegations of members in terms of activities, accounting back up the chain to headquarters, or identifying individual members to comply with Comité regulations on registers (Organisations 1, 22, 27, 30, D, and potentially L and Organisation 28, respectively). For example, member volunteers create individual pods around the country using the association’s name and claiming to speak out on behalf of the association without prior approval, common operating guidelines, or accountability to headquarters. Associations occasionally consider transforming their legal structure into a foundation in order to “escape” the “nightmare” of membership, including the member-elected *conseil d’administration* (Organisation D; Comité senior management interview 2007).

Finally, the member-driven *conseil d’administration* election process for associations also hinders recruitment of independent *administrateurs*. Few organisations have actively sought independent directors, but one Control Group respondent seeking a “US-style board” considered his biggest challenge recruiting “competent board members” (Organisation D). Other member-based organisations’ *conseil d’administrations* avoid nominating independent *administrateur* candidates, fearing the embarrassment of rejection by members and/or vocal objection to management

accountability-related proposals more generally (Comité senior management interviews 2007; Organisations 14, 25, and 30).

*Audit Committee.* The audit committee comprising independent directors remains one of the top three requirements adopted by US NPOs post-Sarbanes Oxley Act and integrated into state law for organisations above a certain revenue threshold (Independent Sector 2005, No. 5; California State Senate 2004, Section 12586(e)(2)). The absence of independent directors across both respondent groups precludes a US-style audit committee with the independent oversight function.<sup>241</sup> While a significant number of Comité Group members confirmed some form of audit committee, most comprise management and other non-independent *administrateurs*.<sup>242</sup>

*Whistleblower Mechanism.* While the whistleblower mechanism is one of the two Sarbanes-Oxley Act requirements legally applicable to NPOs, and therefore increasingly broadly implemented in the US, it remains the most controversial of the VAMs in the French context (US Government 2002, Section 806; e.g. Jackson 2006, 7 and 116). As Table 4-1 shows, only one Control Group organisation has a procedure even resembling the US whistleblower mechanism allowing for confidential reporting of fraud, sexual harassment, and other such cases by employees and others affiliated with the NPO (Organisation C). The three organisations considering the whistleblower mechanism mention a US affiliate's pressure and a belief that the "whole house would benefit" (Organisations 31 and Organisations D and 25, respectively). Finally, like document retention policy (Section 4.2.3 below), certain sectors such as medical and childcare are subject to procedures similar to whistleblower mechanisms through substantive regulation of their activities (e.g. Organisations 10, 25, and 31). The militant organisations (*militants*) (i.e., advocacy or solidarity groups generally focused on achieving awareness and legal or societal reform rather than service delivery) suggested that the open culture encouraging debate mitigates the need for whistleblower mechanisms (Organisations 9, 16, and 30).<sup>243</sup> Other proposed substitutions include the personnel representative (*délégué du personnel*) and enterprise committee (*comité d'entreprise*), both of which provide a forum for expressing employee views

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<sup>241</sup> See Section 3.1.1 "*The Sarbanes-Oxley Act and Accountability*" and Table 3-1. See also Section 8.2.2 for related policy recommendations.

<sup>242</sup> See Section 3.1.1 "*The Sarbanes-Oxley Act and Accountability*."

<sup>243</sup> For example, some of the militant organisations focus on speaking out or lobbying on controversial issues such as immigrant rights or death penalty reform. In the case of associations, the militants are almost always members. The term "militants" does not indicate violence or radical approaches in this context.

(Organisations 23 and 24, respectively). However, none of these options assures confidentiality.

The resistance to whistleblower mechanisms is primarily cultural (Frotiéé teleconference January 7, 2008 and Jaffe teleconference December 2007). Three respondents stated they would never allow whistleblower mechanisms for reasons of a “cultural” aversion to the idea of “turning in” colleagues or “collaborating with the enemy” stemming from memories of World War II (Organisations 18 and 19).<sup>244</sup> The official position of the Commission Nationale de l’Informatique et des Libertés (the French national data protection agency), after consultation with the US authorities, reflects the French reticence with respect to denunciation despite recent changes to accommodate for-profit corporations (Commission nationale de l’informatique et des libertés 2005).<sup>245</sup> Soublin confirms that after years of discussion with Comité member organisations the whistleblower mechanism would be virtually impossible to introduce for the Comité itself or as a Comité requirement for members for these cultural reasons (Soublin call December 2008).

Conflicts of Interest. Control of conflicts of interest is fundamental to accountability and trust (including the scandals addressed in Section 7.2). Like financial transparency, conflicts of interest are heavily regulated and another of the Comité’s four best practice rules (Comité 2006a and 2006d).<sup>246</sup> The interview question on conflicts of interest elicited among the strongest emotional reaction in the study among virtually all respondents across both groups. Two respondents emotionally phrased the sentiment as, “we absolutely do not tolerate conflicts” and “we don’t allow *any* conflicts of *any* kind” on the *conseil d’administration* (Organisations 17 and B, respectively). Examples of financial conflicts of interest include providing commercial or paid legal services to the organisation. Examples of non-financial conflicts of interest include serving on a

<sup>244</sup> Other commentators focus on the “scars of the occupation of 1940” and a Judeo-Christian mistrust of “denunciation” and “collaboration with the enemy” (e.g. working groups on corruption in Africa) [author translation] (Conseil français des investisseurs en Afrique 2007, 1).

<sup>245</sup> The CNIL rejected two initial Sarbanes-Oxley Act-related requests for whistleblower mechanism (including McDonald’s France) fearing self-interested attacks on others, “disproportionate” requests, and overlap with existing French regulations (e.g. alerting the *commissaires aux comptes* for financial matters) (Deleurence 2005). Currently the CNIL permits the whistleblower procedure under specified conditions relating to scope/subject and handling of complaints (Commission nationale de l’informatique et des libertés 2005, 2-7). The CNIL’s formal 2005 report acknowledges the legitimate concerns of senior management of US-France dual stock exchange listed companies regarding managing uneven regulatory regimes (Commission nationale de l’informatique et des libertés 2005, 3). Two respondents noted potentially similar concerns in international NGO networks (Organisations 25 and 30).

<sup>246</sup> The Comité requires “...unbiased management” – i.e., essentially assurance of proper control and elimination of conflicts of interest by the *assemblée générale* and *conseil d’administration* (Comité 2006a, Section I.2).

competitor NPO board or supporting a political agenda of another organisation directly or indirectly related to an issue for vote.

Given the limited margin for voluntarily improving the conflict of interest practice above regulation, the main adjustment would be implementation of an annually signed declaration addressing financial and non-financial conflicts of interest as is US best practice (e.g. USGDTIRS 2008a, Part VI, Section 12 a-c). Under French law, the *commissaires aux comptes* report financial conflicts of interest (primarily significant commercial contracts) that could require *assemblée générale* approval (Durand call 2007; Frotié and Chartier teleconference January 2008; Mémento Pratique Francis Lefebvre 2006-07, Sections 5930, 5935, 5945, and 78000).<sup>247</sup> However, the financial/non-financial distinction is important because it determines appropriate management of the conflict (Jackson 2006, 52-3 and 137). Despite the passionate response to the subject, only two respondents expressed interest in implementing a requirement of a US-style written conflict of interest declaration (Organisations 21 and 32).<sup>248</sup>

Respondents' extreme view of conflict elimination and reliance on the *commissaires aux comptes* does not necessarily yield effective governance. Eliminating potential *administrateurs* with any conflicts may exclude competent *administrateurs* who might participate ethically on all but limited conflicted issues. Furthermore, reliance exclusively on *commissaries aux comptes* may fail to address conflicts arising during time of service in between audits. Effective management of conflicts is central to NPO accountability (e.g. a core issue with l'ARC) and adequately handled by withdrawal from discussion and vote in the case of financial conflicts and withdrawal from vote in the case of non-financial conflicts (e.g. The David and Lucile Packard Foundation 2003).

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<sup>247</sup> Many *commissaires aux comptes* require written declarations of financial conflicts from *administrateurs* as a foundation for the report (e.g. Frotié and Chartier teleconference January 2008).

<sup>248</sup> Despite the role of the *commissaires aux comptes*, the separate written declaration serves a dual purpose: first, updating conflicts of interest declarations annually and again verbally at the time they arise in *conseil d'administration* discussion and second, a separate written record confirmed by the persons involved.

#### **4.2.2 VAMs Relating to Financial Transparency**

**Financial Transparency.** Financial transparency ranked first in importance in supporting donor trust in both the Comité Group and Control Group and is also fundamental to ethical, effective management. As noted in Table 3-1 and Section 3.2.1, financial transparency is a highly regulated aspect of accountability in France, as well as the most widely cited of the Comité's four best practice rules (Comité 2006a).<sup>249</sup> However, despite the regulatory and Comité requirements reflecting increasing accountability, financial transparency is not fully developed. In the Comité/Sofres Survey financial transparency appeared as the least well controlled accountability mechanism in the survey (61% of participants considering controls inadequate) (Comité de la Charte/TNS Sofres 2007, 16).

The Statement of Use of Funds, the most oft-cited example of the Comité's core financial transparency requirement for donors and the subject of recent regulatory modification, exemplifies the need for further refinement (Comité 2008e).<sup>250</sup> According to Soublin, the Comité's version had become a widely used model in the absence of clear regulatory guidance until recent regulatory clarification on *commissaires aux comptes* oversight (Soublin call April 2008; Conseil National de la Comptabilité 2008).<sup>251</sup>

Nonetheless, the Comité and respondents still struggle with on-going issues directly relevant to strategic assessment of accountability. Revenue disclosure such as the proper handling of financial ratios, the appropriate footnoting of pie charts with each "slice" delineating a revenue source, and explanatory disclosure for tables emerge as common challenges. Respondents' sense of entrapment in a relentless "ratio race" to the lowest percentage of donor revenue allocated to administrative costs (e.g. accounting and legal advice, and personnel security) emerges in two principal ways (Comité 2008o,

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<sup>249</sup> The others include rigorous management, and effective communication and best practices in fund-raising (Comité 2006a and 2006d). See also Comité/Sofres Survey citing financial transparency as the third greatest influence on donor trust (Comité de la Charte/TNS Sofres 2007, 12).

<sup>250</sup> See Section 3.2.1. A 1991 law required every NPO with more than €153,000 in revenue to publish the Statement of Use of Funds but did not specify how or, until recently, require certification by the *commissaires aux comptes* of conformity to accounts (French Government 1991a, Article 4; Conseil National de la Comptabilité 2008).

<sup>251</sup> The Conseil National de la Comptabilité debate centred on whether to require disclosure of revenue from all sources (the Comité's version) or only revenue from the general public (the Cour des comptes' position) (Soublin call April 2008). Note that the Cour des comptes' position streamlines the tasks and reduces costs of its statutory mission to audit the use of funds from the general public but provides less complete information (Léo Jégard & Associés Conference 2008).

24). First, members universally opposed publication of member organisation financial statements on the Comité web site for fear of comparison with other organisations. Second, there is an on-going internal debate among members on allocation of expenses and appropriate levels of costs not directly supporting programs (Comité 2008f; Soublin interview 2007). Most Comité Group respondents cited 20% as the appropriate number, whereas in the US there is greater flexibility. Even these leaders lag behind the US, and believe their donors lag behind the US public, in understanding the importance of administrative spending to ensure proper financial and legal oversight (Organisation 2; Independent Sector 2004c, Section V, respectively). In the US, best practice dictates a donor bill of rights that includes requirements of reasonable expenditures for administrative costs to ensure effective accounting oversight, accumulation of operating funds, and allocation of revenue to programs (e.g. Independent Sector 2004c, Sections I and V).<sup>252</sup>

In addition, the limitations of the Statement of Use of Funds (which discloses only how funds are allocated) diminishes the Comité's and non-Comité NPOs' potential role of educating the public to look beyond simple donor checkbook to beneficiaries questions – “whether my euros buy food” – to more complex questions.<sup>253</sup> The Statement of Use of Funds does not address issues such as whether the food made it into the proper hands (e.g. instead of the hands of dishonest government officials) and/or whether the NPO handling the food properly assured the security of its employees and volunteers and the beneficiaries of the food. Also, no respondents in either group have considered the importance of warnings to readers of such limitations in the Statement of Use of Funds.<sup>254</sup>

Finally, financial transparency might be expanded to match US standards on disclosure of terrorism-related matters and individual executive compensation (USGDTIRS 2008a, 14, 15, and 16 and Part VII, respectively).<sup>255</sup> The only two respondents disclosing individual executive compensation (and exceeding Comité

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<sup>252</sup> The donor bill of rights was not listed as a VAM due to overlap with the code of ethics. Typically the donor bill of rights includes such matters as an obligation to use donor restricted funds in accordance with the terms of the gift, confidentiality of data bases with donor information, and provision of adequate information to donors. This overlaps somewhat with the Statement of Use of Funds and the Comité's Charter requirements (Independent Sector 2004c, Section IX; Comité 2006a, Part III).

<sup>253</sup> The Comité's negative view of income statements (described in Section 5.3.1 “*The Comité and Corporatisation*”) also limits transparency.

<sup>254</sup> See related policy recommendation for the Comité in Section 8.4.

<sup>255</sup> With related Form TD F-90-22.1 (Report of Foreign Bank and Financial Accounts).

requirements) are among the largest, most international organisations with leaders heavily focused on accountability (Organisations 18 and C).

*Oversight and Disclosure of Management Compensation and Performance.*

Oversight of management compensation (i.e., fixed and discretionary salary and other monetary and non-monetary benefits) showed consistent results across both groups but a lower standard of independent oversight than in the US. The most common practice is oversight of the Director General's compensation by the President or, in rare cases, a *conseil d'administration* committee. Three interviewees mentioned a budget or salary grid establishing ratios between the highest and lowest salaries as a guide for the Director General's salary decisions (Organisations 3, 18, and C).<sup>256</sup> Typically in the US a compensation committee comprising at least one or two independent directors would recommend compensation for full board approval, particularly in the larger organisations. Best US practice also dictates a process of "benchmarking" top management compensation packages to comparable positions and organisations in the industry.<sup>257</sup>

Transparency of management compensation to donors and the public also appears weak. Even though the Comité now requires disclosure of the top five salaries in aggregate (and the law the top three in aggregate), the processes for oversight are less rigorous and not clear to donors in the public documents (Comité 2008a and 2008r). The Comité/Sofres Survey showed management compensation as second in importance for determining donor trust levels, with 60% considering controls insufficient and only 21% considering controls adequate (Comité de la Charte/TNS Sofres 2007, 16).

Evidence of performance evaluation of the Director General and senior management across both groups was uneven, ranging from informal discussions to end-of-multi-year mandate reviews. The Control Group overall showed more uniform attention to the issue (Table 4-1) and higher standards in terms of regularity, formality, and professionalism of the evaluation process (most importantly, establishing quantitative and non-quantitative objectives for the year and then assessing performance against such objectives). Moreover, here again a US-style compensation committee

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<sup>256</sup> It is likely that other respondents have a salary grid but did not mention this in the interview given the widespread use of this technique in France (Binder meeting 2007).

<sup>257</sup> US NPOs are more carefully benchmarking salaries due to the Internal Revenue "intermediate sanctions" regulations aimed at controlling excessive executive compensation with an excise tax penalty – an alternative to the more draconian penalty of rescinding the charitable exemption status (USGDTIRS 2005, Section 4958; Keating and Frumkin 2000, 15; USGDTIRS 2008a, Part VII; Doubleday teleconferences 2006).

would provide significantly more consistent and independent oversight involving independent directors. One Comité Group and two Control Group respondents also evaluated performance of *volontaires* (Organisations 19, C, and E), and a few also evaluate volunteers thus tying into the increasing professionalisation referred to in Section 5.1.1 below (Organisations 21 and 23).<sup>258</sup>

#### **4.2.3 VAMs Relating to Accountability Generally**

The document retention policy and Code of Ethics relate to accountability more generally.

*Document Retention Policy.* As mentioned in Section 3.1.1, the document retention policy is one of only two Sarbanes-Oxley Act accountability requirements directly applicable to NPOs in the US (US Government 2002, Section 802; Jackson 2006, 7). The document retention policy is an accountability obligation tied to organisational record-keeping. The wide implementation of document retention procedures reflects non-accountability regulatory reasons more than accountability efforts in France. No respondents in either group raised document retention as an important accountability issue – whether in furtherance of donor trust, ethical, effective management, or otherwise. One of the interviewees most focused on accountability and Soublin both avowed weakness in this area (Organisation 19; Soublin interview 2007). Rather, the complex non-accountability regulation explains the relegation of document retention to a lower level administrative matter rather than an issue of accountability. Frotiée cautions that unlike the Sarbanes-Oxley Act's overarching and accountability-driven requirements, document retention requirements in France depend on the type and purposes of individual documents (e.g. contracts or medical files) but do not target accountability (Frotiée and Chartier teleconference January 2008).<sup>259</sup>

*Code of Ethics.* The code of ethics, the most overarching VAM, is commonly adopted by NPOs of all sizes in the US but remains rare among respondents. The code of ethics aligns all VAMs with the mission and ensures application of VAMs to all NPO stakeholders included in the definitions of trust and accountability (e.g. Independent

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<sup>258</sup> A few other respondents with *volontaires* did not comment on *volontaire* evaluation.

<sup>259</sup> For example, contracts are governed by civil contract law, and the medical research and treatment NPOs respect separate, more extensive archive regulations (US Government 2002, Section 802; Frotiée and Chartier teleconference January 2008; organisation codes are omitted to protect confidentiality).

Sector 2004c, Sections I and II). However, both the Comité's Charter and a combination of other related documents show movement toward functionally a US-style code of ethics (Comité 2006a, 2008a, 2008h).

The Independent Sector Code of Ethics was published in 2004 as a model for NPOs nationally to adopt or reassess existing codes of ethics (Independent Sector 2004c).<sup>260</sup> The only respondent using such a model, a Control Group organisation, reported hearing from a government ministry official that this was the “first real code of ethics he had ever seen in many years of reviewing dossiers for privileged international NGO funding status.”<sup>261</sup>

The Comité's Charter applicable to all Comité members is, however, a strong alternative to the US-style code of ethics. No Comité Group members felt they would gain by adding a code of ethics to the Comité's Charter. While there is significant overlap between the Comité's Charter and the Independent Sector Code of Ethics, the key differences for purposes of this analysis are the latter's requirements of an obligation of disclosure to the public and the media in addition to donors and other stakeholders and an obligation to spend adequate amounts to ensure proper administration (accounting and legal oversight) (Independent Sector 2004c, Sections VI and V, respectively).<sup>262</sup> The low number of Control Group participants with a formal code of ethics shows a rare area of broader implementation of an accountability mechanism by the Comité Group (again assuming that the Comité Charter is considered an effective substitute for an independent code of ethics).

Critics of codes of ethics target the difficulty of applying the rules and the ease of sidestepping the rules due to lack of enforceability (e.g. a former Doctors Without Borders/Médecins Sans Frontières President (Médecins Sans Frontières 2003)). These arguments are not compelling. First, codes of ethics may include enforcement mechanisms when appropriate, for example in the case of a NPO engaged in activities potentially facilitating bribery. Second, the law also provides a fallback enforceability mechanism for underlying legal violations (such as fraud with l'ARC or child trafficking as with Zoe's Ark). Third, the benefits of the code of ethics generally outweigh enforceability, including as a communications vehicle to establish a common

<sup>260</sup> See Independent Sector 2004a.

<sup>261</sup> Organisation code is omitted to protect confidentiality. Note that a Cour des comptes report criticises the Ministère des Affaires Etrangères et Européennes' evaluation of French state subsidised NGOs (Charasse 2005, 5).

<sup>262</sup> See Section 8.4 for recommendations to the Comité regarding spending on administrative oversight noted in Section 4.4.2 and 6.6.3.

understanding of standards among all involved with the organisation from volunteers to the board to vendors, beneficiaries of services and beyond. Specifically in the case of the Comité Charter, the *censeurs* do enforce obligations through a trienniel review process that make mandatory recommendations and, potentially, a recommendation to retract accreditation in rare cases (Comité 2008n, 3). Finally, clarity of drafting and communication of organisation-wide standards mitigate the difficulty of application of the rules.

#### **4.3 Beyond VAMS, the Comité, and the Law – Unique Voluntary Practices of Respondent Organisations and Priorities for Improvement of VAMs**

In addition to responding to a pre-established list of potential VAMs, the interviews revealed a range of voluntary accountability mechanisms respondents had individually implemented, and/or consider immediate priorities for future implementation, that exceed the law, Comité requirements, VAMs, or in a few cases even US best practice standards.<sup>263</sup> This section extends the empirical assessment of how energetically, individually, and from the inside out accountability is increasing in France. This section also shows that the accountability mechanisms most critical to remedying the lack of independent oversight in the French nonprofit sector that is emerging as a theme in the empirical findings (e.g. audit committee and internal controls) are also highly susceptible to organisations' independent initiatives for implementation – both in terms of the regulatory gap to fill and the capacity of organisations to act independently.<sup>264</sup> This is one of several points where the analysis pushes the limits of the empirical findings to suggest the complexity and individuality of the strategic assessment process.<sup>265</sup>

The examples of voluntary accountability mechanisms implemented beyond the above-referenced requirements (listed and explained in Appendix 4) fall primarily within five categories: general *conseil d'administration* oversight; audit committee

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<sup>263</sup> See Appendix 4 for a complete list and Section 6.3.2 for accountability mechanisms specifically relating to volunteers.

<sup>264</sup> See Section 4.2.1 “*Independent Directors*” and “*Audit Committee*,” respectively, and Section 8.2.2 for related policy recommendations. See Section 5.3.1 on the extent of possible voluntary initiatives in this area relating to corporatisation.

<sup>265</sup> See also Sections 6.3.2 (on volunteers) and 7.2.3 (on whether increased accountability might have mitigated the impact of scandal).

matters; donor matters; volunteer matters; and examples exceeding US best practice. Many compensate, or functionally substitute, for US practices that seem culturally inappropriate or otherwise too extensive for the French context. According to respondents, all exemplify strategic assessment tailored to the priorities of each organisation reflecting the inside out process. Therefore, these initiatives do not indicate generally the extent of overall implementation of accountability mechanisms by the Comité Group, the Control Group, and/or the sector more broadly. Finally, the findings show that this list does not reflect a response to external variables.

Similarly, respondents' priorities for implementing additional VAMs when resources and time allow also support the base assumption of increasing accountability and the theme of bottom up, organisation by organisation implementation of accountability mechanisms. Their highest priorities span a range of areas in accordance with individual needs. All targeted some of the most functionally crucial voluntary accountability mechanisms in terms of improving independent oversight and accessibility of accountability-related disclosure. The overriding conclusion is that in both the Comité Group and the Control Group *no two organisations were alike* in terms of current accountability mechanisms implemented or priorities for the future.

Goals that interviewees prioritised for further increasing accountability within their organisations fell primarily into three basic categories: *conseil d'administration* matters; management techniques; and transparency. First, the most frequent *conseil d'administration* objective was establishment of committees with targeted objectives (three mentioning audit committees (Organisations 8, 29, and F), but also compensation committee (Organisation 12) and *conseil d'administration* nominating committee (Organisations 5 and D)). Three respondents also wanted to improve *conseil d'administration* functioning – either through recruiting more competent governance experts, developing risk analysis programs to ensure financial stability, or *conseil d'administration* training (Organisations 7 and 32; Organisation 18, respectively). Three others suggested functionally-equivalent alternatives to the US-style audit committee, internal controls, and whistleblower mechanisms (Organisations 25, 31, and E). Second, the management matters included first and foremost internal controls/audits and internal manuals of procedure (Organisations 3, 7, 15, 16, 19, and 20; Organisations 12 and 17, respectively). Other more general suggestions included developing an organisational accountability “reflex” of questioning the accountability aspects of all decisions and more generally improving management and human resources procedures (Organisations

21; Organisations 3, 14, 22, 26, and 31, respectively). Third, the transparency goals addressed primarily publishing financial information on the organisation's web site and tracking information between the field and headquarters (Organisations 30, C, and G; Organisation C, respectively).

Thus despite the limited influence of the accountability regulation and tax system discussed in Chapter 3 on strategic assessment, collectively organisations' individual implementation of accountability mechanisms creates an external context of increasing accountability from the inside out. The accountability efforts and "wish lists" provide evidence of the continuing dynamic of increasing accountability.

#### **4.4 Relevance of Internal and External Variables to Increasing Accountability**

Organisational size and initiative and profile of leader emerge as the two most important influences on the strategic assessment of accountability in the interviews.<sup>266</sup> International engagement, as noted above, is addressed in Chapter 5 as most relevant to increasing accountability in furtherance of ethical, effective management.<sup>267</sup> The external variables discussed in Chapter 3 (accountability regulation and the tax system) were virtually not mentioned as an influence on strategic assessment of accountability. There was no noticeable difference (even anecdotally) in the importance and relevance of the variables between the two respondent groups. These trends will track throughout the empirical findings in Chapters 5, 6, and 7. The complexity of interrelationships among the variables is addressed in Section 5.4.

##### **4.4.1 Organisational Size<sup>268</sup>**

The US literature and French empirical findings show that organisational size is a key factor in effectively determining the appropriate balance between a NPO's commitment to donors to use funds properly for programs and responsibility to implement effective accountability mechanisms (Reiser 2005, 582). Larger

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<sup>266</sup> See Appendix 1-G for a breakdown of organisation size.

<sup>267</sup> See Section 5.3.2.

<sup>268</sup> Throughout this section organisation codes are omitted as necessary to protect confidentiality given the revenue information in Appendix 1-G that is linked to size.

organisations are generally better able to absorb additional costs of implementing accountability mechanisms and benefit more from the effort – whether regulatory or voluntary. For example, a pivotal Independent Sector survey shows acceptance of post-Sarbanes Oxley Act requirements for NPOs to be size-dependent (Ostrower and Bobowick 2006, 5). State law introduces requirements such as independent audit committees based on size (\$2 million in gross revenue or more (California State Senate 2004, Section 12586(e)(2)).<sup>269</sup>

In general, the empirical findings in France follow the US with respect to the importance of organisational size to the decision to adopt, and the efficacy of, VAMs and other voluntary accountability mechanisms. For example, all of the Comité Group and Control Group respondents with audit committees evolving toward US standards were large organisations. Even a self-selecting body like the Comité sets a minimum threshold of €500,000 in annual donor revenue for membership (Soublin call January 2007).<sup>270</sup> Conversely, all of the smaller Comité Group and Control Group organisations (even within the Comité threshold) mention the impact of resource limitations on decisions relating to voluntary accountability mechanisms. Only two respondents also emphasised that VAMs were less necessary given their size because either the risk of failure of accountability was smaller or the small team de facto increased accountability, in part by working more closely together.<sup>271</sup> Therefore, the smallest organisations have generally implemented the fewest non-Comité required mechanisms and have the fewest immediate priorities for new voluntary accountability mechanisms.<sup>272</sup> Nonetheless, each organisation in both respondent groups had a unique approach to the strategic assessment – even within a similar size range. This likely reflects, among other factors, the influence of an organisational leader on accountability choices, even within a particular revenue level (as discussed further in Sections 5.4.1 and 5.4.3).

The only respondent without objectives to implement additional voluntary accountability mechanisms was the same one that did not see an increase in accountability in his organisation due to the small size, lack of resources, and loyal

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<sup>269</sup> See also Salamon and Geller on US study showing smaller organisations as less likely to implement “ethical protections” (2005, 8).

<sup>270</sup> See Note 23, *supra*.

<sup>271</sup> See also Putnam (2000) in Section 2.1.3 and the discussion of the theoretical implications of small NPOs in Sections 1.3 “Associations and Associative Sector,” 1.5, and 4.5.

<sup>272</sup> See also Sections 5.4.1 and 6.5.

donor base.<sup>273</sup> At the other extreme, five respondents felt that they already had implemented sufficient accountability mechanisms – all large organisations except one particularly sophisticated Control Group B organisation. These respondents do not alter the general conclusions regarding the relevance of the influence of organisation size to accountability decisions.

Size also influences the Comité's own strategy for recruiting members and developing accountability requirements for members. The potentially large remaining market for the Comité might include smaller organisations.<sup>274</sup> However, neither the Comité nor any Comité Group respondents interested in including smaller organisations in the Comité argued for lowering standards to facilitate membership of smaller organisations (Comité interviews 2007; Organisations 5, 11, 21, and 28).<sup>275</sup> Such a uniform approach ignoring size would exceed even the tiered US regulatory approach mentioned above. The stage of development of this initiative and the debate on introducing size-tiered accountability requirements is too early at the time of this thesis for analysis.

#### **4.4.2 Initiative and Profile of Leader**

The initiative and profile of leaders is a particularly important influence on increasing accountability in both groups – in terms of general views and authority for driving specific changes in accountability. Professional experience, willingness to take risks, and a personal belief in the importance of accountability all counted.

Almost without exception, the interviewees were experienced leaders (e.g. former captains of industry, one former government minister, and the elite of the younger French nonprofit sector leaders) based on previous professional records. They are willing to take a strong position on the importance of accountability generally and on specific accountability mechanisms – regardless of their views on the rationales for increasing accountability explored in subsequent chapters. As Robert Lloyd of One World Trust noted, “leadership is vital for accountability reform to be successful” (Lloyd, Oatham et al. 2007, 8 and 5 and 60 for risks and challenges). Examples of

<sup>273</sup> Six respondents, all in the Comité Group, did not answer the question for various reasons (Organisations 1, 6, 11, 22, 23, and 24).

<sup>274</sup> See Section 1.2.1 regarding the current €500,000 annual revenue threshold and target market.

<sup>275</sup> See also Section 8.4. Some flexibility in timing of application of Comité requirements for new smaller organisations was considered (Organisations 5 and 32).

leaders taking risks include proactively soliciting an audit from the Ministry of the Interior, soliciting double external audits, and publishing an annual report including accountability weaknesses (*rapport moral*) (Organisations B, 7, and C, respectively).<sup>276</sup> There was also an overall enthusiasm among respondents in both groups for the accountability challenges – willingness to reach, to invest effort, and to push cultural barriers in several cases. One medium-sized Control Group respondent said there was “nothing he would refuse” (Organisation E).

The initiative and profile of leader also proves important in both groups to assessing where the authority for accountability decisions resides. Institutionalisation of accountability practices (i.e., the strategic assessment, resulting accountability decisions, and implementation of decisions) depends largely on the leader (generally either Director General or President, or occasionally member of the *bureau*). Technically a NPO *conseil d'administration* is at the top of the chain of authority – with authority over accountability matters. This authority includes submission for a vote as necessary (by law or organisational practice) to the *assemblée générale* in the case of associations. However, the *conseil d'administration* is much less likely than a US board of directors to assume responsibility for accountability issues. Technically a NPO *conseil d'administration* is at the top of the chain of authority – with authority over accountability matters. This authority includes submission for a vote as necessary (by law or organisational practice) to the *assemblée générale* in the case of associations. However, the *conseil d'administration* is much less likely than a US board of directors to assume responsibility for accountability issues.

The wide variety of examples of increasing accountability reflects individual organisational approaches and differing levels of engagement of the *conseil d'administration*, President, and/or Director General in determining accountability priorities, resource allocation, and necessary internal structural changes to implement accountability mechanisms. Twelve respondents mentioned the importance of co-leaders: a General Secretary referencing the President (Organisations 5, 6, and 27); the President highlighting the driving role of the Director General (Organisations 10, A, H, and J); or a strong Treasurer or other senior manager supporting the Executive Director (Organisations 4, 15, 16, 22, and 32)). The interviews also show the initiative of leader is increasingly important as increasingly complex, international accountability

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<sup>276</sup> See discussion of initiative of leader in Section 4.4.2 and 5.4.3.

mechanisms are assessed (e.g. a Director General laying the groundwork for a whistleblower mechanism).<sup>277</sup> Finally, 12 interviewees from both groups trumpeted their own assumption of responsibility for accountability issues in their organisations as encouragement for broader interest in accountability in the French nonprofit sector (Organisations 4, 21, 25, 27, 30, 31, 32, B, C, D, E, and I). Therefore, leaders' interest in their own influence crossed both respondent groups.

The process of bringing accountability to the organisation's agenda relies in large part on the Director General for those areas most related to operations and the President for the areas most closely linked to governance or the *conseil d'administration*. With respect to the former, most Directors General simply give orders to implement specific practices. For example, one Comité Group member piloted an internal audit process himself (Organisation 25); one enforced a process of focusing on accountability for volunteers (Organisation 21); and a third decided that the *conseil d'administration* should have a dashboard (one-page summaries of key financial and performance indicators most relevant to a particular NPO) (Organisation 15). These voluntary accountability mechanisms do not require *conseil d'administration* approval. Similarly, with respect to the latter, many Presidents single-handedly order procedures. One President declared that all of his expenditures would be approved by the *conseil d'administration* (Organisation 17). An example requiring a lengthier process is the election of independent directors to the Comité's *conseil d'administration*. The election required over a year of Soublin's piloting an information and internal lobbying campaign, engaging individual Comité *administrateurs*, members, and outside experts. Finally, two Comité Group interviewees noted using the Comité as an "excuse" or vehicle for convincing their *conseil d'administration* to approve accountability-related matters if the *conseil d'administration* resists (Organisations 25 and 30; Comité senior management calls/interviews 2007). Alternatively, a few persistently raise issues until the *conseil d'administration* follows the advice and/or *administrateurs* change over time as their terms end (Comité senior management calls/interviews 2007). Finally, as noted in Section 4.4.1, the initiatives of the leaders likely overshadow even size in terms of accountability efforts.

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<sup>277</sup> See also Section 5.4.3 on leadership and ethical, effective management.

#### 4.5 Relationship of Empirical Findings on Increasing Accountability to Theoretical Framework

Rose-Ackerman's analysis of weighing the various costs, benefits, and influences on "signalling" trustworthiness explains the core strategic assessment process around the organisation-driven increasing accountability exposed in this chapter. This strategic assessment of accountability-related decisions across a range of NPOs, taking into consideration internal and external variables noted in Section 4.4, underlies the general approach to increasing accountability (the "how" accountability is increasing that serves as a foundation for asking "why").

The importance of size as a variable in the strategic assessment of accountability mechanisms noted in Section 4.4.1 relates directly to Hansmann's model. The increased need to implement accountability mechanisms with increasing size of organisation links to Hansmann's explanation that the higher the earnings, the higher the risk of unreasonable distribution of funds to controlling management (Hansmann 1980, 871). Smaller organisations theoretically present less incentive to controlling persons to circumvent the nondistribution constraint (i.e., earnings must be significant enough not to be able to be paid out as reasonable management salaries) (Hansmann 1980, 871; Independent Sector and Board Source 2006; Unerman and O'Dwyer 2006, 310).<sup>278</sup>

Finally, the empirical findings relate to Salamon's insistence that modern trust must be earned through accountability rather than assumed from the intrinsic characteristics of the nonprofit form. Even the few respondents beginning to extend the notion of accountability as far as performance evaluation insist on the on-going importance of trust generally.<sup>279</sup> All imply a trust based on something other than accountability even if they do not articulate the idea of a nondistribution constraint in such words.<sup>280</sup> The extent to which respondents currently consider accountability a necessary supplement to trust, as opposed to an issue separate from trust, differs depending on the cited rationale for increasing accountability and underlies the empirical and theoretical explanations in Chapters 5 and 6.

<sup>278</sup> VAMs are not irrelevant to small NPOs but rather should be examined on a case-by-case basis to maximise the strategic assessment in the organisational context. Moreover, no respondents commented on the importance of administrative expenditures to ensure adequate financial/accounting/legal oversight that underlies US best practice (e.g. Independent Sector 2004c, Section V). See also Section 4.2.3 "*Code of Ethics*."

<sup>279</sup> Performance evaluation is further explored in Chapter 5.3.1.

<sup>280</sup> See Chapter 2 Introduction and Section 2.1 for references to literature on donor trust.

#### 4.6 Conclusion

Interest in accountability, and the efforts to introduce mechanisms to enhance accountability, among French NPOs representing a range of sectors of activity, size, degree of international engagement, and initiative and profile of leader, are increasing. Evidence of dedication to increasing accountability includes the interest in the subject demonstrated during the interview process and the supporting concrete examples of accountability efforts. Respondents in both the Comité Group and the Control Group have individually adopted a range of VAMs, implemented additional voluntary accountability mechanisms beyond regulatory obligations, Comité requirements, and/or the defined list of VAMs, and prioritised others for future implementation.

For both groups of respondents, the increasing accountability in France derives largely from organisation-generated, inside out efforts based on the strategic assessment, as opposed to the US accountability environment derived largely from federal and state regulation. Internal variables appear to influence this strategic assessment; however, external variables are significantly less important. Thus the *l'air du temps* in France reflects the collective creation of external context of increasing accountability from individual organisations' accountability efforts more than organisations' generalised sense of, or reaction to, a top down regulated accountability framework. There are no significant differences between the two respondent groups in terms of level of interest in accountability, implementation of VAMs, priorities for the future, or relevance of the variables. The Code of Ethics was the one area of weakness in the Control Group compared to the Comité if the Comité's Charter is considered a code of ethics. However, the key conclusion is that no two respondents are alike in terms of accountability mechanisms implemented and/or accountability priorities for the future.

Nonetheless, overall respondents in both groups still fall short of US standards on a variety of levels. First, the most significant discrepancies include the accountability mechanisms related to independent oversight of accountability matters, particularly independent directors, audit committees, and the whistleblower mechanism. The weakness in independent oversight in turn affects decision-making relating to oversight of management compensation, conflicts of interest, hiring and supervising the Director General, and general unbiased governance. Similarly, while the Comité recently has

taken the significant step to elect independent *administrateurs*, the Comité also continues to lag significantly behind US best practice standards. Second, the findings also show weakness regarding accessibility of disclosure of accountability-related matters. Both are taken up in the policy recommendations in Chapter 8.

The next three chapters explore in greater detail the strategic assessment process and the possible reasons for the growing interest in accountability and adoption of measures to increase accountability. The spectrum from Hansmann's trust to Salamon's accountability-based trust underlies the empirical analysis.

## Chapter 5

### Ethical, Effective Management

#### ***“Doing the Right Thing”? Disregarding Donors?***

“Accountability is not really about donor trust...it is a normal part of being an association and goes along...with being modern...and it’s the *right thing to do*” [author translation] (Organisation H).

“NPOs should not spend their time trying to figure out what it is that donors want” [author translation] (Organisation C).

#### **Introduction**

Building on the previous chapter’s analysis of organisations’ strategic assessment of accountability as the fundamental process showing how accountability is increasing, this chapter moves on to the empirical analysis of why accountability is increasing.<sup>281</sup> In particular, this chapter analyses ethical, effective management, the most oft-cited explanation for increasing accountability above even donor trust (addressed in Chapter 6). It then explores key factors driving increasing accountability in furtherance of ethical, effective management and the relevance of the variables to organisations’ decision-making relating to such factors: corporatisation, integration of international standards, and funder accountability requirements (each as defined below). This chapter also considers the relevance of donor trust generally to respondents citing ethical, effective management, including how, if at all, these organisations position themselves within the Hansmann to Salamon trust theoretical spectrum.

First, ethical, effective management of NPOs in the current nonprofit environment emerges as the single most important reason for increasing accountability. Ethical, effective management is an internally driven process, resulting in the bottom up, organisation-driven increase in accountability introduced in Chapter 3 (as opposed to the regulation downward US system). Moreover, the attention to ethical, effective management through accountability penetrates many layers of the organisation.

Second, the chapter explores three key factors driving accountability efforts in furtherance of ethical, effective management: corporatisation (i.e., the transfer of corporate accountability mechanisms and policies from the corporate/for-profit world to

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<sup>281</sup> Drafting advice from Howell (e-mail 2009).

the nonprofit sector (hereinafter referred to as “corporatisation”); the integration of international standards of accountability (primarily US models explored in Chapter 3); and compliance with accountability requirements imposed by governmental/corporate/institutional funders (hereinafter referred to as “funder accountability requirements”). All three of these driving forces function within the larger ethical, effective management objective rather than as independent rationales for increasing accountability. Overall, the Comité as an independent organisation does not focus on ethical, effective management and lags behind the member organisations in implementation of many related accountability mechanisms tied to corporatisation and international standards. Finally, as the results will indicate, respondents do not consider accountability mechanisms implemented to further ethical, effective management as mitigating the danger to an organisation’s reputation from scandal linked to failure of accountability within the organisation or another NPO.

All respondents citing ethical, effective management emphasise the idea of a continually evolving individual best balance of accountability. The internal variables prove particularly important lenses for organisations’ strategic assessment relating to corporatisation, integration of international standards, and funder accountability requirements. Respondents across both groups view the external variables as relatively unimportant, which aligns with the internally driven focus of the ethical, effective management rationale.

The last section then dissects the theoretical implications of the ethical, effective management rationale for increasing accountability. The theoretical discussion first considers the relationship between the driving forces behind ethical, effective management and Hansmann’s trust theory. In addition, a functional equivalent of Rose-Ackerman’s strategic assessment of “signalling” trust emerges but through a different, ethical, effective management focused approach. Salamon’s suggestion of accountability as a necessary support for Hansmann’s trust in the current environment remains separate from the ethical, effective management group’s motivation. Finally, irrespective of the extent of, and/or the cited primary rationale for, increasing accountability, all respondents in both groups agree on the enduring importance of trust.

## 5.1 Ethical, Effective Management: Key Concepts<sup>282</sup>

### 5.1.1 Components of Ethical, Effective Management

The proposed empirically-derived conceptual overview of ethical, effective management delineates three combined elements: *effective management* (including, in turn, professionalisation, internal trust (as defined below), respect of appropriate divisions between governance and operations, and strategic planning); *ethical behaviour*; and a notion of “*normal*” organisational behaviour in “today’s world” (Organisations C and H). Ethical, effective management was not one of the specified options in the interview question exploring the most important explanations for increasing accountability within respondent organisations. Critically, the term emerged empirically from interviewees’ responses. Every respondent that answered the question spontaneously described accountability as “the right thing to do” (*la bonne chose à faire*) using exactly those words.

Even after further prodding and repeating alternative explanations for increasing accountability (including donor trust), respondents re-emphasised that there was only this one reason for efforts to increase accountability. When asked to explain further, different respondents emphasised different aspects of ethical, effective management. Thus the evidence comprises a range of individual examples and perspectives, reflecting the individuality of the strategic assessment process. However, all included a reference to one or more of effective management, an ethical component, and the notion that there was “no choice” in the current era. This “no choice” perspective reflects organisations’ individual perspective rather than an externally driven sentiment. Finally, ethical, effective management is primarily achieved through corporatisation, integration of international standards, and compliance with funder accountability requirements.

**Effective Management.** First, effective management is the core operational component of ethical, effective management and most closely linked to the implementation of accountability mechanisms. All respondents in both groups citing ethical, effective management describe accountability as essential for effective NPO management generally. Management in turn comprises four areas: professionalisation; internal trust (i.e., trust of the *conseil d’administration*, management, and others within

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<sup>282</sup> The strategy for defining ethical, effective management reflects comments from Mangen (meeting 2008).

the organisation (Anheier 2005, 238-9)); appropriate separation of governance/operations; and strategic planning processes that integrate accountability mechanisms. Examples are individual to various organisations and demonstrate the key theme in the thesis of organisation upward, inside out increasing accountability in France.

The most oft-cited management objective in both respondent groups was “professionalisation” through implementation of voluntary accountability mechanisms. Some cite redefining chief financial officer roles, internal controls, and committee structure of the *conseil d’administration* (Organisations 6, 25, and A; Organisations 14, 17, and 23; Organisations 17 and D, respectively). Other examples include changing the Director General regularly enough to have a “fresh eye” on accountability, attention to clarification of roles of different members of the management team, upgrading computer systems relating to accountability, centralising national fund-raising event procedures, and improving meeting write-up and record-keeping procedures (Organisation 10; Organisations 7 and 12; Organisation 15; Organisations 14 and 15, respectively). At each level the notion of professionalism *from within* was clear – irrespective of perceived behaviour outside the organisation. In addition, ten (30%) Comité Group members and five (42%) Control Group members describe ethical, effective management through accountability as “executing the profession better,” including improving accountability of field operations and more generally linking accountability to operations (Organisations 7, 14, 17, 19, 22, 24, 25, 30, 31, 32, A, B, C, D, and H). Another commented that accountability was the “right thing” to ensure “pertinence and efficacy” (Organisation C). Two senior sector leaders exclaimed that they “deplore” and “abhor” “the absence of professionalism in the nonprofit sector!” and “do not believe in enthusiastic amateurism” (Organisations 17 and D, respectively). Finally, respondents did not link professionalism to exchanging volunteers with paid employees – in contrast with the Foreign Affairs Commission Report’s suggestion that professionalising NPOs requires replacing volunteers with paid professionals (National Assembly Foreign Affairs Commission 2007, 45). All but one of the respondent *conseil d’administration* Presidents are volunteers, as are a few management positions (Organisation 14 (paid President); Organisations 23 and 33 (particular emphasis on volunteer management), respectively).<sup>283</sup>

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<sup>283</sup> See Section 6.3.2 on volunteers.

Accountability mechanisms have also become a tool for effective management through ensuring “internal trust.” Respondents’ definition of internal trust matches the literature: reassuring the executive team and ensuring the trust of the *conseil d’administration* in management (Anheier 2005, 238-9). The key aspect of internal trust is responsibility of leaders for accountability matters. Leaders suggested that accountability “comes from [them],” complimented a predecessor on major accountability initiatives, and in the case of one small organisation “even [dumped] the founder/former President” for failure to enforce a culture emphasising accountability (Organisations 21, 25, and 24, respectively). Thus part of the management benefits and requirements include leaders’ “will” to “do the right thing.”<sup>284</sup>

The respondents citing ethical, effective management also demonstrated the greatest awareness of the importance of clear boundaries between governance and operations that defines most well-functioning US boards of directors.<sup>285</sup> One seasoned President believes implementation of accountability mechanisms confines the *conseil d’administration* to using “their noses but not their fingers” with regard to operations (Organisation 17). One Control Group respondent strives for a “true board (a US-style board) that...oversees the paid executive director, budget, and planning” (Organisation D). Another established a charter for the *bureau* that reflects exclusion of operational matters (Organisation 30). Finally, two international NPOs undertook a major restructuring of *conseil d’administration*/senior management relations, each with outside expert consultants (Organisations 30 and C). This governance/operations line requires independent oversight by independent directors, which is complicated by the membership structure of associations and resulting general absence of independent *administrateurs*.<sup>286</sup>

Finally, accountability has become an “instrument of strategic differentiation” and a “strategic and management tool” (Organisations 18, 19, and 23; Organisation 25, respectively). The management component of ethical, effective management increasingly includes detailed qualitative/quantitative strategic planning (e.g. one organisation’s three-to-five year plan including delegation of authority and employee “contracts” to meet strategic planning objectives) (Organisations 23 and 31;

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<sup>284</sup> See also Sections 4.4.2 and 5.4.3 on the initiative of the leader.

<sup>285</sup> The line between governance and operations is just developing in the French nonprofit sector as a formal responsibility for *conseil d’administration* oversight but is most advanced among respondents citing ethical, effective management. See also Section 5.4.3.

<sup>286</sup> See Sections 4.2.1 “*Independent Directors*” and 5.3.1.

Organisation 18, respectively). Accountability considerations underlie the strategic planning process, and voluntary accountability mechanisms increasingly appear as planning objectives along with operating objectives (Organisations 18, 19, C, D, and E).<sup>287</sup> One respondent even requested confidential treatment of the network of internal strategic/reporting structure documents shared during the interview due to the importance to competitive strategy (Organisation 19).

Ethics. Second, ethical, effective management includes an ethical component for all respondents in both respondent groups, even for respondents speaking more extensively of the management aspects. Respondents described this aspect of ethical, effective management as “defending” values, reflecting in organisational behaviour the “values that the mission is about,” a “culture of accountability with core values,” and a “moral contract of trust” (Organisations 22 and 32; Organisations 21, and 13; Organisations 2 and 12, respectively). Comments all explicitly and implicitly refer to a general ethical obligation to behave in accordance with expectations irrespective of others’ reaction (recalling Rose-Ackerman) rather than donor trust. This question of “why ‘do the right thing?’” in a situation where, as noted in Sections 2.1.3 and 3.1.1, the nondistribution constraint eliminates financial incentives and is weakly enforced is central (Hansmann call 2008).

The ethics element again exemplifies organisation-specific context influencing individual strategic assessment. Militant organisations believe militant members’ historically consistent demand for dialogue increases attention to ethical matters, including increasing accountability efforts (Organisations 9 and 30).<sup>288</sup> One medical support organisation ethically “owed accountability to parents and patients because members are responsible to peers” (Organisation 14). Another emphasised that ethical management is more important than even in the for-profit world because they “sell health!” (Organisation 7).

Normal Practice. Third, respondents consider accountability efforts in furtherance of ethical, effective management “normal” effective NPO practice in a world increasingly concerned with accountability. Comments include acceptance that accountability is “part of the normal evolution of things in particular in an era when

<sup>287</sup> Other organisations may include accountability in the strategic planning process, but due to time constraints the interview did not explore this except where respondents demonstrated particular emphasis.

<sup>288</sup> See Section 4.2.1 “*Whistleblower Mechanism*” and Note 243, *supra* for a description of militant organisations. All interviewees who spoke out on the importance of militancy represent Comité Group respondents.

accountability is on everybody's mind" and part of the "normal functioning of an association" (Organisations 29 and C, respectively). Two Directors General insisted that accountability is "part of keeping up with the times" and "being modern" – with all other respondents agreeing (Organisations J and H, respectively). Thus accountability is becoming ordinary course for both governance and operations, notwithstanding the varied levels of sophistication of implementation of accountability mechanisms among organisations.<sup>289</sup> This notion of "normal" rarely involves the influence of external variables on accountability or donor trust. Rather, "normal" appears to reflect both organisations' internal sense of what is the "right" way to behave with respect to accountability plus organisations' sense of other organisations – i.e., internally generated accountability efforts collectively creating the external level of normalcy.<sup>290</sup>

### **5.1.2 Ethical, Effective Management Responses – For Show or For Real?**

The question of whether some of the ethical, effective management responses were "for public show" rather than the true underlying reason for increasing accountability emerged during the follow-up verification and analysis of the interview findings (Comité senior management call/interview 2007).<sup>291</sup> This concern appears unfounded. As described throughout this chapter, the group of respondents citing ethical, effective management as the primary rationale for increasing accountability includes the most committed and sophisticated organisations in terms of implementation of accountability mechanisms (surpassing the Comité itself and Comité standards for members in many cases). Thus the rhetoric is backed by concrete actions. Moreover, the candour and depth of disclosure of weaknesses in the organisations' accountability mechanisms during the interviews, even among the largest and most well-known respondents, argues against "acting." Also, as noted in Section 1.2, the interviewees were senior members of the French nonprofit sector, and indicated that they have "nothing to prove" as NPO leaders or individuals. Finally, the question of public image (i.e., whether ethical, effective management is an example of "the right deed for the wrong reason") is, nonetheless, important to ask even though the end result is still

<sup>289</sup> There do not appear to be important links between ethical, effective management and new public management (NPM) (Schedler and Proeller 2002, 165 and 170). No respondents referred to NPM.

<sup>290</sup> See Sections 2.3, 3.2, 4.1, and 4.2 for sector context. See Section 5.4 citing Howell on the impact of environment.

<sup>291</sup> See also Section 5.2 on how ethical, effective management respondents do not cite, although some explicitly refute, donor trust as a key rationale for increasing accountability.

substantively higher levels of accountability.<sup>292</sup> Arguably a public image incentive might more closely approach the donor trust rationale that respondents separated from ethical, effective management.<sup>293</sup>

## **5.2 Empirical Findings: Accountability and Ethical, Effective Management – Respondent Organisations and the Comité**

This section explores the empirical findings of the importance of the ethical, effective management rationale for increasing accountability among respondents in both the Comité Group and the Control Group, compared to the relatively lesser importance of ethical, effective management to the Comité itself as an independent organisation. The analysis then considers the relationship between the ethical, effective management and donor trust responses. Finally, evidence of the depth of implementation of accountability mechanisms to achieve ethical, effective management within the organisations adds perspective.

The most frequently and vehemently cited reason for increasing accountability in both the Comité Group and the Control Group organisations is that accountability is essential for ethical, effective management. The ethical, effective management results were stronger on a percentage basis in the Control Group. Within the Comité Group, 19 (58%) cited ethical, effective management. Within the Control Group, nine (75%) prioritised ethical, effective management. All respondents were then asked to comment on a brief list of other possible reasons for increasing accountability (omitting any that respondents raised spontaneously): donor trust, the media, corporatisation, the influence of international standards of accountability, donor pressure, funder accountability requirements, and regulation. As noted above, the idea of ethical, effective management was not specifically offered for comment as it emerged empirically through the course of the research.

Respondents citing ethical, effective management as the primary rationale for increasing accountability focused on the intrinsic importance of accountability as both the basic morality and management strategy *irrespective of donor reaction (trust or*

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<sup>292</sup> The reference from T.S. Eliot's poem *Murder In the Cathedral* responds to a question and reference to the poem from Mangen (meeting 2008; Eliot 1935).

<sup>293</sup> See, for example, the discussion on performance evaluation in Section 5.3.1.

*otherwise*). In every case, respondents citing ethical, effective management answered without hesitation and rarely referred to the other potential rationales. There were no moderate answers like “somewhat important” among ethical, effective management respondents. No respondents in either group cited ethical, effective management as a second priority. Only one respondent cited donor trust as a second rationale closely behind ethical, effective management (Organisation 15). For respondents citing ethical, effective management there was only one acceptable answer. Certain respondents concisely described the independent importance of accountability as “no choice” (i.e., a mandatory management obligation) (Organisations 7, 18, 25, 31, C, and D). Similarly, no respondents affirmatively said that ethical, effective management was not a factor. Finally, within the ethical, effective management category, only seven Comité Group and two Control Group organisations also offered a secondary explanation after ethical, effective management other than donor trust (Organisations 6, 15, 21, 24, 25, 29, 31, 33, I, and J).

All respondents in both groups suggested, explicitly or implicitly, that this view had moved accountability to a higher level than donor trust or other donor result driven rationales. However, as with the respondents citing donor trust, the risk to an organisation’s reputation of failure of accountability remained a consistent parallel theme.<sup>294</sup>

Despite the frequently crucial focus of leaders on ethical, effective management described in Section 5.4.3, the ethical, effective management practices are deeply integrated into the organisation’s policies and operations. Multiple examples offer evidence of the individual, organisation upward efforts to increase accountability beyond regulation, Comité requirements, and VAMs. The ethical, effective management group included the most sophisticated organisations with respect to written policies. The most effective and pro-active were a clear directive from the President to implement all policies in writing, specifically to avoid loss of accountability at succession of the President or Director General (Organisation 17) and written strategic documents binding headquarters and the field through a network of written policies considered strategically unique (Organisation 19). Other examples include top down

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<sup>294</sup> This aligns with a 2005 study of approximately 500 US NPOs by The Johns Hopkins Nonprofit Listening Post Project that concluded “...relatively limited numbers of the organizations making recent changes in their accountability practices cited funder demands, media attention, or other outside pressures as reasons for the changes. Much more common were reasons related to a desire to ensure transparency and accountability..., demonstrate effectiveness..., and serve customers and clients better...” (Salamon and Geller 2005, 9).

mandates for written internal audit procedures (Organisation 25) and written policies and letters binding management and the *administrateurs* with respect to certain accounting and/or auditor policies (Organisation 18).<sup>295</sup>

In addition, the group citing ethical, effective management includes all of the most resolutely accountable in both groups in terms of internal documents relating to accountability matters (e.g. internal manuals and volunteer codes). Respondents felt that the internal documents/procedures offered concrete examples of wide understanding of the term “accountability” among employees, the *conseil d’administration*, and volunteers (despite the absence of a formal organisation-specific or French language definition). Respondents also suggested that these documents establish a breadth of expectation of ethical, effective management within the organisation, even if employees do not always read all the documents. More generally, 13 (39%) Comité Group respondents and two (17%) Control Group respondents citing ethical, effective management have implemented the most extensive accountability mechanisms (in terms of number and type – VAMs and others) in the entire study (Organisations 7, 14, 15, 17, 18, 19, 21, 24, 25, 21, 29, 30, 31, C, and D).<sup>296</sup>

Finally, the explicit separation of ethical, effective management from donor trust among respondents citing ethical, effective management merits particular emphasis. Ethical, effective management requires acting on the basis of independent managerial, ethical, and sector analyses – not on the perception of donor or any other external reaction. 13 (ten (30%) Comité Group and three (25%) Control Group) respondents stated that they did not consider, or hardly considered, donor trust or external reaction with phrases such as “regardless of donor trust” or the “irrelevance of donor trust” (Organisations 6, 7, 17, 18, 19, 20, 22, 23, 24, 32, B, C, and H).<sup>297</sup> Many of the examples of voluntary accountability mechanisms cited targeted management objectives that would not even be known and/or understood by individual donors (e.g. the dashboard described in Section 2.2.1 and in Appendix 4). One acknowledged that the “Coca-Cola level renown” his organisation enjoys overprotects donor trust. Professionalising the organisation through the implementation of accountability measures provides credibility and, more generally, is the “right thing to do” ethically

<sup>295</sup> In the case of the Fondation de France, there is a further trickle-down effect on foundations housed within the Fondation de France through the written policies and requirements (Fondation de France study interview 2007 (See Appendix 1-A); Fondation de France 2007, 2-8).

<sup>296</sup> See Section 4.2, Table 4-1, and Appendix 4.

<sup>297</sup> Note that this number may be small as others communicated the idea less explicitly.

(Organisation 25). One international organisation respondent suggested that the extreme example is that “in the US good management compensates for trust...because the US organisations have stereotypes of good management and therefore no real suspicion by donors” (Organisation 18).

Those that recognised the de facto benefits to donor trust of ethical, effective management carefully noted the cause and effect: “It is simply normal to work with clarity and transparency...nonetheless it is true that good accountability establishes donors trust” (Organisation 7). One noted that the positive effect of accountability on trust is an “underlying assumption” even if not motivated by donor trust (Organisation 14). Similarly, four respondents explicitly mentioned the importance of image, but all as affected by accountability after the fact and none as the reason for accountability efforts (Organisations 6, 12, 24, and I).

*The Comité and Ethical, Effective Management.* The Comité itself does not focus on ethical, effective management as a rationale for increasing accountability. In 2005 the Comité’s conseil d’administration formally reaffirmed the donor trust mission and revamped the logo to state “Comité de la Charte giving with trust” (Comité 2008n; Comité assemblée générale 2008; Comité 2005d). Moreover, none of the representatives of Comité senior management mentioned ethical, effective management in any of the numerous formal interviews or informal conversations on the subject – either with respect to Comité members or within the Comité itself. Even the Conseil de Déontologie (Ethics Council), a group of independent advisors that advised the Comité periodically on ethical issues until recently dissolved into individual advisors, functioned within the donor trust mission (Comité senior management call/interview 2007; Cohas-Bogey e-mail May 2008). Similarly, the financial transparency requirements target donors specifically, with the Statement of Use of Funds the lynchpin (Comité senior management calls/interviews 2007; Organisation 4).<sup>298</sup> Separately (i.e., outside the discussion of the Comité’s mission and requirements), Comité senior management does address accountability as related to ethical, effective management generally. Also, de facto many of the Comité’s requirements further ethical, effective management (e.g. Comité 2008e and Comité 2008f). However, the lack of direct focus on ethical, effective management both within the Comité and on behalf of Comité members results in the Comité lagging behind member organisations

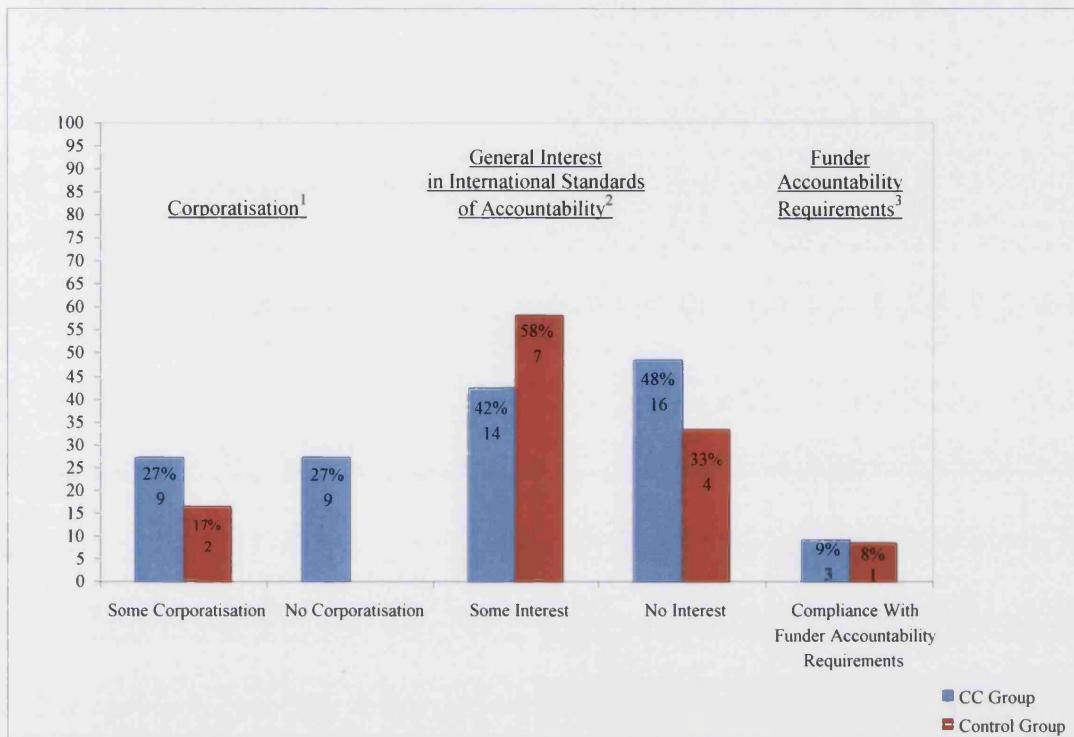
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<sup>298</sup> See Section 5.3.1 “*The Comité and Corporatisation*” on the restriction on publication of income statements by Comité members.

with respect to implementation of accountability mechanisms relating to corporatisation and international standards (analysed below).

**5.3 Empirical Findings: Three Key Forces Driving Increasing Accountability to Achieve Ethical, Effective Management – Corporatisation, Integration of International Standards, and Compliance with Funder Accountability Requirements**

This section explains how organisations increase accountability in furtherance of ethical, effective management. Three key driving forces for implementing voluntary accountability mechanisms to achieve ethical, effective management include: corporatisation, the integration of international standards of accountability, and compliance with funder accountability requirements. All three reflect the individual organisational strategic assessment of appropriate accountability initiatives that generate inside out increasing accountability and demonstrate the dynamic nature of accountability. However, despite the evidence of the implementation of accountability mechanisms triggered by these factors, few cited them as independent rationales for increasing accountability. Most respondents in both groups considered all three corollaries to, or forces in support of, ethical, effective management. Respondents also insisted unwaveringly on the on-going independent importance of donor trust irrespective of the choice of ethical, effective management as the primary rationale for increasing accountability and/or the relevance of these three factors. Finally, respondents do not perceive accountability efforts targeting ethical, effective management (whether or not triggered by any or all of these three factors) as protection from scandal resulting from failure of accountability within their own organisation or another NPO. Table 5-1 sets out the approximate response levels with respect to each of the three.

**Table 5-1****Driving Forces for Accountability Targeting Ethical, Effective Management**

Source: Author's research data.

<sup>1</sup>Corporatisation: 7, 8, 9, 17, 18, 19, 21, 25, 29, C, and I. Affirmatively stated no corporatisation: Organisations 1, 2, 3, 4, 10, 15, 16, 22, and 27. Organisation codes and table reflect respondent comments. Note that de facto some of these organisations did exhibit corporatisation.

<sup>2</sup> No respondents focused on integration of international standards of accountability as a direct rationale for their own increasing accountability. Some interest in international standards: Organisations 4, 5, 7, 8, 11, 14, 18, 19, 25, 26, 27, 30, 31, 32 ("from advisors only"), B, C, D, E, G, I, and H ("when ready"). No interest in international standards: Organisations 1, 6, 9, 10, 12, 13, 15, 16, 17, 20, 21, 22, 23, 24, 28, 29, A, J, K, and L. Control Group respondents stating "no interest" still de facto implemented international practices.

<sup>3</sup> Organisations 5, 19, and D. Note that other organisations have state, corporate, and institutional funding but did not consider them at all related to increasing accountability or ethical, effective management.

### **5.3.1 Empirical Findings: Corporatisation as a Driving Force for Increasing Accountability**

Corporatisation is the most important driving force for increasing accountability practices in furtherance of ethical, effective management. Performance evaluation is at the most advanced edge of corporatisation. While few considered corporatisation an independent explanation for implementing new accountability mechanisms, many cited newly implemented VAMs and other voluntary accountability mechanisms that de facto

exemplify corporatisation.<sup>299</sup> Accountability mechanisms implemented through corporatisation target almost exclusively ethical, effective management.<sup>300</sup>

The most important areas of corporatisation are selected individually by organisations and therefore offer evidence of the bottom up approach to increasing accountability. The organisations decide internally which VAMs and other voluntary accountability mechanisms within the corporate menu are important in their own organisational context. These include setting qualitative and quantitative objectives as a basis of employee evaluations; formal strategic planning; risk analysis; internal audit procedures; and hiring senior management positions through professional search firms generally focused on corporate hiring (Organisations 8, 18, C, and D; Organisations 18, 19, and C; Organisation 7; Organisations 7, 25, and 32; Organisations 7 and 31, respectively).<sup>301</sup> One Control Group A organisation has adopted an advisory board of corporate luminaries who share overall business world perspective at regular semi-annual meetings, which the Director General considers an important part of “staying with the times” (Organisation C). Another major Comité Group organisation’s study of the whistleblower mechanism reflects the importance of accountability “...as in the corporate world” (Organisation 25).

In addition, the list of best voluntary accountability practices above and beyond regulation, the Comité requirements, and VAMs, collected during the course of the interview shows extensive and sophisticated borrowing from corporate practices.<sup>302</sup> A significant number reflect best practice in corporations, such as “dashboards,” internal audit teams, disclosure of individual management compensation, and linking variable compensation (e.g. year-end bonuses) to individual and team performance of specified planning objectives. Only a few practices in that list were specific to the US or French nonprofit sectors such as those relating to donors and volunteers. Other practices are designed to substitute functionally for the corporate equivalent in a less resource-intensive manner and/or a less culturally sensitive manner.

Finally, performance evaluation remains on the latest edge of corporatisation-driven accountability mechanisms, as well as the most costly, difficult to implement, and complex to evaluate (KPMG-Observatoire 2007, 52). There is no significant

<sup>299</sup> Some overlap between the international standards and corporatisation explanations is logical given the largely US origins for both. See Section 3.1.1 and 5.3.2.

<sup>300</sup> The literature suggests that corporatisation could also reflect increasing competition even outside the sector with business (Archambault 1997b, 14; Ryan 1999, 127-9).

<sup>301</sup> See also Section 5.1.1 “*Effective Management*.”

<sup>302</sup> See also Section 4.3 and Appendix 4.

difference in level of interest in performance evaluation between the two respondent groups. Approximately 25% of the organisations in each of the Comité Group and the Control Group spontaneously raised performance evaluation at some point in the interview (Organisation 5, 9, 20, 26, 30, 31, 33, A, C, H; Soublin call December 2008).<sup>303</sup> In general, these organisations had already demonstrated a high level of understanding of accountability and implementation of challenging accountability mechanisms and therefore were ready to add complex performance evaluation.

Several examples illustrate the scope of the challenge of effective, objective performance evaluation – as well as the particularly individual nature of performance evaluation as an accountability mechanism. One respondent discussed how expense tracking must be extended to evaluate the program efficacy of specified sites in Africa (Organisation C). Two respondents cautioned that donors will not necessarily understand expense allocation for activities or how to measure success (Organisations 30 and 31). Another Director General emphasised the on-going performance evaluation dilemmas of short-term performance versus long-term accountability and other priorities, as well as objectively measurable versus more subjective results. His donors support continued funding of a lobbying effort for a vote that a multilateral organisation would approve even without additional investment largely because the end result (i.e., the vote) is measurable. In contrast, funding for another politically challenging project that yielded unmeasurable “planted seeds” for future progress would trigger a donor backlash because he could not deliver objective measurable results. Even the organisation’s international network leadership (International Secretariat) internally seeks measurable results on a short-term basis.<sup>304</sup> Certain of these examples, while raised by organisations citing ethical, effective management and focusing on performance evaluation as an element of ethical, effective management, seem to circle back somewhat to donor reaction (although perhaps not donor trust).

*Vehicles for Corporatisation.* Regulatory and self-regulatory patterns leading to corporatisation in the US offer a point of comparison for the explanation for potential increases in corporatisation in France. As discussed in Chapter 3, the most important recent US example of transfer from the corporate world to the nonprofit world was the direct application to NPOs of key Sarbanes-Oxley Act provisions (i.e., the document

<sup>303</sup> As noted in Section 2.2.2(a), the definition of accountability proposed, as well as the Comité’s approach to accountability as defined through internal operations and activities with members, excludes performance evaluation (Comité 2008h).

<sup>304</sup> Organisation code is omitted to protect confidentiality.

retention and whistleblower provisions) and the rapid adoption in state nonprofit law of various Sarbanes Oxley Act provisions such as the audit committee.<sup>305</sup> These Sarbanes-Oxley Act and state law changes were in turn supplemented by such self-regulatory efforts as the Independent Sector's sector-wide best practice guidelines. In contrast to the federal regulation downward influence in the US, in France corporate accountability practices emerge from organisations selecting individually relevant corporate-derived voluntary accountability mechanisms through the strategic assessment process, based in part on the internal and external variables. As noted in Section 4.3, many respondents' accountability practices far exceeded regulation and pushed the boundaries of accountability on an individual basis.

Further down the corporatisation chain from regulation, the transfer of accountability requirements from funder to grantee organisations has become an increasingly important explanation for expansion of NPO accountability into performance evaluation. A growing number of funders must themselves report to their own funders – particularly corporate foundations and venture philanthropy funds. The increase in corporate foundations in the US and France has led to a focus on the oversight of grantee NPOs' independent directors in order to assure, in turn, accountability to the donor corporate foundation's own independent board of directors (Arrillaga e-mail 2008; SV2 group meetings 2002-04; Organisation A; Little (Third Sector) 2006, 10). Venture philanthropy similarly expedites the fusion of for-profit and nonprofit models as funds are raised from the venture and private equity communities to grant to NPOs. A selling point to donors is that venture philanthropy firms will report back to the funders in a business language they understand – i.e., *results-based* reporting (Dawson and Sloane meeting 2006). Impetus Trust, a well-known UK venture philanthropy fund, raises funds (largely from successful venture capital and private equity investors) for redistribution to NPOs in the belief that Impetus Trusts' knowledge of the sector is worth the cost of services, including due diligence, on-going monitoring, and "demonstrable social return on investment" (Impetus Trust 2007, "What Impetus Trust Does"). Impetus Trust's web page is rife with terms such as "results focused," "investment approach," and "business frameworks" modelled on US venture philanthropy firms such as SV2 in Silicon Valley (founded in Silicon Valley 1998) and

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<sup>305</sup> See Section 3.1.1 "Follow-On to the Sarbanes-Oxley Act in State Law."

Social Ventures Partners International (founded in Seattle in 2001) (Impetus Trust 2007, “Investment Approach”).<sup>306</sup>

Notes of Caution. Corporatisation is viewed with some skepticism and generally with the caution of maintaining the “heart and soul” of the nonprofit world and addressing the challenges of the 1901 Law membership structure. All respondents across both groups accept that NPOs need management and accounting tools and techniques. Nonetheless, two in the Comité Group (but none in the Control Group) reacted against going “too far” with “too much governance” and cited a need to keep the for-profit and nonprofit worlds somewhat separate (Organisations 27 and 18, respectively). Some association respondents also referred to the difficulty of obtaining the support of members on certain practices and the need to convince members in incremental steps over time of the value of corporate-derived accountability mechanisms (Organisations 30 and 1). Two highlighted the need to transform slowly employees’ and volunteers’ acceptance of these practices; however, all indirectly expressed this measured approach (Organisations 25 and 21, respectively). In virtually all cases involving operations the Directors General had the authority to implement new internal regulations and practices and enforce compliance. While all respondents interested in corporatisation commented on the need for consistent oversight, the limited specific commentary on this issue may reflect that fact that overall relatively few organisations are actively engaged in corporatisation (Table 5-1).<sup>307</sup>

Critics feel that the quantitative reporting and professionalisation has reached an extreme, hindering progress of humanitarian work and the administrative efficacy of NPOs (Organisation 3 and 27; Bruneau 2004, 4). An overriding sentiment persists that not everything in the nonprofit world is measurable or, as Hansmann notes, even that every donor will measure (Hansmann 1980, 896; Comité de la Charte Conference 2008). Beyond these general interview discussions, more specifically performance evaluation is not without risk or critics regarding utility. Even sector experts focused on performance evaluation such as Martin Brookes, Executive Director of UK charity rating service New Philanthropy Capital, argued that performance evaluation is a “moral imperative” but recognises that a poorly executed, erroneous, or misinterpreted

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<sup>306</sup> Impetus Trust does not disclose the amount of its own overhead costs raised separately. This is necessary to allow donors to measure the efficacy of gifts irrespective of funding source for operating costs (e.g. Independent Sector 2008b; Brody 2002, 483).

<sup>307</sup> See also Section 5.3.2 “Cautions.”

comment on a NPO's performance can have disastrous reputational effects on the organisation (Brookes (The Guardian) 2007).<sup>308</sup>

*The Comité and Corporatisation.* The Comité does not generally exhibit or seek to integrate corporate practices internally or in requirements of members despite Soublin's long career with the Schlumberger Group and deep understanding of international corporate practice.<sup>309</sup> Soublin exemplifies the profile of leader referred to in Section 5.4.3 below that recognises the need to function differently in the context of a NPO. Soublin considers the corporatisation process generally slow and faults the corporate world for not "pushing" enough (Soublin interview 2007).

At the Comité level, the Comité does not disclose management salaries individually, requires improvement in document retention, and has not implemented a US-style audit committee or a whistleblower mechanism (Soublin interview 2007; Comité senior management e-mail 2008). (The audit committee could change now that the pre-requisite of independent directors is in place.)<sup>310</sup> Another example of the Comité's failure to corporatise that should be culturally less sensitive is the outdated fee structure of a membership fee based on a sliding scale linked to organisations' total revenues from private sources (Comité senior management call/interview 2007). Standard practice among similar NPOs, the US member of the International Committee on Fundraising Organisations (ICFO) (described in Section 5.3.2), and for-profit accountability certification companies is a variable annual fee for services approach (Comité senior management call/interview 2007; e.g. Bureau Veritas Quality International 2008). One Comité representative suggested a de minimis membership fee and commercial fees, combining the French association membership requirements and corporate standards (Comité senior management call/interview 2007). This system complicates management and would require approval by members to implement.

The Comité's requirements for members, for example as articulated in the guidelines for *censeurs*, do not generally cover voluntary corporate practices such as those mentioned earlier in this section or in Appendix 4 (Comité 2006c). The Comité's

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<sup>308</sup> Brookes also notes a key reason charities have not been subjected to performance scrutiny is that many donors do not care about performance because they give for social, emotional, and personal reasons (Brookes (The Guardian) 2007). The disproportionately successful recipients of aid for the tsunami, however, combine renown, the cause, and long-standing reputations for ethical management (e.g. French Red Cross) (Cour des comptes 2007, 13). See Section 7.2.1 "*The December 26, 2004 Asian Tsunami.*"

<sup>309</sup> Schlumberger Group is a global oilfield and information services company (Schlumberger Group 2009).

<sup>310</sup> See Table 4-1.

overwhelming focus on respect of mission and transparency does overlap some (e.g. recent modifications regarding disclosure of certain financial ratios and management compensation). However, even certain basic areas such as discouraging publication of income statements lag behind the most basic US corporate disclosure practices (Organisation 26; Comité senior management interviews 2008).<sup>311</sup>

### **5.3.2 Empirical Findings: Integration of International Accountability Standards as a Driving Force for Increasing Accountability**

The integration of international standards of accountability is the second most important driving force through which ethical, effective management is achieved. As part of the discussion of whether, how, and why accountability was increasing within the respondents' organisations, respondents were asked if they considered international standards as a matter of information or guidance and/or as a rationale for increasing accountability. Virtually all respondents interpreted international as "US." Only two respondents referred to EU or other EU country standards at any point.<sup>312</sup> The integration of international standards largely overlaps with corporatisation but targets certain of the particularly US-based mechanisms and some different vehicles for transfer. As with corporatisation, few considered the integration of international standards an independent rationale for increasing accountability. Rather, the integration of international standards almost always reflected general interest or awareness and a corollary to ethical, effective management. (See Table 5-1.)

First, the interviews revealed a moderate difference on a percentage basis between the significant number of Comité Group respondents not interested generally in international standards compared to the majority of the Control Group respondents that were. The most interested Comité Group interviewees focused on three areas. Two respondents emphasised developing Comité standards to a level acceptable to international donors in light of the "porous frontiers" for both giving and service delivery (Organisation 2 and 18). One focused on greater attention to management and transparency of donor capital raised in France and distributed to programs outside of

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<sup>311</sup> The financially sophisticated reader would need the income statement (along with the balance sheet and the Statement of Use of Funds) to understand fully the financial statements. See Section 5.2 "The Comité and Ethical, Effective Management."

<sup>312</sup> These respondents lamented the challenge of harmonising with the EU and the absence of a standard EU form of NPO by-laws (Organisations 14 and 22, respectively).

France (Organisation 26). Finally, two argued for greater awareness of international standards generally among Comité members – whether or not internationally directed and whether or not they would actually implement any international standards (Organisations 4 and 32).

The most important international standards to consider – due to their importance in the US and, as with corporatisation, respondents' priorities – overlap with many of the important examples of corporatisation. These include: independent directors, the whistleblower mechanism, disclosure of executive compensation individually for senior management, and the document retention policy (discussed in Sections 4.2.1, 4.2.2, and 4.2.3, respectively). These are also the most complex procedurally to implement. The key differences among them are the mechanisms for transfer described below.

*Vehicles of Transfer of International Standards of Accountability.* The mechanisms for transfer of accountability mechanisms include regulation, non-regulatory vehicles, internal international NPO networks, and nonprofit sector experts. The whistleblower mechanism (required for companies listed on a US exchange) exemplifies a recurring vehicle of historical migration of accountability practices from the US through for-profit companies listed on both US and French securities exchanges. French companies have adapted the whistleblower mechanism requirements to the French legal limitations and overcome the significant cultural barriers resulting from the historical distaste for denunciation mentioned in Section 4.2.1 (e.g. Business Objects Corporation corporate documents (2007)). The French nonprofit sector follow-on – both as a result of the desire within individual organisations and the evolution in business world practices – is only slowly beginning to emerge.

Non-regulatory forces also contribute to the transfer of VAMs and other voluntary accountability mechanisms from the US to France. Philanthropic organisations such as the European Venture Philanthropy Association (EVPA) are propagating US models around Europe (including France), growing their international donor base, and transferring US venture philanthropy reporting and performance evaluation requirements to European grantee NPOs (European Venture Philanthropy Association 2007; Miller call 2006). These practices increase both grantee NPOs' perception of necessary accountability mechanisms and EVPA donors' expectations (Miller meeting 2006; Dawson and Sloane meeting 2006). These models originated with organisations such as Social Venture Partners International (Seattle) and SV2 (Silicon Valley), as well as Impetus Trust mentioned above (Arrillaga discussion 2007; Social

Ventures Partners International (SVPI) 2006; Impetus Trust 2007, “What Impetus Trust Does”).<sup>313</sup> Phi Trust in France engages similarly with grantees based on these international models (de Guerre meeting 2007).

In addition, the international NPO networks contribute to influencing the transfer of international accountability practices through their governance structure. The primary governance mechanisms include an international secretariat and/or international federated structure, an international top down governance structure, and a mandate from the US to consider implementing particular VAMs (Organisations 30, D, and 31, respectively). Larger organisations engaged in international accountability networks include the Amnesty International Accountability and Control Committee (established in 2007) with oversight over financial control and risk management, review of international NPO and corporate models, and mandatory independence from the executive as one of 21 detailed membership criteria (Amnesty International 2007, 20). Amnesty International also joined a group of 11 international organisations (e.g. Transparency International and CIVICUS World Alliance for Citizen Participation) that in 2007 jointly signed an “unprecedented” accountability charter focusing on transparency and best practice (Amnesty International 2006). Doctors Without Borders/Médecins Sans Frontières also recently improved alignment of accountability matters among its approximately 20 international divisions (de Torrente discussion January 2008).

Finally, consultants and other experts transmit best international practice to clients in France. Two interviewees regularly learn of international practices through international legal advisers and consultants (Organisations 32 and E). The Fondation de France occupies a central role through housing many other foundations (Fondation de France 2006b; Charhon meeting 2005; Organisation 31, respectively).<sup>314</sup>

Notes of Caution. As with corporatisation, the association of the term “international standards” with the US triggered fear of excessive accountability mechanisms. Also as with corporatisation, the limited number of respondents actively assessing international standards (Table 5-1) limits the evidence to anecdotes. The larger organisations and a few exceptional small organisations in both respondent

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<sup>313</sup> See Section 3.1.1 “Relationship Between Accountability Regulation and Voluntary Accountability Mechanisms.”

<sup>314</sup> See Note 41 *supra*.

groups were more aggressively willing to accept the cultural differences (Organisations 7, 15, 21, 25, 30, 31, and C, D, E, and J).

International standards exceed legal and Comité requirements and therefore may trigger a reflex to protect the French context, particularly the balance between freedom of association and stringent accountability standards (Organisations 20, 22, and 27).<sup>315</sup> Comments cautioned against “going too far” and the need to apply international standards “in the French setting” (Organisations 18 and 27 and Organisation I, respectively). Even organisations forming part of an international network struggle with potentially serious institutional resistance (e.g. work load) and/or cultural resistance to implementing international accountability mechanisms without immediately apparent tangible value.<sup>316</sup> Six Directors General explained that persistent rule enforcement internally gradually brought employees into compliance and even agreement with accountability “habits” (Organisations 23, 25, 31, D, E, and I). Thus the importance of the authority and initiative of the leaders is clear.<sup>317</sup>

Comité and International Standards. The Comité itself remains behind even many of its members in actively seeking to understand and implement accountability mechanisms based on international standards. According to a senior Comité spokesperson, only two Comité representatives are extensively interested in international standards – Soublin and André de Montalembert, the Head of Controls at the time of the study. The *conseil d’administration* rarely shows interest in or discusses international standards or issues (Comité senior management call/interview 2007). Similarly, the Comité’s *assemblée générale* does not address international standards (Comité 2008o; Comité de la Charte General Assembly 2008).

The Comité’s main international engagement is through membership in the ICFO, a group of 11 member NPO accountability accreditation organisations from different countries (Comité 2008i). However, ICFO membership has not resulted in transfer of new noteworthy international best practices to the Comité or its members. The ICFO also includes uneven levels of exigency among the organisations (e.g.

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<sup>315</sup> See Section 1.3 and, secondarily, Sections 2.3.1, 5.3.2, and 6.6.1 on freedom of association.

<sup>316</sup> Organisation codes are omitted to protect confidentiality.

<sup>317</sup> See Sections 4.4.2 and 5.4.3.

softening of requirements for account certification to attract members) (Comité senior management call/interview 2007).<sup>318</sup>

As noted in the discussion on corporatisation, the Comité has not implemented any of the four most important US accountability standards except the early 2008 election of seven independent *administrateurs* (out of a total of 13) (Cohas-Bogey e-mail September 18, 2008). However, repeated mention of the fear of cultural backlash during the discussion of the shift to of independent *administrateurs* suggests the cultural resistance would hinder other mechanisms such as more extensive disclosure of individual senior management compensation (Soublin interview and calls 2006 and 2007). Moreover, until recently the Comité had never considered a non-French national for the *conseil d'administration* (Comité senior management call/interview 2009).<sup>319</sup>

The Comité has not been to date a vector for transfer of international accountability standards to members either. Soublin believes that only a few members are interested – mostly individual leaders – but that now the Comité should begin to impose consideration of international matters on members.<sup>320</sup> As shown in Table 4-1, none of the most important international standards cited above are Comité requirements. Nor has the Comité considered international standards and mechanisms necessary to implement in France in order to avoid the widely feared scandal from failure of accountability within a member or non-member organisation.<sup>321</sup>

### **5.3.3 Empirical Findings: Funder Accountability Requirements as a Driving Force for Increasing Accountability**<sup>322</sup>

Funder accountability requirements are consistently viewed as a third but significantly less important mechanism potentially provoking increasing accountability in both the Comité Group and Control Group.<sup>323</sup> However, while funder accountability

<sup>318</sup> This certification of accounts was compulsory for all Comité organisations even prior to becoming a French law requirement for all organisations with revenues of €153,000 or more (French Government 2006b, Article 2; Chartier and Frotié teleconference January 2008; de Montalembert interview 2007).

<sup>319</sup> See Section 4.1 “Increasing Accountability Within the Comité.” In April 2009, an additional independent director, the author, was elected.

<sup>320</sup> One recent example was inviting the author to speak as an “international observer” at a Comité-sponsored conference on financial transparency (Comité de la Charte Conference 2008).

<sup>321</sup> See Section 8.4 on self-regulatory policy suggestions for the Comité.

<sup>322</sup> See Appendix 1-F for a breakdown of participant organisations’ revenue among a range of sources: individual donors, corporate donors, international aid agencies, the EU or other foreign states, and French government sources.

<sup>323</sup> Many receiving French state or other French “public” funding (i.e., from a government *département*, ministry, agency, or other such entity) and/or EU or EU donor funding raised the issue of funder

requirements de facto trigger implementation of accountability mechanisms, respondents consider compliance with funder accountability requirements normal business practice and not an independent rationale or motivation for increasing accountability. These donor exigencies are explained as a necessary step or “hoop to jump through” to achieve the specific operations goal of obtaining funding from a particular governmental/corporate/institutional donor – “part of doing business these days” (Organisation 19).<sup>324</sup> As such, respondents separate funder accountability requirements from the more general internally-driven accountability efforts based on general strategic assessment of accountability. The former relate only to a funding opportunity and require a second level of strategic assessment linked to the specific opportunity. The latter establish a barometer for increasing accountability in the French nonprofit sector. One additional partial explanation for the limited perception of funder accountability requirements as a motivation for improving accountability systems generally may be that the funders’ accountability priorities differ from the Comité requirements, VAMs, and other voluntary accountability mechanisms the organisations prioritise (i.e., the definition of accountability as developing among respondents internally and as proposed in this thesis). As shown in this section, most governmental/corporate/institutional funders focus in particular on justification of use of funds as the overriding objective of accountability.

The key funder accountability requirements relate to the French state, the EU, corporate donors, and institutional donors. The variation in degree of exigency respondents perceive ranges from the EU at one extreme as by far the most demanding, to the French state/governmental agency donors as demanding but more moderate, to corporate donors as generally far less stringent, and institutional donors as strict but uneven. Despite complaints of administrative burden, funder accountability requirements were not generally considered excessive. Reactions may reflect a parallel increase in expectation of growing demands for accountability and/or an acceptance of the need for the underlying funding.

First, the French state (e.g. the Ministry of Foreign and European Affairs, the Ministry of the Interior, *départements*, and the *collectivités*) is widely considered to require detailed reporting from grantee organisations. Requirements focus on

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accountability requirements at some other point in the interview but not directly connected to accountability efforts.

<sup>324</sup> See Section 5.3.3.

justification of use of funds and evaluation of projects but occasionally include more ordinary course reporting and audits (e.g. French Government 2006a; associations.gouv.fr 2008a and 2008b; Organisations 5, 18, 19, 32, and B). A recent example of controlling for use of funds is the Cour des comptes report on the tsunami that analysed the sector-wide donor funding situation, but also organisation by organisation in detail the use of funds among the top recipients of donor funds (Cour des comptes 2006b and 2007; Cour des comptes 2007, 22 (for the 16 participants in this study included)). More generally, some respondents describe French government representatives travelling to visit humanitarian work at overseas sites in order to verify program expenditures first hand (Organisations 5 and 19). All interviewees receiving French state funding described the French state accountability requirements as justifiably thorough and generally predictable – even those who consider requirements stringent. Anecdotally the key criticism targeted the unreliability of the funding, particularly as changes in politically appointed personnel and/or policy often result in an unexpected delay or withdrawal of funding. One Executive Director of a large renowned French NPO exclaimed that he “can’t be bothered and is much happier on his own as it’s not worth the effort” (Organisation 11).

Second, European Union funding sources (benefiting approximately 11 Comité Group and three Control Group respondents), including ECHO and PEAD, were universally considered draconian.<sup>325</sup> Respondents in both groups uniformly complained of “awful” and “harsh” obligations, and affirmed that the EU far exceeds both French government requirements and Comité obligations – particularly in terms of justification of use of funds. One Director General of an international NGO claimed that his Chief Financial Officer even suggested refusing aid for starving children in Africa because the drain on resources to comply with the accountability requirements would be so severe (Organisation 18). Another equated compliance with the EU accountability obligations with the amount of required work to manage the programs themselves (Organisation H). A General Secretary of a major international NGO and founding Comité member reported having to reimburse funds early because local South American partners were

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<sup>325</sup> According to self-completion questionnaires and therefore based on participants in the self-completion questionnaire. Numbers could vary slightly based on a few respondents to the self-completion questionnaire answering the question on international funding with exclusively non-EU foreign government sources of funding and/or respondents not participating in the self-completion questionnaire.

unable to provide the information necessary for compliance with the picayune EU audit standards.<sup>326</sup>

Third, overall accountability requirements imposed by corporate donors were seen to be modest and again unrelated to decisions to implement accountability mechanisms more generally.<sup>327</sup> Comments ranged from “not really demanding” to “only the results matter” to “nothing in particular” and “corporations only care about a good image” (Organisations 31, H, J, 18, respectively). Only one respondent described corporate funder accountability requirements as “serious” (Organisation F). The discussions did not cover whether the advantages of corporate philanthropy in terms of image or pressure to prove corporate social responsibility influenced or justified the corporations’ limited accountability requirements as this point would require input from the corporations. However, this possibility is somewhat mitigated by respondents’ strict limitations on the type of engagement with corporations (e.g. prohibition on use of NPO name on products like toothbrushes distributed to the homeless).<sup>328</sup>

Finally, all but one of the few organisations that had institutional funding noted that requirements for accountability were strict and uneven, in one case more demanding than the Comité and in another case more demanding than those of the French government (Organisations 13 and 20, respectively). Even those with small grants were strictly controlled (Organisations 13 and E). However, none suggested that the requirements rose to the level of the EU or hesitated in maintaining the funding relationship.

Notes of Caution. A diverse group of organisations in terms of size, sector, and perspective on accountability mechanisms spoke of the considerable burden and inefficiency of funder accountability requirements, the issues of duplication, and for some even the impact on operations and administrative cost, both spontaneously and in response to direct questions.<sup>329</sup> The French system was the most widely discussed and most relevant to the analysis in this thesis. Virtually all respondents in both groups believe that the work of the *commissaires aux comptes*, l’IGAS, the Cour des comptes, and French government funding staff such as the Ministry of Foreign and European Affairs could and should be streamlined without losing quality of accountability (also

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<sup>326</sup> Organisation code is omitted to protect confidentiality.

<sup>327</sup> Corporate funding was most often corporate foundations but may include broader corporate social responsibility efforts.

<sup>328</sup> Organisation code is omitted to protect confidentiality.

<sup>329</sup> See also Section 3.2.1 “*Empirical Findings:.....*”.

Soublin interview 2007; Archambault discussion 2008).<sup>330</sup> Virtually all respondents also described the burden on staff, particularly the finance team, as considerable. Two organisations cited the need to allocate an office for six months plus over half of the time of a Chief Financial Officer and junior finance team member for l'IGAS or Cour des comptes investigation (Organisations 18 and 30).

The duplication of efforts is perhaps not as extensive as many respondents suggest. Durand suggests that while there is limited overlap, different controls function and apply differently. First, the role of the *commissaires aux comptes* is to provide independent certification of the accounts annually and inform the authorities of any errors or irregularities (Durand call 2007).<sup>331</sup> The Cour des comptes targets proper use of NPO funds raised from the general public and not the regularity of accounts. As noted in Section 3.2.1, the Cour des comptes controls almost exclusively large organisations and only several each year absent unusual events (Léo Jégard & Associés Conference 2008).<sup>332</sup> The Cour des comptes does not have enforcement authority but does publish reports publicly (unlike the Comité) so can have a significant negative impact on an organisation's public image.<sup>333</sup> Finally, l'IGAS audits organisations with health and social issues (and not, for example, culture or poverty in developing countries) – auditing proper management with limited overlap regarding use of funds (Ministère du Travail, des Relations sociales, de la Famille, et de la Solidarité 2008). The Comité considers its role "complementary" to all three (Comité 2008k).

The other most common objection to funder accountability requirements is the concern that donors will use accountability controls in ways that jeopardise independent operations and policy-making. Eight organisations insisted that in order to maintain complete independence of management and activities (e.g. in determining allocation of donor funds to activities) they may not accept governmental, corporate, and/or institutional gifts (Organisations 11, 14, 15, 17, 21, C, D, and F). Certain respondents mentioned avoiding governmental funding and specified corporate and institutional donors (e.g. corporations engaged in an industry related to their core activities such as

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<sup>330</sup> See Section 3.2.1 "Empirical Findings:.....".

<sup>331</sup> The *commissaires aux comptes* for for-profit companies function similarly but within different applicable accounting and governance rules.

<sup>332</sup> See "Empirical Findings..." The Cour des comptes is expected to test the new Statement of Use of Funds laws with an audit of ten to 20 NPOs each year starting in 2008 (Frotié and Chartier teleconference January 2008).

<sup>333</sup> The Cour des comptes also responds to rumours, for example the l'ARC enquiry following l'IGAS' detection of evidence of wrongdoing. See Section 7.2.1 "L'ARC: The First and Continuing 'Reference' Scandal."

pharmaceuticals for Doctors Without Borders/Médecins Sans Frontières; Organisation 11). There was no particular pattern among those prioritising independence. However, the level of passion against accepting governmental/corporate/institutional funding to prevent even the potential for infringement on NPOs' independence under the guise of accountability requirements was clear. In all cases this concern reflects both firm organisational policy and the management and personal philosophy of the organisations' leaders.<sup>334</sup>

The interview comments and examples described above also indicate that, like corporatisation and international standards, the external funding sources reflect a strategic assessment whereby the burden of demonstrating accountability to funders is weighed up against the financial and strategic value of the funding received (e.g. the prestige of an EU grant to attract subsequent funding from other governments/institutions).<sup>335</sup> In the end, given the magnitude of the funding relative to their overall budget, most respondents considered even the EU requirements acceptable and occasionally more predictable than French government funders (Organisation 19 and 11 (emphasising the relevance and regularity of the EU requirements)). However, this analysis reflects a business decision regarding the net qualitative and quantitative value of the specific potential funding opportunity to the individual organisation. This decision process does not explain increasing accountability generally.

Finally, no respondents viewed compliance with funder accountability requirements as mitigating the risk of the negative consequences of scandal triggered by an accountability lapse within an organisation or elsewhere in the French nonprofit sector.<sup>336</sup> This again suggests that the respondents citing funder accountability requirements see the funder organisations as primarily targeting the specific purpose of verifying the funding triggering the controls.<sup>337</sup>

*The Comité and Funder Accountability Requirements.* In general, the Comité does not accept governmental/corporate/institutional funding with the exception of a recent first-time subsidy of approximately €70,000 allocated to communication projects

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<sup>334</sup> See also Section 6.2 “*Expected Benefits of Donor Trust*” on donor trust and independence.

<sup>335</sup> See e.g. Action contre la Faim sign-posting governmental/corporate/institutional donors as a validation of credibility (Action contre la Faim 2007). Action contre La Faim represents a relatively unusual case in the study with approximately 70% of annual revenues from governmental/corporate/institutional funding.

<sup>336</sup> See Section 7.2.3 for a discussion of the potential relationship between accountability and prevention of scandal.

<sup>337</sup> See Section 3.2 for regulatory weakness generally that also relates to funding.

(Comité 2008o, 20; Comité 2008p, 25). The Comité is committed to maintaining financial independence and therefore has not addressed this issue directly.

#### **5.4 Relevance of Variables to Increasing Accountability and Ethical, Effective Management**

This section parallels Section 4.4 that addresses the relevance of internal and external variables to respondents' strategic assessment of accountability. As with the empirical findings on increasing accountability generally in Chapter 4, the internal variables emerge as important to both Comité Group and Control Group respondents. However, interviewees rarely mention external variables with respect to accountability in furtherance of ethical, effective management.

In general, the key internal variables (size, international engagement, and initiative and profile of leader) potentially affecting respondents' strategic assessment of accountability proved more important to the three forces driving accountability mechanisms in furtherance of ethical, effective management than to the more basic accountability mechanisms analysed in Section 4.4. Within the ethical, effective management group, the findings reveal similar importance of the three internal variables to corporatisation and integration of international standards across both the Comité Group and the Control Group. This is logical given the overlap in those accountability mechanisms as noted above. In contrast, funder accountability requirements relate more to the specific organisation and funding situation and not patterns across the study or more broadly. In addition, the sample size of respondents referring to funder accountability requirements is too small to draw conclusions. In all three cases, the internal variables result in individually analysed strategic assessments thus reflecting the theme of bottom up, organisation-driven increasing accountability.

The lack of attention to external variables is logical given that respondents citing ethical, effective management explicitly discuss disregarding external reaction to accountability. The only external variable relevant to ethical, effective management was regulation and only insofar as related to the theoretical framework for funder accountability requirements analysed in Section 5.3. All respondents spontaneously mentioned scandal but none in connection with directly motivating accountability

efforts related to ethical, effective management.<sup>338</sup> Almost all of the interviewees citing ethical, effective management spoke of a combination of evolution of the organisation and the climate of increasing accountability among NPOs (the “normal” element of ethical, effective management). The key point is that this “climate” is not directly one or a combination of external variables. Rather, according to respondents in both respondent groups, this combination largely reflects the creation of a context of increasing accountability through a collective but still organisation by organisation effort from the inside out. These internally-driven accountability efforts are incorporated into the definition of ethical, effective management, but the overall context includes actions of respondents citing donor trust.

Finally, the analysis of the empirical findings relating to ethical, effective management reinforces limitations on conclusions relating to the interrelationships among variables. Key general concerns include: the overriding subjectivity of the initiatives of leaders; the impossibility of determining the extent of any one leader’s influence on the strategic assessment process generally or implementation of any specific VAMs or other voluntary accountability mechanisms; and how other factors not tested in this study affect the strategic assessment process and individual decisions within that (e.g. budget constraints, unique organisational events such as fraud or the introduction of new services, or the influence of individual *administrateurs*). A detailed understanding of the complex interrelationship among the size and leadership variables, as well as the potential impact of variables not considered in this study, would require further research.

#### **5.4.1 Size**

Size was particularly important to all respondents’ strategic assessment of accountability related to ethical, effective management generally and corporatisation and international standards in particular. The greater sophistication and complexity of corporate and international accountability mechanisms require both prior implementation of more basic accountability mechanisms (also size-driven as noted in Section 4.4.1) and a higher level of organisational understanding, management capacity,

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<sup>338</sup> See Section 7.2.2. Note, however, Howell’s suggestion that NPOs underestimate the impact of the external environment on civil society (e.g. governmental backlash from terrorism limiting the “spaces for civil society to flourish and act”) (Howell et al. 2006, 4; Howell e-mail June 2008).

and resources. With rare exceptions, all of the most sophisticated and international VAMs noted in Table 4-1 (the whistleblower mechanism, audit committee, and written conflict of interest policy (although mostly financial conflicts)) were adopted only by organisations among the top 15 and top five organisations in revenue level in the Comité Group and Control Group, respectively.<sup>339</sup> Nonetheless, the importance of initiative of leader even among larger organisations (as well as a range of other possible factors noted in Section 4.4.1) still leads to considerable variation even among large organisations as further analysed in Section 5.4.3.

The smaller Comité participants specifically noted the resource constraints and lack of need for, or benefit from, corporate and international derived accountability mechanisms.<sup>340</sup> Moreover, while as noted in Section 4.4.1, no respondents (or the Comité) argued in favour of moderating the Comité's requirements to encourage smaller members, several respondents of various sizes advised that any corporate or international mechanisms would need adapting to smaller organisations. Four even considered current Comité requirements corporate (e.g. the level of exigency with respect to financial statement and ratio preparation) and particularly at risk of imposing excessively on the Director General's and finance staff's time (Organisations 13, 18, 30, and 32). Finally, for the strategic assessment of external funding, size is evaluated relative to magnitude of funding and cost of accountability requirements. A mix of different size organisations obtains governmental/corporate/institutional funding (Organisations 1, 13, 19, E, H, and J).

#### **5.4.2 International Engagement**

A connection emerged in both respondent groups between the importance of international engagement and both corporatisation and the integration of international standards.<sup>341</sup> Five of the nine Comité Group respondents and both Control Group respondents specifically mentioning corporatisation were also internationally engaged (Organisations 8, 18, 19, 25, 29, C, and I). Approximately 50% of the Comité Group

<sup>339</sup> The exceptions were for written conflict of interest policies and ranked 21, 23, and 27 in revenue level.

<sup>340</sup> One organisation considered personal contact a substitute for accountability to some extent among his almost exclusively corporate donors (recalling Putnam 2000). Organisation code is omitted to protect confidentiality. See Section 2.1.3.

<sup>341</sup> Of the small sample size of organisations citing funder accountability requirements, two organisations are international, and the two others are large, well-known national French associations with a slight bias for humanitarian aid. Organisation codes are omitted to protect confidentiality.

and 29% of the Control Group organisations interested in international standards were linked internationally either by an organisational network or some other means, such as addressing an internationally relevant issue or an international donor base (Organisations 2, 8, 18, 19, 25, 26, 31, D, and I). Conversely, in both groups those specifically stating they had no interest in international standards were almost exclusively operating in France. All three of the organisations considering the most controversial international accountability mechanisms – the whistleblower mechanism – are large, internationally networked organisations. The sample size is small, but within the study the connection is clear.

#### **5.4.3 Initiative and Profile of Leader**<sup>342</sup>

As with size and international engagement, the passion and commitment of the respondent leaders play an essential role in defining the ethical, effective management focus of an organisation across both respondent groups. The importance of the initiative and profile of leaders to strategic assessment discussed in Section 4.4.2 becomes even more pronounced with corporatisation and international standards. However, as in Section 4.4.2, the *conseil d'administration* exerts a weaker influence as a group than the Presidents of the *conseil d'administration*, Directors General, or other senior finance or fund-raising leaders individually. Moreover, the subjectivity of the initiative of leaders leads to differing results even among organisations of similar sizes.

The interviewees in both groups citing ethical, effective management as the primary rationale for increasing accountability were senior leaders heavily focused on accountability despite a frequently less focused *conseil d'administration*. Only four were Presidents. The others were Directors General or in a few cases senior financial officers. The difference between the role of the President of the *conseil d'administration* (with significant authority over the *conseil d'administration*) and the role of the Director General (to drive the management/operations and organisational culture) proves less important than the *conseil d'administration*'s weakness in acting as a governing body. In many cases, the respondent President or Director General took personal credit for specific accountability efforts, or even the overall drive to increase accountability to improve ethical, effective management. One Director General implemented an

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<sup>342</sup> See Section 4.4.2 for a discussion of how leaders drive the implementation of accountability mechanisms generally – irrespective of rationale for increasing accountability.

ambitious strategic planning and evaluation process; one Director General spearheads the organisation-wide accountability effort himself; and one Director General furthers a personal philosophy of asking “Is it good for the organisation strategically? Is it ethical?” with every decision among all engaged with the organisation in any capacity (Organisations 18, 25, and 21, respectively).<sup>343</sup>

The findings show some links between the several Directors General and Presidents with corporate background and the corporatisation responses. All of the nine Presidents and Directors General influenced by corporate practice spoke of bringing corporate background to their position, as did the two in the Control Group. Overwhelmingly, respondents in both the Comité Group and Control Group affirmatively denying corporatisation as an influence spoke of greater career depth in the nonprofit sector, and none raised the relevance of professional background during the interview. However, a link between lack of corporate experience and low levels of corporatisation cannot be concluded without further investigation.

One Director General particularly influential in the sector through other national leadership positions believed that leaders with corporate backgrounds adapt to the nonprofit world and do not approach their new professional situations with the idea of transferring for-profit business practice (Organisation 27). However, a range of examples of corporatisation identified in the interviews reflect the individual experience of the President or Director General. These include sophisticated employee evaluation and human resources procedures borrowed from previous corporate experience that exceed the expected practice for the small organisation size and partnerships with corporations for core activities (Organisations 8 and 21; Organisation A, respectively).

While the leaders citing corporatisation and international standards exhibit experience and energy, the *conseil d'administration* functioning of their organisations shows the weaker penetration of corporatisation and international standards. Few respondents in both groups mentioned the philosophy of ethical, effective management as a *conseil d'administration* philosophy beyond the individual efforts of the President. For example, only four organisations affirmatively praised respect for the line between governance and operations so fundamental to accountability in the US (all prioritising

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<sup>343</sup> Age of the leaders was not a factor as there was a wide range of ages from late thirties to significantly post-retirement. Thus accountability is not a generational issue among the “doers.” Age was not a factor among donor trust respondents either except insofar as a few cited the “new generation” of more accountability-focused donors as relevant to demands for additional evidence of accountability mechanisms (Organisation 31).

ethical, effective management) (Organisations 17, 23, C, and D; e.g. Hamilton and Trautmann 2002, 159; US Government 2002, Section 2001 “Purpose of the Bill”).<sup>344</sup> None mentioned board self-evaluation procedures to assess the performance of either individual *administrateurs* or the *conseil d’administration* as a whole. In comparison, US board best practice generally would advise self-evaluations and individual board member evaluations at least every three years (Panel on the Nonprofit Sector 2007, 17).

The lesser involvement of the *conseil d’administration* as a body may be explained in part by the member-driven election process (referred to in Section 4.2.1 “*Independent Directors*”) that leads to a *conseil d’administration* comprising a significant number of subject matter experts (e.g. medical experts for a medical association) or “friends” of the association with no governance expertise (Organisations 14 and C, respectively).<sup>345</sup> Another explanation may be that the bulk of the work is handled by the President and the *bureau*, which differs from US-style boards with multiple active committees such as governance committees.

Finally, the subjectivity of the initiative of leaders may be one factor (along with others not tested in this study) leading to differing results among organisations even among similar sizes.<sup>346</sup> Within this study, leadership appears to trump size, although a direct correlation cannot be concluded again due to the range of other possible influences on accountability beyond size. For example, six out of the ten Comité Group respondents with the highest revenue levels, and two of the five Control Group Organisations with the highest revenue levels do not have a written conflict of interest policy (Organisations 2, 6, 11, 19, 22, 32, B, and D). (This compares to four Comité Group and three Control Group that do (Organisations 5, 7, 15, 25, B, C, and D).) Only three of the top ten Comité Group organisations in terms of revenue and no Control Group organisations have audit committees approaching US standards (Organisations 11, 19, and 32). Thus, while it may be possible to conclude within the sample tested that only the larger organisations have implemented the most complex VAMs and other voluntary accountability mechanisms (with rare exceptions), it is not possible to conclude that large organisations will necessarily demonstrate this higher level of accountability. Moreover, it is also not possible to tell within the scope of this study

<sup>344</sup> Nonetheless, while progress remains to be made, the ethical, effective management group is more concerned with the governance/operations separation than other respondents.

<sup>345</sup> See Section 4.2.1 “*Independent Directors*.”

<sup>346</sup> Note that in the US board practices and board control over the strategic decisions of the Director General or equivalent leader significantly diminish the influence of any individual on the outcome of accountability. See e.g. Table 3-1 and Section 4.2.1 “*Audit Committee*.”

exactly how and/or the extent to which leadership influenced the strategic assessment generally or VAMs targeting ethical, effective management beyond the law and Comité requirements specifically.

## **5.5 Ethical, Effective Management, Accountability, and the Theoretical Framework**

This final section considers the relationship between ethical, effective management and the three corollary forces to the theoretical framework. First, the analysis extends to how and why corporatisation, integration of international standards, and compliance with funder accountability requirements relate to Hansmann's model of the dual rationale for the importance of trust as both an explanation for the nonprofit form and necessary to compete in an increasingly challenging nonprofit environment. It then connects accountability efforts targeting ethical, effective management to the Rose-Ackerman and Salamon extensions of the theory, including implications for the strategic assessment and the relevance of internal and external variables.

### **5.5.1 Corporatisation/International Standards/Funder Accountability Requirements and the Theoretical Framework**

The analysis of ethical, effective management and the three related driving forces supports the thread throughout this thesis across both the ethical, effective management and donor trust groups that the nondistribution constraint no longer provides adequate levels of trust to compensate for Hansmann's information asymmetry and contract failure in the nonprofit market. Nor does Hansmann's trust suffice to meet competition in the current nonprofit environment. However, each of corporatisation, integration of international standards, and compliance with funder accountability requirements has a different relationship to Hansmann's nondistribution constraint and the ethical, effective management and donor trust rationales.

Evidence of corporatisation (including the small but growing number of organisations spontaneously raising performance evaluation) and international standards suggests that the competitive environment requires increasingly broad accountability efforts to compensate for inadequacy in the nondistribution constraint. This logically

could be considered competition for donors but appears to be increasingly independent of donor trust as most respondents explicitly separated donor trust from corporate and international models. Accountability may indirectly benefit donor trust irrespective of motivation, but such benefits are secondary.<sup>347</sup> Moreover, NPO leaders moving to the higher level of performance evaluation recognise they have not done all that is necessary to achieve ethical, effective management through VAMs and their other more fundamental voluntary accountability mechanisms (Organisations 5, 19, 26, 31, 33, C, and H). The grey area emerges when, as noted in Section 5.3.1, performance evaluation posited as the furthest step in ethical, effective management appears to circle back to a concern with donor interpretation of performance. This suggests that this ethical, effective management mechanism approaches both donor trust generally and Salamon's suggestion that performance evaluation supports donor trust. Further study specifically on performance evaluation would be necessary to evaluate this.

In contrast, funder accountability requirements fall in an in-between space. Accountability is required but elected through a business decision (to seek a certain amount and type of funding from a specific funder) in direct exchange for this ethical, effective management result relating to a financial opportunity. For most governmental/corporate/institutional funders improved accountability has become a prerequisite for trust – largely by supplementing information relating to accountability when Hansmann's trust is no longer adequate. Thus funder accountability requirements relate to Salamon's idea of accountability as a basis for trust but in a manner limited to the specific funder imposing the controls. However, while the funders may have a Salamon accountability-based trust motive, the organisations have an ethical, effective management objective of obtaining funding unrelated to donor views. Finally, because most funder accountability requirements prioritise justification of use of funds, and because the nondistribution constraint focuses on preventing misuse of funds by controlling persons, functionally both contribute to the same end (Hansmann 1980, 844 and e.g. 874 and 875).

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<sup>347</sup> The discussions of the most widely studied and adopted US accountability mechanisms in the US literature emphasise the grounding in notions of trust even if *de facto* they are considered "corporate" and necessary to function in a nonprofit environment increasingly concerned with accountability (Independent Sector 2008a).

### **5.5.2 Rose-Ackerman**

The Rose-Ackerman extension of the theory with the concept of strategic assessment applies to the ethical, effective management rationale for increasing accountability and the three corollary influences with one key difference from donor trust. In the case of ethical, effective management, the strategic assessment of accountability evaluates the appropriate level of accountability to maximise ethical, effective management in light of the resources available – not as a “signal” to donors as with donor trust. The overriding characteristic of this strategic assessment process is the individual, inside out bespoke approach to accountability and the assessment of the impact of variables on the *individual organisation*’s ethical, effective management objectives.<sup>348</sup> No respondent canvassed all best corporate or international practices. The margins of the type of accountability mechanisms supporting ethical, effective management, and the related strategic assessment, expand in an increasingly competitive landscape.

### **5.5.3 Salamon**

The ethical, effective management analysis continues the theme of how organisations position themselves within the spectrum from Hansmann’s nondistribution constraint based trust to Salamon’s accountability-based trust as accountability becomes increasingly complex. However, the findings on increasing accountability as defined by the Comité and in this thesis (i.e., heavily focused on concrete, specified accountability mechanisms together with an overall obligation to answer for an organisation’s behaviour) suggest a gap between Salamon’s view and ethical, effective management respondents. For respondents citing ethical, effective management, accountability is essential but analysed as a management tool rather than as a means of supporting donor trust generally or weaknesses in Hansmann’s trust.

In addition, Salamon’s suggestion of accountability as the modern means of achieving trust does not suggest that trust no longer matters.<sup>349</sup> The empirical findings confirm continued undisputed insistence on the importance of underlying trust across

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<sup>348</sup> Contrast, for example, contingency theory suggesting pre-set adaptation to variables (Donaldson 2001, 7).

<sup>349</sup> Salamon recognises that trust still matters but posits accountability as the modern alternative means to the trust end (call 2008). See also Section 2.2.1. See Section 3.1 for US context.

both respondent groups – irrespective of cited rationale for, or levels of, increasing accountability. The ethical, effective management objective also highlights the distinction in reverse: the independent importance of accountability for reasons beyond replacing trust for all respondents.<sup>350</sup>

While the challenge in determining the appropriate level of accountability may appear to be “where to draw the line” in the Hansmann to Salamon spectrum, in fact a key finding is that there is no line to draw. First, respondents citing ethical, effective management place themselves outside the Hansmann-Salamon spectrum by engaging in the strategic assessment for purposes other than supplementing trust. Second, while respondents citing ethical, effective management accept the on-going importance of trust irrespective of the rationale for increasing accountability (and the *de facto* improvement of trust through implementation of accountability mechanisms), accountability will never fully support trust (Organisation 18). Even for those following Salamon’s analysis to the limit of performance evaluation, the risks and weaknesses in performance evaluation suggest that performance evaluation only partially supports trust at best. Salamon acknowledges dangers such as the cost outweighing the resources available, the measurability outweighing programmatic importance, and the failure to consider diverse accountability requirements to accommodate multiple stakeholders (Salamon 2003, 35-6).<sup>351</sup> Finally, it is difficult to understand how accountability that is complex (such as the US Form 990 disclosure forms criticised as excessively complicated) or unavailable (such as in the French context) could replace the nondistribution constraint as a basis for trust. The mechanisms for accountability may exist, but the “consumer” of accountability cannot access or effectively use accountability so in the end still relies on Hansmann’s trust.

More generally, for most NPOs, the cost of accountability efforts will outweigh the benefits before the adequate level of trust (for example, the level of accountability that for-profit corporations need in a non-nondistribution constraint/non-trust based environment) is reached. Moreover, as the research has shown, the line will be individually drawn on an organisation by organisation basis in France. Finally, even for organisations prepared to invest heavily in accountability and/or that are exclusively motivated by ethical, effective management, some level of trust independent of

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<sup>350</sup> See Sections 5.1.1 and 5.2.

<sup>351</sup> Concerns relating to cost and resources should be mitigated on an organisation by organisation basis by the strategic assessment approach, including grantee involvement in accountability (EVPA Conference on Venture Philanthropy 2006, Halton remarks).

accountability will always matter in parallel. This conclusion holds even when accountability extends to performance evaluation and irrespective of perceived and/or actual benefits to donor trust resulting from accountability efforts. Therefore, the question becomes why organisations engage in accountability when trust is not an objective and/or knowing that the nondistribution constraint is poorly enforced (Hansmann call 2008).<sup>352</sup> Respondents citing ethical, effective management answer both, at least in part.

## 5.6 Conclusion

Ethical, effective management emerged as the most frequently cited explanation for increasing accountability, followed by donor trust (discussed in Chapter 6) a close second. On a percentage basis, the Control Group showed a moderately higher level of ethical, effective management. For respondents citing ethical, effective management, accountability is not a choice. Accountability is explicitly motivated by internal management, strategy, and ethics concerns and not external factors – whether donor trust, external variables, or other outside influences.

The three primary driving forces for implementing accountability mechanisms in furtherance of ethical, effective management include corporatisation, the transfer of international accountability standards, and compliance with funder accountability requirements. While all three advance NPOs toward greater accountability, almost all respondents in both respondent groups considered them within the larger ethical, effective management objective rather than independent rationales for increasing accountability.

Corporatisation and international standards allow organisations to remain current in a nonprofit sector increasingly concerned with accountability. Corporate and international accountability mechanisms do not target, or replace, donor trust. Respondents in both groups also generally consider funder accountability requirements a normal part of doing business. However, imposition of funder accountability

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<sup>352</sup> Note Salamon's general warning of the "threat to the public trust" and the need to restore the balance as NPOs have increasingly adapted activities, policies, and management practices to the market (Salamon 2003, 79 and 77, respectively). Note also that donor trust respondents ask the further question how much further accountability must extend to achieve the estimated "necessary" trust level. See Section 6.6.3.

requirements more directly aims to protect (but not replace) donor trust by positioning accountability as a pre-requisite for donor trust.

No respondents in either group considered accountability mechanisms implemented in order to achieve ethical, effective management – whether or not via the three driving forces cited – as mitigating the risk to a particular organisation or the sector more widely of a scandal caused by failure of accountability within the organisation or another NPO. However, collectively, the impact of the individual efforts contributes to an external context of increasing accountability.

The Comité remains focused almost entirely on donor trust and does not address accountability in terms of ethical, effective management despite the strong shift in this direction among Comité members (explained in Chapter 6). The Comité has not proven effective as a vehicle for integration of corporate or international standards within the French nonprofit sector. Nor, according to Comité Group, has the Comité adequately represented its members in matters relating to funders that establish funder accountability requirements.

All three driving forces for increasing accountability in furtherance of ethical, effective management suggest the insufficiency of the nondistribution constraint to protect against inappropriate behaviour of controlling persons (misuse of funds, fraud, and other such examples Hansmann offers) in the current environment (Hansmann 1980, 874-5). In Hansmann's terms, the distribution of additional information to funders would mitigate the information asymmetry involving those funders' grantees potentially leading to contract failure. In addition, all three driving forces are integrated on an individual basis into the strategic assessment. However, rather than "signalling trust" as in Rose-Ackerman's model, the strategic assessment targets ethical, effective management objectives. Finally, Salamon's linking accountability to compensating for weaknesses in trust derived from intrinsic NPO characteristics does not apply to organisations and leaders that engage in accountability efforts for reasons other than trust relating to ethical, effective management. Moreover, the limits of Salamon's proposal more generally include the cost of increasing accountability and accessing accountability-related information. Hansmann's trust still matters because the cost of a level of accountability independently supporting trust will always outweigh the benefits, particularly in the nonprofit sector. Chapter 6 extends the unpacking of the strategic assessment process by positioning the donor trust rationale for increasing accountability within the Hansmann-Salamon trust theoretical framework.

## Chapter 6

### Donor Trust

#### *The Basis of Survival?*

The success of “large and small organizations serving the public good...is directly related to the trust they inspire, and the public holds them to a higher standard of accountability...than it does other sectors of our society” (“Keeping the Trust: Confidence in Charitable Organizations in an Age of Scrutiny” (Independent Sector 2002, 2)).

“Donor trust is the starting point... [and] basis of survival” [author translation] (Organisation 10).

#### **Introduction**

This chapter further develops the discussion of the empirical findings with an analysis of donor trust, the second most-oft cited rationale for increasing accountability after ethical, effective management. The chapter continues the exploration of organisations’ strategic assessment of accountability and the positioning of the findings within or outside the Hansmann-Salamon trust theoretical spectrum traced through Chapters 3 through 5. The hypothesis of this thesis that a desire to support donor trust explains increasing accountability proves accurate with respect to the respondents citing donor trust. However, the hypothesis was not valid with respect to the respondents citing ethical, effective management analysed in Chapter 5. The trust-focused respondents address accountability matters largely in response to their perception of the link between accountability and trust. In contrast, as seen in Chapter 5, respondents focused on ethical, effective management assess accountability matters almost exclusively independently of donor trust and other external reaction. Donor trust respondents represent a higher percentage of Comité Group respondents, whereas ethical, effective management respondents represented a higher percentage of Control Group respondents.<sup>353</sup>

The first section explores the empirical findings on the donor trust rationale. The analysis includes expected benefits of donor trust and the importance of existing levels of trust independent of accountability. The analysis then considers evidence that

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<sup>353</sup> See Table 6-1 and Section 5.2, respectively.

attitudes toward the relationship between accountability and trust are changing, in part to integrate more ethical, effective management concerns into strategic assessment. Such evidence includes: evolution in the Comité Group's view of the rationale for increasing accountability toward increasing focus on ethical, effective management; newly developing attention toward volunteer trust and public trust (each as defined in Section 6.3.2 below); and respondents' adaptable perspectives on whether accountability functions to increase/maintain trust or rather remedy/mitigate mistrust. The three most important potential forces driving increasing accountability within the donor trust objective are: Comité membership; donor pressure; and the media. However, these three forces prove less relevant to donor trust than the parallel three driving forces (corporatisation, integration of international standards, and funder accountability requirements) proved to ethical, effective management. The internal and external variables also prove less influential on the strategic assessment process with donor trust respondents than with ethical, effective management respondents in both respondent groups. Finally, the analysis explains the relationship between the empirical findings and the theoretical framework.

In addition to reinforcing the strategic assessment process and the trust theoretical framework, this chapter highlights several key sub-themes throughout the research. All are independent of cited primary rationale for increasing accountability, and all apply to both respondent groups. First, donor trust proves essential to ensure both financial stability and independence from donor influence on use of funds and organisational policy. Second, donor trust is widely perceived as fragile – irrespective of the organisations' existing levels of donor trust. Third, as with ethical, effective management, the empirical findings show the strategic assessment and implementation of accountability efforts in furtherance of donor trust as a dynamic, evolving process seeking best “next steps” for improvement. Finally, the potential consequences of the failure of accountability for both individual organisations and the sector more broadly remain an overriding concern among respondents.

## 6.1 Empirical Findings: Accountability and Donor Trust – Respondent Organisations and the Comité

This section explores the empirical findings that donor trust is an important rationale for increasing accountability but nonetheless cited second most often after ethical, effective management. The donor trust results are higher for the Comité Group than the Control Group, but similar for associations and foundations and between Control Groups A and B.<sup>354</sup>

The interview questions included details about the level of importance of donor trust to respondents' strategic assessment. A range of issues were addressed, for example: how respondents measured levels of donor trust and reaction of donors to accountability efforts; advantages of donor trust; the relevance of increasing donor trust versus mitigating mistrust (and any issues particular to the organisation's situation or history relevant to this answer); whether the donor profile related to the importance of donor trust; factors other than accountability relating to donor trust and whether the respondent addressed those; and other rationales for increasing accountability. Similar questions were raised with respect to the importance of accountability to donor trust in the French nonprofit sector more broadly.

For most respondents citing donor trust as the primary factor influencing accountability, the answer was clear, without hesitation, and without the need to embellish with explanatory details. For those affirmatively stating donor trust is not relevant, the clarity of conviction was equally strong. As discussed in Section 4.1, all but one Comité Group respondent and all Control Group respondents noted an increase in accountability within their organisations. Respondents that did not mention donor trust themselves when asked to describe the primary motivation for this increasing accountability were subsequently specifically asked to comment on the relative importance of donor trust. In addition to the questions relating to donor trust, the same menu of alternatives was offered to donor trust respondents as to ethical, effective management respondents.<sup>355</sup> Table 6-1 shows the detailed breakdown of responses relating to donor trust.

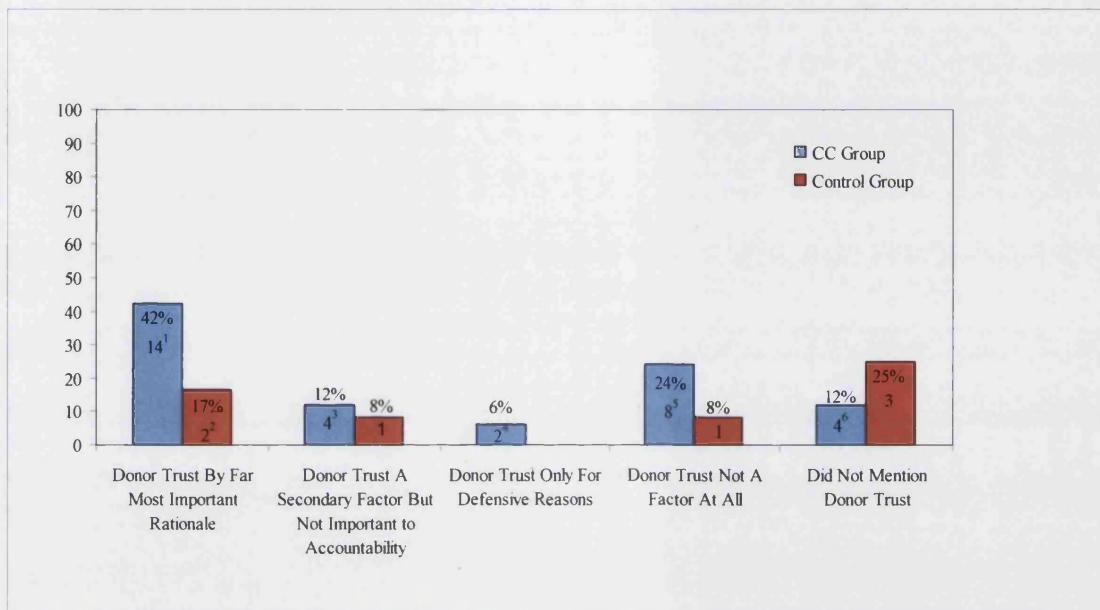
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<sup>354</sup> This result was expected as the six foundations participating in the study all fund-raise from the general public, which respondents defined as the most important common criterion among the study participants. See Section 1.3.1.

<sup>355</sup> See Section 5.2 for more detail on the interview process.

**Table 6-1**

**Importance of Donor Trust  
as a Rationale for Increasing Accountability**



Source: Author's research data.

<sup>1</sup> Organisations 2, 3, 4, 5, 8, 9, 10, 12, 13, 14, 15, 26, 27, 28, E, and F.

<sup>2</sup> Of the remaining Control Group respondents, two said some donor motivation but not donor trust (i.e., a more vague sense of donor expectation) (Organisations B and J). One respondent affirmatively stated donor trust did not matter, and two stated that donor trust was “essential” but not the reason for accountability (Organisations H and Organisations L and C, respectively).

<sup>3</sup> Organisations 21, 24, 25, 31 and G.

<sup>4</sup> Organisations 1 and 16.

<sup>5</sup> Organisations 6, 7, 17, 18, 19, 20, 22, 23, and A.

<sup>6</sup> Organisations 29, 30, 32, 33, D, I, and K.

Comments among Comité Group respondents citing donor trust as the most important rationale included “essential,” “key,” “number one now and then” (i.e., at the founding of the Comité), “100% the reason,” and “the starting point and basis of survival” (Organisations 2, 13, 3, 4, and 10, respectively). Similarly, Control Group respondents citing donor trust described donor trust as “essential,” “the biggest reason,” and “key,” specifying that “other factors are not really an issue” (Organisations E, F, G, and L, respectively). Those citing “defensive reasons” referred to a crisis involving accountability in the organisation or the sector or just general awareness that even organisations with high levels of donor trust are always at risk (Organisations 1 and 16).

The relationship between the respondents citing donor trust as the most important influence on increasing accountability and those citing ethical, effective

management reveals a clear split between the two groups. As noted in Section 5.2, only one respondent cited donor trust as a second choice to ethical, effective management (Organisation 15).

*The Comité and Donor Trust.* The Comité's overriding focus on donor trust highlighted in Section 5.2 – as opposed to accountability more generally – arguably may be a weakness. This question may become even more acute as members' attention to accountability to the public increases.<sup>356</sup>

## **6.2 Empirical Findings: Expected Benefits of Donor Trust and Donor Trust Independent of Accountability**

The expected benefits and the on-going fragility of donor trust further inform the general findings on donor trust. Both areas also relate to respondents citing ethical, effective management.

*Expected Benefits of Donor Trust.* First, although donor trust emerged as the second most oft-cited motivation for increasing accountability, all organisations in both groups consider donor trust the “basis of survival” for economic reasons (Organisations 10, 11, and 15). The primary expected benefit and objective of donor trust is ensuring the financial stability of the organisation, including for those with more governmental/corporate/institutional funding such as those in Control Group B with a higher percentage of high level individual and/or corporate donors. Thus donor trust is not the only reason for accountability but is important for all NPOs irrespective of the cited motivation for increased accountability.

The second key benefit of donor trust is independence from donor restrictions on allocation of funds and/or policies.<sup>357</sup> The concern with independence extends beyond governmental/corporate/institutional donors (discussed in connection with funder accountability requirements) to verification of the independence of large individual donors (e.g. Organisation D's tracking of all donors above a certain threshold amount). For organisations attentive to independence, accountability supports donor trust, which in turn supports a wide platform of current and potential donors (Organisations 2, 7, 11,

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<sup>356</sup> See Section 6.3.2.

<sup>357</sup> See Section 5.3.3.

15, 17, C, and D). This selection of respondents may under-represent the concern with independence as a number of respondents did not focus on this issue.

*Donor Trust Independent of Accountability and Fragility of Donor Trust.*

Respondents' perception of existing strong levels of donor trust in their organisations irrespective of the level of accountability further explains the empirical findings on donor trust. Most importantly, all respondents discussing existing trust consider donor trust fragile and view accountability as supporting donor trust. This sense of instability surfaces irrespective of the level of trust unrelated to accountability that organisations enjoy.<sup>358</sup> Also, perceived existing levels of donor trust do not necessarily correspond to views on donor trust or ethical, effective management as the primary rationale for increasing accountability.

First, organisations in both respondent groups of all sizes, irrespective of primary rationale for increasing accountability, claim significant donor trust and loyalty for reasons of emotional attachment to the cause and/or the exceptional renown of the organisation. 15 (33%) respondents (12 (38%) Comité Group and three (25%) Control Group) spontaneously reported high levels of donor trust and loyalty irrespective of accountability efforts and, in the case of the Comité Group, irrespective of Comité membership (Organisations 6, 9, 12, 16, 18, 21, 23, 25, 26, 28, 30, 31, C, D, and I).<sup>359</sup> Thus there is no significant difference between the two respondent groups. Such loyalty is measured through tracking repeat donors from year to year, as well as interviewees' general perceptions of donor loyalty. The self-completion questionnaires showed that 100% of the Comité Group organisations and 80% of the Control Group organisations work to ensure renewal of donors from year to year. All Comité Group organisations also commented on their own renown as far superior to that of the Comité (Organisations 5, 22, 24, 25, 30, and 31 particularly emphasising reputation). Both Soublin and Cohas-Bogey agreed that virtually all of the Comité members benefit from significantly greater national and even international reputation than the Comité. Ten of the 12 Control Group respondents also felt their organisations were better known than the Comité. For example, seven respondents (six from the Comité Group) were among the nine most significant recipients of gifts in aid of the tsunami, comprising over €269 million of the approximately €284 million total in aid to these nine French organisations

<sup>358</sup> The relationship between the fragility of donor trust and accountability efforts is considered on the broader sector-wide level in Chapter 7.

<sup>359</sup> These organisations affirmatively mentioned donor loyalty. However, the fact that others did not does not mean that they do not experience loyal donors.

as of December 31, 2005 (Organisations 4, 5, 16, 19, 25, 26, and C; Cour des comptes 2007, 13; Cour des comptes 2006a, 52).

Second, there was little connection between respondents selecting donor trust as the primary rationale for increasing accountability and respondents spontaneously evoking existing long-standing donor trust. Nine Comité Group and one Control Group respondents citing donor trust did not mention existing and/or long-term donor trust (Organisations 3, 4, 10, 12, 15, 26, 27, 28, 33, and E). Only three Comité Group and two Control Group respondents citing donor trust (both from Control Group B) affirmatively expressed existing high levels of donor trust (Organisations 5, 13, F, and G).

Third, almost all respondents consider donor trust important yet fragile irrespective of renown and cited rationale for increasing accountability. No organisation citing either donor trust or ethical, effective management felt that they could rely complacently on past or present levels of donor trust and/or long-standing reputation – even the most well-known organisations with a historically outstanding reputation. One respondent summarised this universal sense that donor trust is “always at risk” and “fragile” (Organisation 16). One of the largest and most internationally known Comité Group members concluded the interview with “we are very vulnerable to the slightest thing.” He cautioned that even his organisation’s high level of existing donor trust no longer suffices because donors are “looking over their shoulders” requiring them to “prove themselves” through accountability efforts (Organisation 31). This does not necessarily mean that these organisations do not benefit from longstanding donor loyalty and trust. Rather, the leaders perceive that any such trust is insufficient alone and/or does not diminish the need to reinforce donor trust through accountability efforts. Comité Executive Director Cohas-Bogey agreed that French NPOs have an enormous “built-up trust capital” but that trust is fragile (Cohas-Bogey call 2007).<sup>360</sup> Finally, only the respondents citing donor trust as the primary rationale for increasing accountability linked accountability directly to addressing this fragility.

Fourth, respondents’ strategic approach to donors (i.e., targeting specific donors or seeking a relatively constant flow of overall number of donors and amount of revenue) also shows concern with both fragility of even longstanding trust based on

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<sup>360</sup> The Comité/Sofres Survey also showed reputation as among the least important sources of donor trust (compared to rigour and transparency in fund management and the type of cause (e.g. poverty reduction) being the most important) (Comité de la Charte/TNS Sofres 2007, 13).

reputation and enhancing trust through accountability efforts. On the one hand, the profile of the donor populations of the respondent organisations – mostly large numbers of small gifts – might suggest that organisations focus more on the overall levels of donor revenue (i.e., a revenue stream) rather than individual donors. Average gifts in many organisations (other than Control Group B organisations) ranged from approximately €20-35 annually.<sup>361</sup> The organisations with higher giving levels did focus on the personal contact with the donors as essential above and beyond accountability efforts generally.<sup>362</sup> However, the interviews indicated that accountability penetrates many levels of donors, including concern with specific donors even at lower giving levels. Certain respondents systematically respond to questions and complaints from every donor or, in one case, every donor or non-donor (on the theory that every non-donor is a potential donor) (Organisations 4 and 14; Organisation B, respectively). Some respondents have also implemented donor committees offering donor representatives access to senior management and an opportunity to liaise between headquarters and all levels of individual donors (Organisations 10 and 30). While the question remains as to donor effort and/or ability to benefit from the detailed financial disclosure that the Comité requires and that many Control Group organisations offer, all respondents in both groups target lower level donors in preparing and distributing accountability-related documents.<sup>363</sup>

Finally, almost all respondents highlight the fact that increasing attention to accountability may protect trust. Again, however, for the group citing ethical, effective management as the motivation for increasing accountability, the distinction between trust as an on-going concern and benefiting *de facto* from increasing accountability, compared to trust as the direct motivation for accountability efforts, is essential.

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<sup>361</sup> See Appendix 6-A for a breakdown of donor revenue among the respondents. The Comité was unable to provide an average for organisations individually or collectively, and many organisations either did not provide this information or provided an estimate (Berlincourt e-mail November 2008). This range reflects estimates of approximately 50% of respondents.

<sup>362</sup> This includes primarily the Control Group B organisations and organisations with corporate donors but excludes governmental and institutional donors. Organisations codes are omitted to protect confidentiality.

<sup>363</sup> See also Section 1.4. Such concerns echo the criticisms of the US disclosure system analysed in Section 3.1.1 and the Comité/Sofres Survey showing that 61% of respondents surveyed cared more about the availability of accountability materials than actually reading them (Comité de la Charte/TNS Sofres 2007, 18).

### 6.3 Empirical Findings: Evolution in the Relationship Between Accountability and Donor Trust

This section explores empirical evidence of change in respondents' views of the donor trust rationale for increasing accountability. The dynamic nature of increasing accountability as defined in the thesis emerges as crucial to organisations' strategic assessment of accountability and perceptions of trust – including how respondents position themselves within the Hansmann-Salamon spectrum, if at all. Evidence of changing approaches to the strategic assessment include: greater attention to ethical, effective management as a rationale for increasing accountability among Comité Group respondents (from donor trust as the primary rationale for joining the Comité at the time of joining); emerging attention to volunteer trust and public trust; and adaptability in respondents' positioning accountability as a tool for maintaining/increasing donor trust versus remedying/mitigating mistrust.

#### 6.3.1 Empirical Findings: Evolving Perspectives on Donor Trust of Comité Group Members

A comparison of the Comité Group respondents' rationales for originally joining the Comité (overwhelmingly donor trust) with the explanations for increasing accountability in their organisations at the time of this thesis shows an evolution away from donor trust toward ethical, effective management. Three nuances – the importance of a group dynamic, the value of an external review of organisations, and efforts to “police themselves” – add contour to the emerging trend.

Donor trust was the key reason for Comité membership at the time the organisations joined. 27 Comité Group respondents cited protecting and/or enhancing donor trust as the most important reason for joining the Comité at the time they joined.<sup>364</sup> 12 respondents were among the 18 original founding members, therefore involved in the initial donor trust-driven impetus of anticipating the consequences of l'ARC for their organisations and the French nonprofit sector (Comité 2006e).<sup>365</sup> Of the

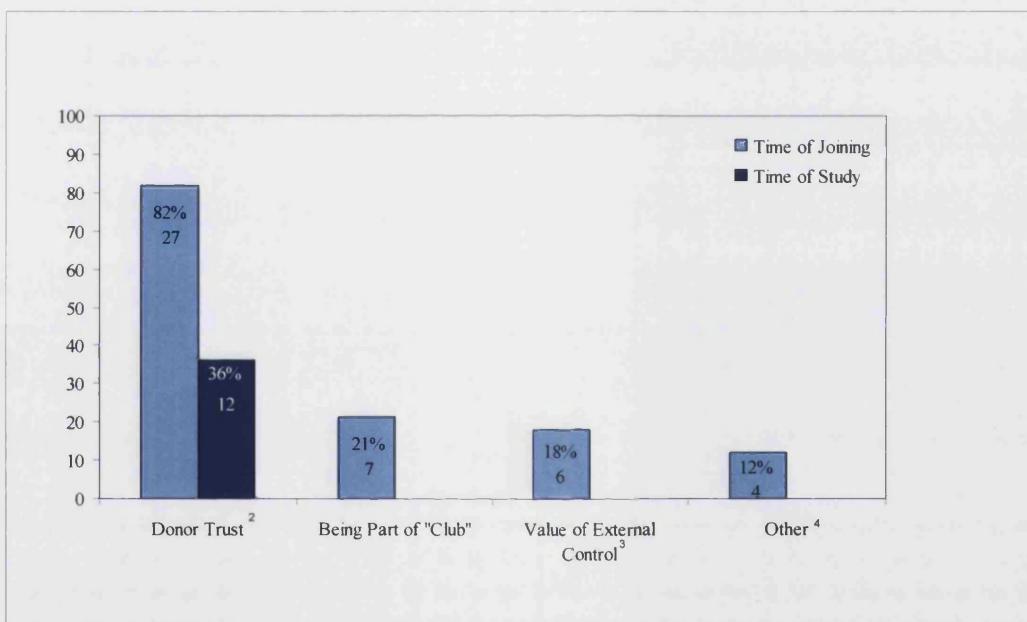
<sup>364</sup> The Comité Group self-completion questionnaire also showed that donor trust as a reason for joining the Comité mattered “a lot” for 13 (45%), was the “essential motivation” for 11 (38%), and was the only motivation for five (17%) of respondents participating in the Comité Group self-completion questionnaire.

<sup>365</sup> See Sections 1.2.4 and 7.2.2 “*The Comité, Accountability, and Scandal*” and Appendix 1-D.

27 Comité Group organisations citing protecting/enhancing donor trust as the reason for joining initially, only twelve felt donor trust was the primary motivation for their improving accountability systems at the time of this thesis. The other 15 cited ethical, effective management as the current motivation for increasing accountability. Table 6-2 shows the rationales for joining the Comité at the time of joining and on-going relevance of donor trust.

**Table 6-2**

**Reason for Joining Comité at Time of Joining and On-Going Relevance of Donor Trust<sup>1</sup>**



Source: Author's research data.

<sup>1</sup> Numbers include multiple responses from certain respondents. Results suggest trends more than reliable quantitative results given respondents' mixing of different responses. See discussion below for the on-going relevance of the rationales for joining other than donor trust. These are not represented in the table as they are not rationales for increasing accountability.

<sup>2</sup> Donor trust at time of joining: Organisations 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33. Donor trust at the time of this thesis (the others saying ethical, effective management): Organisations 2, 3, 5, 9, 10, 12, 13, 16, 20, 26, 27, and 28.

<sup>3</sup> Organisations 8, 12, 17, 21, 28, and 30.

<sup>4</sup> Organisations 4, 8, 18, and 21.

Several secondary comments on reasons for joining remain relevant. Seven respondents continue to consider being outside such a group, movement, or Comité "club" "impossible" once it exists for fear of donors questioning why they are not members (i.e., the organisations' assumption that failure to join "signals" inadequate

accountability to donors) (Organisations 1, 4, 5, 9, 20, 23, and 31). Respondents perceive probable donor reaction as “if the Comité exists, why aren’t you a member?” more than a judgment that Comité membership is substantively beneficial. These comments specifically separated the “club” phenomenon from motivation for increasing accountability or even potential substantive benefit of membership.

Other explanations for joining the Comité initially, usually as a second priority, included external oversight (particularly the exigency with financial transparency and technical progress through work with the *censeurs*), “policing themselves,” and individual issues such as support for grant applications (Organisations 12, 28, and 30; Organisations 4, 8, 21, and 9; Organisations 12, 28, and 30, respectively).<sup>366</sup> There was virtually no link between the notion of “policing themselves” individually and the larger question of the relationship between self-regulation and regulation as might have been expected (e.g. self-regulation as a deterrent for excessive governmental intervention).<sup>367</sup>

### **6.3.2 Empirical Findings: Signs of Evolving Perspectives on Volunteer and Public Trust**

This section explores early signs of evolution in respondents’ perception of the relationship between accountability and trust of volunteers (defined below) and the general public (i.e., non-donors) in the organisation (hereafter referred to as “volunteer trust” and “public trust,” respectively). While volunteer trust and public trust remain considerably less important to respondents in both the Comité Group and the Control Group than donor trust, both are starting to be seen as related to the strategic assessment of accountability. Both test the boundaries of the evolving views of donor trust as a rationale for increasing accountability and the strategic assessment process.

Volunteer trust is defined to include two perspectives: the impact of an organisation’s accountability on its own volunteers’ trust and organisations’ engagement of volunteers in the implementation of accountability mechanisms. Accountability in furtherance of public trust is widely interpreted as the same exercise as accountability to donors, particularly in the ethical, effective management group.

<sup>366</sup> See also Independent Sector on self-regulation as a deterrent to excessive regulation (Panel on the Nonprofit Sector 2007, 3). See also Section 4.4.2 on Comité obligations as pressure on *conseils d’administration* to adopt accountability mechanisms..

<sup>367</sup> Hansmann also noted that he would have expected deterring excessive regulation to be a factor in increasing accountability (Hansmann call 2008). See Section 3.2.1 “Relationship Between Accountability Regulation and Self-Regulatory Initiatives...” for US emphasis on deterring regulation.

Thus, the findings raise the question of whether increasing importance of the ethical, effective management rationale for accountability efforts may result in a parallel increase in accountability to the public and even volunteers – if only because de facto the accountability measures are not specifically targeting donors but rather the right level and mechanisms for the organisation generally irrespective of beneficiary.<sup>368</sup> Finally, notwithstanding the significantly lesser importance of volunteer trust and public trust compared to donor trust as a rationale for increasing accountability, the recurring recognition of the fear of the failure of accountability surfaces with respect to all three types of trust.

*Volunteers, Accountability, and Trust.*<sup>369</sup> Overall respondents in both groups and the Comité do not view volunteer trust as an important motivation for their own increasing accountability. This is primarily because most organisations do not perceive accountability efforts as important to attracting volunteers. Nonetheless, the respondents starting to direct accountability efforts at increasing/maintaining volunteer trust demonstrate changing attitudes – even if describing the link as moderately important and in some cases in early stages. The increasing competition for volunteer recruiting and retention, especially for high level volunteers, largely explains signs of change (Organisations 4, 16, 23, 33, A (“hunt for volunteers”), and E). The Comité/Sofres Survey showed that 42% of participants felt that a “label of good practice” would positively influence their desire to volunteer with the certified organisations, compared to 53% saying it would not (Comité de la Charte/TNS Sofres 2007, 19). Similarly, a significant number of organisations in both groups believe accountability counts to some extent for volunteers. Table 6-3 sets out the findings.<sup>370</sup>

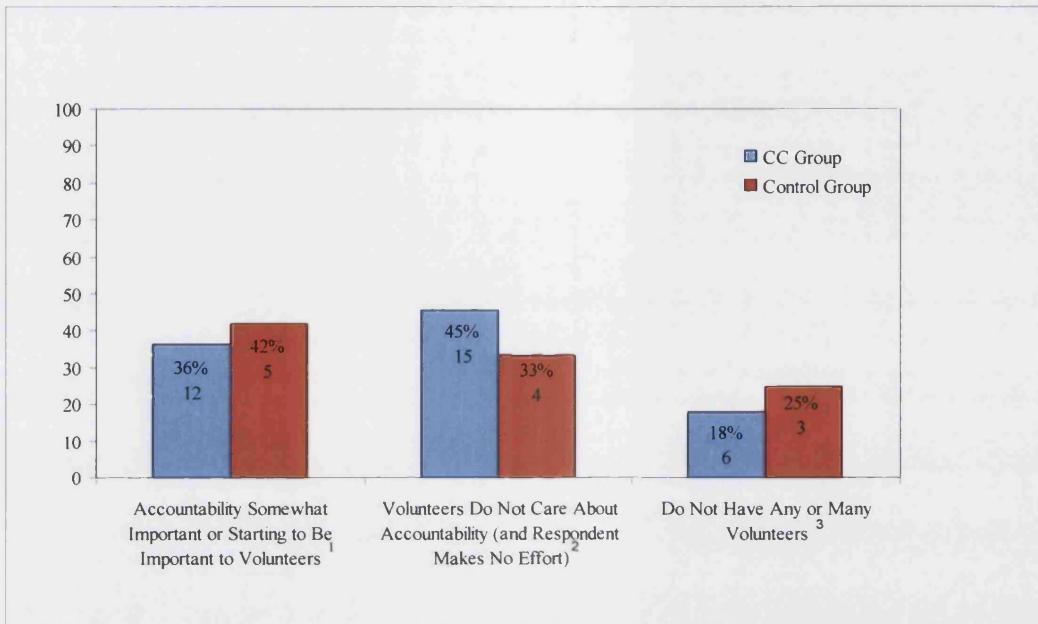
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<sup>368</sup> See also Section 5.2 on the view of some respondents citing ethical, effective management that their level of accountability exceeds that of the donor trust group.

<sup>369</sup> See Appendix 6-B for further details of numerical distribution of employees and volunteers among respondents.

<sup>370</sup> Two of the seven respondents affirming the importance of accountability distinguish volunteers (*bénévoles*) and *volontaires*.

**Table 6-3**  
**Importance of Accountability to Volunteer Trust**



Source: Author's research data.

<sup>1</sup> Organisations 4, 5, 6, 8, 12, 13, 20, 24, 26, 28, 29, 33, A, B, C, D, and E. Level of importance varies but respondents usually emphasised importance to higher level volunteers.

<sup>2</sup> Organisations 1, 2, 3, 7, 14, 15, 18, 19, 21, 22, 25, 27, 30, 31, 32, F, H, I, and K. Control Group respondents in this category emphasised that only the mission counted.

<sup>3</sup> Organisations 9, 10, 11, 16, 17, 23, G, J, and L.

Within both the Comité Group and Control Group those that did not believe volunteers cared about accountability insisted on the emotional attachment to the organisation's reputation, as well as the mission, usefulness of the work, personal convictions about volunteering, and, to a lesser extent, the social experience (Organisations 3, 14, and 25; Organisations 3, H, 23, and 23, respectively). The "cause" also appears as one of the two most important factors for donor trust (along with rigorous transparent fund management) in the Comité/Sofres Survey (Comité de la Charte/TNS Sofres 2007, 13).<sup>371</sup> One respondent concluded that "volunteers are spoken to [about accountability matters] but don't care" (Organisation 32).

Despite limited direct focus on volunteer trust, anecdotal examples of management of volunteers indicate inclusion of volunteer matters in overall efforts to increase accountability. All who commented on volunteers believed that the higher level

<sup>371</sup> This section of the Comité/Sofres Survey did not specify the type of trust, but donor trust was implied and understood as the basis for the Comité's commissioning of the survey (Soublin call June 2008).

volunteers demonstrate greater interest in accountability, for example the regional delegates or other senior representatives of local offshoots of a national association. A few organisations have a volunteer charter (*charte de bénévoles*) outlining volunteer responsibilities, ethical standards, and general functioning or volunteer-driven democratic membership procedures (Organisations 8, 21 and C; Organisation 19, respectively). Others have detailed procedures monitoring volunteer participation in major fund-raising events (Organisations 4, 14, and B). Three have professionalised high level volunteer positions (in one case the Director General and almost half of the senior management team are volunteers) to be “almost interchangeable with paid employees” (Organisations 21 and 29; Organisation 23, respectively). Finally, the *administrateurs* in all organisations are high level volunteers but represent a distinct case as their statutory role intrinsically involves responsibility for oversight of accountability matters.<sup>372</sup>

Finally, the recurring theme of the danger to NPOs of failure of accountability affects volunteer trust. Irrespective of respondents’ views on the various motivations for increasing accountability, respondents generally believe that failure of accountability would negatively affect volunteer trust and, in turn, recruiting and retention of volunteers. One Comité Group respondent noted that “not having accountability is the best way to have [volunteers] leave” (Organisation 25). Another reminded that volunteers “have l’ARC in mind” (Organisation 30). A third insisted that volunteers “don’t ask about accountability but would leave if there were a scandal” (Organisation 21).

*The Comité and Volunteer Trust.* The Comité is not specifically concerned with members’ accountability toward volunteers despite the volunteer-driven structure of the Comité itself. The Comité web site does not directly address volunteer trust (Comité 2008c). Similarly, the Comité representatives do not discuss accountability to volunteers or as a vehicle for generating volunteer trust as part of the membership screening or on-going compliance. No Comité Group respondents reported any conversations or other interaction with the Comité regarding volunteers.

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<sup>372</sup> See Sections 4.2 and 5.4.3 for limitations in *conseil d’administration* participation in accountability matters. The Comité still does not permit paying *administrateurs*, including the President (although permitted under French law in limited circumstances). This subject is currently under discussion within the Comité. The decisive issues concern disclosure of the salary, benchmarking of salaries against market practice, and compensation of *administrateurs* for time away from regular paid work dedicated to *conseil d’administration* duties (Soublin call June 2008).

The Comité's substantive work is, however, almost entirely volunteer-driven. A team of approximately 70 exclusively independent volunteer examiners (*censeurs*) assumes responsibility for reviewing applications for accreditation, engaging with member organisations triennially for an in-depth review, approving any improvements required for on-going accreditation, and, if necessary, recommending sanctions (Comité 2008c and 2008g; 2008o, 8-9; 2008b, respectively). The *censeurs* are high level professionals with accounting and finance background. Almost all Comité Group respondents noted the *censeurs*' significant professional experience, and no respondents complained of competence issues.<sup>373</sup> Volunteers also comprise the Commission d'agrément et de contrôle, the Conseil de déontologie (until recently dissolved into independent volunteer advisors), and the *conseil d'administration*, and a few assist with communication (Comité 2008c).

The reasons volunteers join the Comité are "multiple and complex" according to Soublin. The word "accountability...is not in their vocabulary" even though the concept is "practised without using the word" (Soublin interview 2007). Soublin notes that five to ten years ago the Comité had a similar volunteer structure yet a much less advanced accountability level (Soublin interview 2007). Nonetheless, the volunteers' primary activity and the Comité's standards are difficult to separate as the volunteers are essentially finance experts volunteering in a role of overseeing organisational accountability and expressing views on accountability requirements for members (Comité senior management call/interview 2007). Finally, Comité senior management echoes respondents' concern that the highly experienced *censeurs*' would leave if accountability standards were insufficient (Comité senior management call/interview 2007).

*The General Public, Accountability, and Trust.* Respondents' sense of obligation of accountability to the general public and perception of the importance of public trust also suggest changing priorities for increasing accountability that affect strategic assessment. One key issue involves whether accountability to donors differs from accountability to the public. A follow-on question is whether the respondents citing donor trust differ from respondents citing ethical, effective management with respect to the level the public benefits from accountability efforts not directly targeting the public.

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<sup>373</sup> See Section 4.1 "Increasing Accountability Within the Comité."

Respondents were briefed that the debate in the US regarding accountability to the public and public trust in NPOs has been largely linked to the tax system through which the government supports eligible NPOs through tax deductible gifts with tax revenue (e.g. Anheier 2005, 40; USGDTIRS 2008a). Best US practice now also includes accountability to the public. For example, the Independent Sector Code of Ethics specifically includes an obligation of comprehensive and timely disclosure to the general public and the media in addition to donors and other stakeholders (Independent Sector 2004c, Section VI). The question has become more pertinent in France given the series of increases in tax benefits of donations to NPOs since 2003 and increasing levels of accountability generally.<sup>374</sup>

The Control Group was generally more concerned with accountability to the public than the Comité Group on a percentage basis. 19 (57%) Comité Group respondents expressed concern with accountability to the public; two expressed moderate concern; and 12 do not consider the public in the strategic assessment of accountability (other than general “awareness” in three cases) (Organisations 13, 24, and 25). One respondent not concerned with the general public believed that most Comité organisations focused on basic ethical standards irrespective of the beneficiary or level of specific focus on the public (Organisation 13). Only one deliberately targeted accountability efforts only to donors (Organisation 20). Within the Control Group nine (75%) respondents felt that accountability to the public is important (almost all actively focused on the public); and two did not. However, conclusions cannot be drawn from this discussion alone that the Comité Group respondents focus more exclusively on donor trust and less on public trust as a result of their Comité membership and the Comité’s position on public trust (below).

The comparison between views on obligations of accountability to the public and views on the donor trust and ethical, effective management rationales shows a relatively balanced distribution. Again there is a somewhat greater focus on public trust in the Control Group in both cases. Approximately half of the Comité Group respondents prioritising each of donor trust and ethical, effective management prioritised accountability to the public.<sup>375</sup> All three in the Control Group prioritising donor trust and six of the nine in the Control Group prioritising ethical, effective management also focused on the public.

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<sup>374</sup> See Section 3.2.2.

<sup>375</sup> Two responses were not clear.

The respondents citing donor trust and respondents citing ethical, effective management share a common view of accountability to the public. All respondents from both groups who answered the question, regardless of cited rationale for increasing accountability or their perspective on accountability to the public, felt that the accountability measures required would be the same as they currently do or would undertake for donors. Five respondents specified that “there isn’t one type of accountability for one set of stakeholders and different for others” (Organisations 18, 19, C, D, and E).<sup>376</sup> Only one Comité Group organisation affirmatively distinguished obligations to the public and to donors (Organisation 30). In particular, the respondents prioritising ethical, effective management considered their standards adequate for all beneficiaries of accountability – internally and externally. The comments from some that the ethical, effective management objective generated a higher level of accountability than a donor trust focus raises the question of the extent to which respondents assessing accountability for ethical, effective management provide greater accountability to the public (even without specifically targeting the public) than those citing donor trust.<sup>377</sup> In addition, a few respondents in both the donor trust and ethical, effective management groups viewed one sub-purpose of accountability to the public as addressing potential donors (therefore arguably falling back, in part, into the donor trust explanation) (Organisations 18, 19, and B; Organisation 19, respectively).

Finally, although the explanation of the interview question cited a tax-based origin to concern with public trust (i.e., NPOs’ benefit from the public’s funding of tax deductions on donations to NPOs), only one Comité Group and three Control Group respondents associated accountability to the public with the tax argument (Organisations 9, E, G and I). Two Comité Group respondents rejected the tax argument outright (Organisations 1 and 4). One respondent insisted that the state’s payments through the tax system were normal because there was also a transfer of competence through the tax system (Organisation I).

*The Comité and Public Trust.* The Comité’s reaction as an organisation (represented by management) regarding the public is split (Comité senior management calls/interviews 2007). Comité management states that they do not pay attention to the public – or only “very indirectly.” Nonetheless, the fact of “acting in a zone of trust”

<sup>376</sup> Hansmann notes that in certain NPOs the fiduciary role vis-à-vis donors and beneficiaries is “one and the same” (particularly for commercial NPOs). However, he does not specifically address the public (Hansmann 1980, 845).

<sup>377</sup> See Section 5.2. This would require additional study.

touches the public because the Comité is in a position to change the public's perception of the French nonprofit sector (Cohas-Bogey interview 2007). Soublin believes that the concern with the public has begun to emerge in the past few years but was not an initial concern (Soublin interview 2007).

### **6.3.3 Empirical Findings: Adaptability of Perspective on Accountability – Increasing/Maintaining Trust or Remedy/Mitigating Mistrust?**

A debate as to whether accountability efforts aim to increase/maintain trust or, conversely, to remedy/mitigate mistrust emerged during the preparatory discussions with experts for the study and the interview process.<sup>378</sup> This debate, offering a third example of adaptability of respondents' perspective on trust as a rationale for accountability, is not addressed in the literature. The question focuses primarily on assessing accountability efforts from an operational sense of whether a proactive approach to trust, or a defensive approach to threats to trust, guides the strategic assessment. Respondents were asked whether their organisation's accountability efforts fell into one or both of the increasing/maintaining or remedying/mitigating interpretations and, more generally, the extent to which the debate was useful in the French context. All participants in both groups felt that the question was relevant to the overall discussion of accountability. Responses reflect interviewees' views and not measured data.

The findings do not show a clear bias toward one side of the debate. The results show slightly more respondents prioritising increasing/maintaining trust adapting somewhat to two variables: most importantly, scandal and, to a lesser extent, individual internal organisation leadership initiatives. Table 6-4 shows the distribution of responses. In an ordinary (i.e., scandal free) environment, the balance is stronger toward increasing/maintaining trust. At the other extreme (i.e., immediately post-scandal), remedying/mitigating mistrust reflects accountability efforts directed at post-scandal recovery.<sup>379</sup> Finally, a significant number also said "both" or "avoidance of decline/management of risk." Within the "both" group, again many considered timing

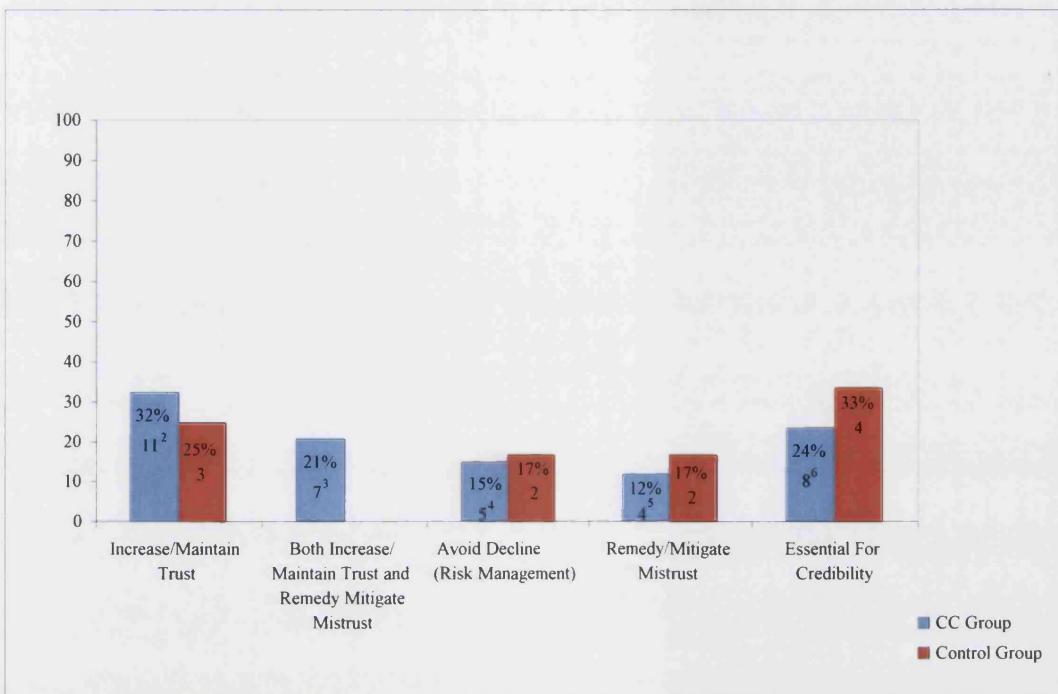
<sup>378</sup> Le Grand raised this debate at the Major Review discussion (February 2007).

<sup>379</sup> One Comité Group respondent and former Comité board member noted the "irrational" dimension of mistrust of the nonprofit sector among the French public (Organisation 25; Comité de la Charte/TNS Sofres 2007 (showing 36% of those surveyed mistrusted associations and foundations (but still third after 40% trust and 57% respect, 10))).

relative to scandal crucial. Post-l'ARC (and post- any French nonprofit sector or NPO crisis), there were significant efforts to remedy mistrust, including the founding of the Comité. This is the only question eliciting references to movement in accountability directly relating to scandal, and these responses almost exclusively related to the founding of the Comité. L'ARC remains a highly sensitive and relevant issue, but almost all respondents acknowledge an evolving perspective on the implications of l'ARC for accountability efforts.<sup>380</sup> Other sources of a changing perspective on this debate arise from management issues such as the hiring of a new Director General with a particular perspective and/or mandate from the *conseil d'administration* on accountability issues (Organisations 10 and C, respectively).

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<sup>380</sup> See Section 7.2.1 for a detailed discussion of l'ARC, as well as the Comité as the only example of adaptability of accountability systems to scandal.

**Table 6-4****Increasing/Maintaining Donor Trust or Mitigating Mistrust?<sup>1</sup>**

Source: Author's research data.

<sup>1</sup> Four Comité Group responses that were unclear were omitted. Certain respondents cited "Essential For Credibility" together with another option and therefore are counted twice. Three Control Group answers positioned respondents outside of the debate themselves, notwithstanding their view of the relevance of the question (Organisations C, H, and J). Some organisations offered two answers, and both were included. Some did not answer. Accordingly, results indicate a general qualitative panorama rather than reliable specific quantitative results.

<sup>2</sup> Organisations 5, 9, 10, 12, 14, 15, 17, 26, 30, 32, 33, A, B, and F.

<sup>3</sup> Organisations 6, 7, 8, 13, 16, 25, and 27.

<sup>4</sup> Organisations 1, 3, 18, 23, 31, I, and K.

<sup>5</sup> Organisations 2, 4, 19, 21, D, and E.

<sup>6</sup> Organisations 10, 17, 19, 20, 24, 25, 26, 32, A, D, G, and K.

The three most militant organisations (all in the Comité Group) believe that the militant culture and activities (e.g. lobbying and speaking out on behalf of human rights victims) modify somewhat the perspective on this debate positioning donor trust.<sup>381</sup> All three leaders focus on accountability as increasing/maintaining trust but consider their militant actions themselves a trust-enhancing source of accountability.<sup>382</sup> These include recruiting volunteer "militants" to speak out, as well as members voting on *bureau* proposals for organisational priorities at the bi-annual member congress or exerting pressure for accountability through the *assemblée générale* (all actions taken

<sup>381</sup> See also Section 4.2.1 "Whistleblower Mechanism" on militant organisations.

<sup>382</sup> Organisation codes are omitted to protect confidentiality.

independently of donor trust). One boasts average donation levels twice the French NPO average, high donor stability across even challenging times, and total expenses related to fund-raising approximately ten times lower than most French NPOs (Organisation 9).

*The Comité Perspective.* Comité management offers a mixed perspective. Soublin acknowledges increasing/maintaining trust as the goal reflected in all of the Comité documents. However, he and Cohas-Bogey recognise that everyone “still believes mistrust exists,” and the sector must consolidate accountability efforts following l’ARC (Soublin and Cohas-Bogey interviews 2007). The Comité/Sofres Survey reflects this combination, showing 51% of the 1000 survey respondents trust NPOs, and 47% do not (Comité de la Charte/TNS Sofres 2007, 9). The former includes more donors, volunteers, and those with higher education, and the latter includes more non-donors (Comité de la Charte/TNS Sofres 2007, 9). The Comité/Sofres Survey also showed that greater controls (e.g. with respect to honesty, management compensation, and transparency) should result in increased trust (Comité de la Charte/TNS Sofres 2007, 15 and 16). However, these results are unclear regarding the impact of scandal on responses. Moreover, the results do not lead to conclusive findings regarding actual reliance of the donor trust group on improved accountability controls or whether accountability actually does increase trust.

#### **6.4 Empirical Findings: Key Potential Factors Driving Increasing Accountability in Furtherance of Donor Trust: Donor Pressure, Comité Membership, and the Media**

This section explains three key potential driving forces behind increasing accountability in furtherance of the donor trust objective: donor pressure; Comité membership; and the media. These three potential triggers of increasing accountability parallel the three driving forces addressed in the analysis of ethical, effective management (i.e., corporatisation, integration of international standards, and funder accountability requirements). However, in the case of donor trust, in both respondent groups the connection between these expected forces within the larger donor trust rationale proves less direct than in the case of the three within ethical, effective management. Rather, leaders appear to engage in the strategic assessment and act in

accordance with an internally generated idea of trust and/or a notion of the importance of being “trustworthy.”<sup>383</sup>

#### **6.4.1 Empirical Findings: Donor Pressure as a Driving Force for Increasing Accountability**

Respondents do not generally perceive donor pressure, whether from individuals or institutions, as an important impetus for increasing accountability. Donor pressure might manifest itself as specific requests for additional accountability mechanisms (including transparency) and/or discourse or giving practices linking the level of accountability or the implementation of specific accountability mechanisms to gifts. The organisations’ perceptions of donor pressure and/or specific donor requests for accountability mechanisms might have logically been an important counterpart to donor trust based on the perception organisations have of donor reaction to media coverage of accountability-related scandal such as l’ARC.<sup>384</sup> In contrast, the findings showing absence of a link between donor pressure and efforts to increase accountability to support donor trust reinforce the recurring theme of inside out accountability. Organisations appear to make accountability decisions based on their perceptions of accountability efforts necessary to enhance their idea of trustworthiness rather than in response to specific donor requests or other evidence of donor requirements.

The Comité Group and Control Group again showed similar results on a percentage basis, both low relevance of donor pressure. Only three Comité Group organisations mentioned donor pressure – all weakly; three others mentioned institutional donor pressure; and seven affirmatively said there was no donor pressure (Organisations 3, 16, and 18; Organisations 2, 5, and 19; Organisations 1, 4, 5, 8, 9, 10, and 30, respectively). Only two Control Group respondents mentioned donor pressure as “somewhat” important; one other mentioned institutional donor pressure; and three affirmatively felt no donor pressure (Organisations I and K; Organisation E; Organisations A, G, and H, respectively).

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<sup>383</sup> This empirically-based conclusion reinforces a suggestion from Howell early in the research process (Howell meeting 2006). Hansmann commented that ultimately trustworthiness is key, and it is nice to have trust as well (Hansmann call 2008).

<sup>384</sup> Every respondent that discussed the media noted the fear of impact on donors, even though most did not consider the media as an important rationale for increasing accountability. See also Section 7.2.2.

In addition, funder accountability requirements were not perceived as donor pressure to increase accountability generally. Rather, as noted in Section 5.3.3, even for respondents mentioning institutional donor pressure funder accountability requirements reflect “normal business” linked to the specific funding opportunity and the related accountability mechanisms required by the funder.

Further research would be needed to measure actual donor behaviour relative to accountability, as well as whether and how donor pressure is effective in increasing accountability or for achieving any other objectives.<sup>385</sup> The supply side research here confirms that the respondent organisations do not generally react to donor pressure or integrate donor pressure in the strategic assessment of accountability – irrespective of how much donor pressure may actually exist, the perspective of donors, and whether the organisations are excluding a factor that, if considered, would change the strategic assessment.<sup>386</sup>

#### **6.4.2 Empirical Findings: The Comité as a Driving Force for Increasing Accountability? – The Comité Paradox**

Unlike donor pressure, Comité membership does appear to increase accountability within member organisations.<sup>387</sup> The extent of the Comité’s influence on increasing accountability and/or increasing donor trust is fundamental to the Comité’s success with both current members and recruiting of new members (e.g. Comité 2008n). However, the research reveals a key paradox. On the one hand, the Comité emphasises developing donor trust, and a significant percentage of respondents’ motivation for increasing accountability through Comité membership is to enhance donor trust. On the other hand, respondents perceive lack of awareness of the Comité among donors and the public, and the single biggest criticism of the Comité was the Comité’s failure to communicate the value of Comité membership and the accreditation logo. A reverse logic of the impossibility of not having the Comité logo appears the key reason for remaining a member.

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<sup>385</sup> See Section 1.4 on excluding donor perspective in the empirical research for this thesis.

<sup>386</sup> While actual donor perception is beyond the scope of this thesis, this combination of the empirical findings relating to donor trust and donor pressure raises the question of the extent to which individual donors do pressure NPOs for and/or take into consideration accountability efforts.

<sup>387</sup> See Section 7.2.2 “The Comité, Accountability, and Scandal” for a discussion of the broader sector-wide implications of the Comité.

Respondents' criticism was without hesitation and/or mitigating factors. 20 respondents commenting on the issue believe that donors do not know of the Comité, and, among the few who do, the value of the logo is poorly understood. All other respondents noted less directly the limited impact of Comité membership on donors, and none contradicted this view. Two affirmatively offered that "not being a Comité member would make no difference at all" with donors, and several others agreed indirectly (Organisations 1 and 21). Three respondents did note that the logo may be of "some help" for the "few" donors who know of the Comité (Organisations 2, 14, and 22).

Neither the Comité nor the respondents offered any evidence for this overwhelmingly negative view of the value of the logo and Comité membership to donors. None of the 33 Comité Group respondents had a mechanism for measuring the impact of Comité membership on donor response. None reported ever having any significant donor feedback or Comité feedback on donor reaction. Similarly, Comité management had never evaluated the impact of the logo with the exception of the few points addressed in the Comité/Sofres Survey (Comité de la Charte/TNS Sofres 2007, 19-20). Moreover, there has been no effort to develop any evaluation tools either individually or within the Comité. Members simply do not know if the logo helps. Failure to assess the impact of Comité membership on donor reaction appears to reflect strategic assessment – i.e., other organisational priorities (including the investment in accountability mechanisms directly). The more the trend moves toward ethical, effective management as the primary motivation for increasing accountability, the more logical the failure to solicit donor feedback on the Comité becomes.

The cause(s) and possible remedy for the Comité's ineffective communication remain undefined. One impediment to donor and public awareness of the Comité may be that the Comité does not publish the *censeurs'* reports as, for example, the Cour des comptes does (Comité senior management call/interview October 2007; Pérouse de Montclos 2005, 615). Whether failure to disclose compliance weaknesses among respondents and/or sanctions applied (short of expulsion) affects the Comité's reputation or the value externally of being a Comité member remains unclear. In the last 12 years, only three organisations have left the Comité, all during the course of a routine control (Soublin e-mail October 28, 2008; Pérouse de Montclos 2005, 615; Comité

2008g, 12).<sup>388</sup> Only one Comité Group respondent argued for a “radical change” to more severe sanctions for failure to comply with Comité requirements (Organisation 17).

While few respondents recognised a positive benefit of the Comité logo, the recurring theme emerged of the fear that absence, particularly the loss, of Comité membership and the failure to be part of a sub-community like the Comité would be noticed and interpreted as a failure of accountability. Thus respondents perceive loss of the logo as a risk to the NPO’s reputation despite the perception of the logo’s limited positive benefits (Organisations 1, 4, 5, 7, 13, 15, 23, 27, and 32).<sup>389</sup> Only three of the 33 Comité Group respondents did not post the Comité logo on their web site despite the above-mentioned paradoxical lack of belief in donors’ understanding of the logo.<sup>390</sup> Moreover, this is one of only two areas throughout the interview process where respondents mentioned sector of activity, specifically the need to be members if others in their sector were members (Organisations 1 and 15).<sup>391</sup> This attitude reflects fear of being perceived as less accountable than a competitor – not simply a question of prestige. As noted in Section 6.2, repeatedly both the respondents and Soublin insisted that the individual organisations are significantly more well-known than the Comité itself and do not need the Comité for prestige reasons.<sup>392</sup> Five respondents explained remaining a Comité member to be “part of the French association world,” one in order to balance the organisation’s international profile (Organisations 5, 11, 21, 31, and 32).

None of the Control Group respondents felt that joining the Comité would improve donor trust or otherwise benefit them vis-à-vis donors or the general public. Two Control Group respondents know “very little about,” and one had never heard of, the Comité despite their experience and prominence in the nonprofit world (Organisations A and F; Organisation J, respectively). The Control Group A respondents already exhibit in four of six cases a high level accountability standards and

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<sup>388</sup> These organisations include AFM, Fondation Raoul-Follereau, and Mouvement pour les Villages d’enfants (Comité senior management call/interview 2007). Note that Comité management does not agree with Pérouse de Monclos’ characterisation of the Raoul-Follereau case as expulsion.

<sup>389</sup> These organisations explicitly stated that they could not “not be” members. However, all organisations communicated this idea indirectly (e.g. needing the logo to be a model for the sector).

<sup>390</sup> Approximately half of the Comité Group respondents posted the logo on the home page, and approximately half on either the main donor page or the frame. Some also published the logo on the financial statement page.

<sup>391</sup> The other is when NPOs are subject to whistleblower type mechanisms or document retention policies due to the sector of activity (e.g. working with children). See Sections 4.2.1 “*Whistleblower Mechanism*” and 4.2.3 “*Document Retention Policy*.”

<sup>392</sup> See Section 6.2 “*Donor Trust Independent of Accountability and Fragility of Donor Trust*.”

practices – two exceeding Comité requirements (Organisations C and D).<sup>393</sup> Two others categorically refused the possibility of Comité membership on the grounds of lack of independent *administrateurs*, which has changed since the interview (Organisations B and C).<sup>394</sup> The Control Group B respondents focused largely on ethical, effective management and were not compelled to join for reasons of donor trust. Only one Control Group organisation (an internationally renowned organisation highly focused on accountability with successful donor relations) expressed interest in joining the Comité but with the objective of “good sector citizenship” and not for donor trust reasons (Organisation D).

The Comité recognises the need to increase communication and public education efforts. In 2007, the Comité secured its first grant to do so (Soublin interview 2007; Comité 2008p, 25). Comité management queries how members might raise awareness of the Comité logo, suggesting that they should contribute as well (Soublin interview 2007). However, no Comité members accepted supporting the Comité’s communication efforts, financially or otherwise, as their responsibility.<sup>395</sup>

Finally, the attitude toward the improvements in the underlying accountability that Comité membership triggers generally does not fall within the paradoxical lack of awareness of donors of the Comité despite the Comité’s donor trust focus. Organisations believe donors do recognise the value of the underlying improvements in accountability even if the logo alone fails, or leaders believe fails, to “signal” (in Rose-Ackerman’s terms) trustworthiness or increase donor trust. Internal benefits are also recognised, such as raising awareness of the *conseil d’administration* consideration of accountability mentioned in Section 4.4.2. Both points reinforce the inside out accountability.

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<sup>393</sup> See Section 5.2.

<sup>394</sup> See Section 4.1 “Increasing Accountability Within the Comité.”

<sup>395</sup> See Section 7.2.2 “The Comité, Accountability, and Scandal” on the Comité’s media efforts relating to scandal.

#### **6.4.3 Empirical Findings: The Media as a Corollary to Donor Trust and Driving Force for Increasing Accountability**

The media was not cited as an important rationale for increasing accountability by any respondents in either group, even though the interview question specifically offered the media as one of several potential explanations.<sup>396</sup> Given the increasing media scrutiny of French NPOs individually and the sector more generally, the media might have been expected to trigger increasing accountability.<sup>397</sup> The issue is on respondents' minds in both the Comité Group and the Control Group but as a corollary to the primary donor trust rationale rather than directly linked directly to accountability efforts. For most respondents, the media relates above all to organisational image generally, and, in turn, impact on donors' perception of the organisation – whether or not they cited donor trust as a rationale for increasing accountability. Nine (27%) Comité Group and two (17%) Control Group respondents said that the media counts "somewhat" but "really not much" (Organisations 4, 5, 6, 7, 12, 13, 16, 21, 24, E, and I ("only after scandal")). Six Comité Group and two Control Group respondents affirmatively rejected the media as a trigger for efforts to improve accountability (Organisations 1, 8, 19, 22, 23, 29, B, and J). 17 (51%) Comité Group and eight (67%) Control Group respondents did not mention the media at all despite the inclusion of the media as an option in the interview question.

There is no clear link between respondents' comments on the media and the donor trust and ethical, effective management rationales for increasing accountability. Among the group saying the media counted somewhat, there was a 50-50 split between donor trust and ethical, effective management (Organisations 4, 5, 12, 13, 16, and E; Organisations 6, 7, 21, 24, 31, and I, respectively). Among respondents saying the media affirmatively did not count, two cited donor trust and six cited ethical effective management (Organisations 1, and 8; Organisations 19, 22, 23, 19, B, and J,

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<sup>396</sup> See also Salamon and Geller on the media as of limited importance to accountability efforts in a broader study of US NPOs (2005, 9).

<sup>397</sup> See also Note 536, *supra*. For example, an advanced Google search of French language entries only on March 31, 2008 revealed approximately 322,000 articles on the Zoe's Ark scandal approximately six months after the initial press coverage in October 2007. This does not include other languages, radio and television, and other forms of web/media communication. Stories in the international media such as even the positive story of Doctors Without Borders/Médecins Sans Frontières early closure of tsunami gifts were reported as having an important impact on French branches of the international NPO networks (e.g. Action contre La Faim response (de Torrente discussion 2005; Cour des comptes 2006b, 100; Bennhold (International Herald Tribune) 2005). (See Section 7.2.1.)

respectively). In addition, given the number of respondents that did consider the media important enough to discuss conclusions cannot be drawn.

Despite the limited attention to the media as a motivation for increasing accountability, the media was overwhelmingly present in the interviews defensively as a potential source of “disaster.” Most respondents expected mediatisation in the event of failure of accountability within an organisation or elsewhere in the sector to play a key role in the impact of scandal (e.g. extensive questions at Comité de la Charte Conference 2008).<sup>398</sup> Scandal is explored more fully in Section 7.2. However, as previously noted, every respondent evoked spontaneously and forcefully the sector-wide impact of the mediatisation of l’ARC. All interviews post-Zoe’s Ark feared the impact on the sector generally and even on Comité members.<sup>399</sup> Some noted fear of a direct, potentially dramatic effect of the media on “fragile” and indispensable donor trust noted in Section 6.2 (Organisations 13, 16, C, and E). All respondents described this as an issue within the larger donor trust concern. However, none connected this fear of media-driven “disaster” directly to their own accountability efforts. Overwhelmingly respondents separated their own strategic assessment from the media despite impressions that scandal in one organisation is usually close enough to harm the sector and therefore other organisations individually (particularly in the same sector of activity) to varying degrees.

*The Comité and the Media.* Echoing respondents’ views, Soublin also believes that attracting donors through trust is by far the most direct and primary incentive to improve accountability. Soublin notes that some media pressure may count secondarily insofar as the media functions as a corollary to donor trust (Soublin interview 2007). The Comité claims to be solicited by the media, public authorities, and the French nonprofit sector on “current topics” (Comité 2008k).<sup>400</sup> However, as noted in Section 6.4.2, respondents frequently criticised the Comité for failing to use the media as a communications vehicle to expose the benefits of the Comité and express views on

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<sup>398</sup> No respondents praised the media’s ability to report the nonprofit sector objectively, one criticising the media’s consistently underestimating the importance and existence of donor loyalty (Organisation 2). Only two respondents vaguely referred to potentially positive repercussions of media coverage (Organisations 13 and 21).

<sup>399</sup> 24 Comité Group and ten Control Group interviews were completed at the time the Zoe’s Ark story first appeared in the press in late October 2007. See Section 7.2.1 “*The 2007 Zoe’s Ark Scandal....*”

<sup>400</sup> The Comité expressly excludes acting on behalf of individual members. Thus the criticism that the Comité fails to engage in effective lobbying efforts (e.g. the dual tax deduction levels) remains an ongoing debate (Soublin meeting February 2008; Organisation 31). See Section 7.2.1 for further discussion on the Comité’s media practices and scandal.

accountability-related matters. Comité press releases have been few (approximately five in 2007) (Comité 2008s). Most address ordinary Comité business, with the exception of three on the tsunami in 2005 (but none address Zoe's Ark) (Comité 2005a, 2005b, 2005c, and 2008o, 15).<sup>401</sup>

## 6.5 Relevance of Variables to Increasing Accountability and Donor Trust

There do not appear to be any important patterns between the internal or external variables and the prioritisation of donor trust as the primary rationale for increasing accountability. Nor did any patterns emerge with respect to the impact of the variables on the potential driving forces behind donor trust. Both proved true for both the Comité Group and the Control Group.

With respect to size, a broad range of small, medium, and large organisations ranked donor trust as the most important rationale. The only notable nuance is that all of the smallest four Comité Group respondents cited donor trust, whereas only three of the six smaller Control Group organisations (all Control Group B) cited donor trust.<sup>402</sup> On the one hand, as noted in Section 4.4.1, “small” Comité members still meet the €500,000 revenue requirement. On the other hand, smaller members even at that revenue level do report struggling to comply with Comité requirements.<sup>403</sup>

Similarly, the international engagement of the organisations was not a determining factor. In both the Comité Group and the Control Group, there was almost a 50-50 split between France focused activities and internationally focused activities among both respondents citing donor trust as the essential motivation for increasing accountability and respondents affirmatively refuting the importance of trust.

Third, the same elements with respect to leadership apply to donor trust as noted in Section 5.4.3 with respect to ethical, effective management. However, overall,

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<sup>401</sup> See Section 6.4.2.

<sup>402</sup> As noted in Section 1.2.1, all of the smaller Control Group organisations are Control Group B organisations with a different profile of donors (i.e., a much smaller number of larger donors). The sample size was too small to determine with certainty the importance of donor profile.

<sup>403</sup> Organisation codes are omitted to protect confidentiality given the small number of small organisations and publication of revenue data in Appendix 1-G.

specific efforts of individual leaders were not as important to the donor trust respondents as to the ethical, effective management respondents.<sup>404</sup>

Finally, no respondents in either respondent group connected external variables to focusing accountability efforts on donor trust. Thus again the external variables do not factor into the strategic assessment – irrespective of the outcome of the strategic assessment /or cited rationale for increasing accountability.

Other than leaders' initiative in joining the Comité, the internal and external variables do not appear to affect the strategic assessment of the three factors driving increasing accountability to support donor trust either. First, a wide variety of size, international engagement, and initiative of leader represent the varying perspectives on volunteer trust and public trust. Moreover, no respondents linked the external variables with proactive accountability efforts toward volunteers or the public. However, arguably scandal affects the defensive posture – i.e., the conclusion mentioned that volunteers would leave in the event of scandal – even if less important to affirmative efforts to increase accountability. Second, respondents did not link the media to the internal or external variables.<sup>405</sup> Third, in contrast to volunteer and public trust and the media, the decision to join the Comité, as well as the evolution toward ethical, effective management among Comité Group respondents, is largely linked to the initiative of the leader (although no particular profile of leader). According to Comité Group respondents, individuals were important at the outset in setting the organisation on a particular course by being a founding member of the Comité or by joining post-founding.

## **6.6 Donor Trust, Accountability, and the Theoretical Framework**

This section addresses the two most important links between the empirical findings on donor trust and the theoretical framework. First, the relationship among accountability, trust, and French 1901 Law associations as a nonprofit form, on the one hand, as compared to Hansmann's analysis of trust as a rationale for the US nonprofit form, on the other hand, proves crucial to explaining a tension respondents expressed

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<sup>404</sup> See Section 5.4.3.

<sup>405</sup> The relevance of the media to the definition of scandal is addressed in Section 7.2.1.

between freedom of association and accountability (Organisations 18, 22, 27, 30, and H; Cohas-Bogey interview 2007).<sup>406</sup> Second, the three potential driving forces behind donor trust relate to Hansmann's theory in different ways. Third, the empirical findings relating to the VAMs most important to trust link to both Rose-Ackerman's analysis of accountability efforts and Salamon's extension of Hansmann's theory to accountability as a prerequisite for trust.

#### **6.6.1 Relationship Among Donor Trust, Accountability, and Origins of the Nonprofit Form: Tension Between Freedom of Association and Accountability**

First, even to the extent donor trust is a primary motivation for increasing accountability in the French nonprofit sector, donor trust does not relate to the French 1901 Law associations based on a freedom of association objective in the same way as to the rationale for the US NPO form as articulated in Hansman's economically-driven theory. French associations and US NPOs do, however, share the underlying economic concerns of the NPO form and trust (Hansmann 1980, 843-5; French Government 1901b, Article 2).

As noted in Section 2.1.2, Hansmann's trust derived from the nondistribution constraint addresses consumers' inability to police the market through ordinary for-profit type contractual means. In contrast to Hansmann's primarily market-driven analysis, the 1901 Law combines economic limitations on profit distribution with a fundamental emphasis on freedom of association (French Government 1901b, Article 1). The essential economic parallel with the US is the 1901 Law prohibition on statutory objectives to distribute profits among members. All profits must be reinvested in the mission or risk reclassification of the association as a for-profit entity (French Government 1901b, Article 3). However, the concept of "members" with freedom of association creates a tension with increasing accountability that has surfaced throughout the study and that underlies many of the policy recommendations.<sup>407</sup> Therefore, while the economics of associations overlap Hansmann's analysis of the intrinsic US

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<sup>406</sup> Foundations are not addressed in the first part on freedom of association because the foundation structure (without members) does not raise these 1901 Law based theoretical differences from Hansmann's theory (e.g. the Fondation de France's self-electing, more independent governance (Durand call 2007)). One association is seriously considering a structural change to foundation status (Organisation D).

<sup>407</sup> See Sections 1.3.1 and 8.2.2.

nonprofit form, the political and social overlay of freedom of association creates tension with accountability that the economic view alone does not.

The 1901 Law's implementation of a freedom of association regime – not an economic objective or even a subject matter or sector of activities objective – proves fundamental to the analysis of increasing accountability. Regardless of the cited primary motivation for increasing accountability, respondents frequently positioned the issue as one of balance or tension between accountability and freedom of association. 14 (42%) Comité Group and five (41%) Control Group leaders spontaneously raised encroaching on democratic functioning as a direct risk of accountability efforts (Organisations 3, 4, 5, 6, 9, 10, 18, 19, 20, 21, 22, 27, 32, 33, B, C, D, E, and L).<sup>408</sup> This concern was particularly important for leaders of large French national member-driven associations (Comité de la Charte/TNS Sofres 2007, 18).<sup>409</sup> The legal basis and theoretical purpose for 1901 Law associations results in an overriding preoccupation with democratic organisation, potentially linked to a political history suppressing voluntary associations. The emphasis on democratic associations continues to suggest a power struggle with political establishments (Tchernonog 2007b, 6; Archambault 1997b, 28-9; French Government 1791; Organisation 32).<sup>410</sup>

As noted in Section 1.3.1, the general absence of accountability or administrative regulations in the 1901 Law further exacerbates this tension between accountability (and trust) and freedom of association because practices of the *assemblée générale*, *conseil d'administration*, and *bureau* reflect accountability norms developing under the influence of the freedom of association tradition (French Government 1901b).<sup>411</sup> Some experts feel this organisational culture rather than legal rationales directly relates to views of, and potentially efforts to hinder, increasing accountability (Binder meeting 2007; Soublin interview 2007).

Finally, the freedom of association purpose highlights the ambiguous balance between trust based on the mission (again a political/social priority) as opposed to trust based on Hansmann's nondistribution constraint (an explanation based on economic considerations). Hansmann's trust does not emphasise charitable purpose, despite the requirement of charitable purpose for US tax exempt status (USGDTIRS 2006a and

<sup>408</sup> Within the Control Group, all four of the 1901 Law associations in Control Group A but only two in Control Group B would find this issue relevant given donor structure.

<sup>409</sup> Organisation codes are omitted to protect confidentiality.

<sup>410</sup> See Sections 2.3 and 7.1.

<sup>411</sup> See Section 1.3.1 "Associations and Associative Sector."

2008c).<sup>412</sup> Archambault describes Hansmann's nondistribution constraint as "a label of trust and quality" even in certain cases in the French context (Archambault 1997b, 233). However, Archambault also notes that French public opinion considers "nonprofit purpose...a guarantee of ethical behavior" – the absence of charitable purpose requirement in the 1901 Law and scandals such as l'ARC notwithstanding (Archambault 1997b, 14).<sup>413</sup> Thus it is unclear the extent to which the French donor population and/or the French public places more importance on trust based on the cause or trust based on the economic basis of the nonprofit form.

The question then becomes how, if at all, accountability can be democratic (i.e., function effectively in the 1901 Law context) – whether intended to reinforce trust, to achieve ethical, effective management, or to further other objectives. As discussed in Section 4.2.1, the fact that members elect democratically the *conseil d'administration* (often up the organisational hierarchy from regional member groups on the basis of personal or political connections and/or membership seniority rather than governance expertise) hinders election of independent directors (Organisations 14, 22, 27, 30, C, and D; Table 3-1). This prioritisation of freedom of association and general feeling that independent oversight violates basic member rights collides with the increasing emphasis on accountability. The US focus on independent oversight that underlies the arguments and policy recommendations in this thesis proves the core challenge (Comité de la Charte Conference 2008).<sup>414</sup>

Finally, despite the emphasis on freedom of association, respondents in both groups acknowledge the link between donor trust and the economic reality of NPOs' extensive reliance on donor funds. Most respondents addressing the risk of failure of accountability noted the danger for trust, and in turn for donor/economic stability. No respondents affirmatively separated failure of accountability from an impact on donor trust.

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<sup>412</sup> This is exemplified by the overlap in activities between NPOs and commercial enterprises (e.g. hospitals or nursing homes) (Hansmann 1980, 863). See also the UK law public purpose requirement (United Kingdom Government 2006, Part 1, Sections 1 and 2).

<sup>413</sup> See also Fondation de France-Observatoire de la Fondation de la Fondation de France/TNS Sofres on compassion for the cause as a key factor in giving (2007, 10).

<sup>414</sup> See Chapter 8 Introduction.

### **6.6.2 The Three Potential Forces Driving Accountability and the Theoretical Framework**

First, the link between donor pressure and the theoretical framework remains unclear. Hansmann did not address the reasons underlying donor pressure or reactions in his seminal 1980 article (1980, 897-8).<sup>415</sup> The impact of differing donor capacities and/or incentive to investigate NPOs and understand research relating to accountability also remains unclear (Keating and Frumkin 2000, 6-7; Reiser 2005, 603-4). However, Hansmann notes that the validity of the theory does not require that every donor assess effectiveness of the nondistribution constraint and engage in a detailed cost-benefit analysis of the market failure involved in deciding whether to give to a particular NPO (1980, 896). Similarly, the debate on increasing trust versus remedying mistrust seems largely irrelevant to the theoretical framework as the market commodity is trust – whether the organisation achieves trust affirmatively or defensively.

In contrast, the media as a corollary to donor trust through distribution of information appears to challenge Hansmann's trust based on intrinsic NPO characteristics. The current media culture suggests that Hansmann's nondistribution constraint may alone be insufficient to address the information asymmetry and ensure donor trust. Specifically, the media may be viewed as a mechanism for re-balancing Hansmann's information asymmetry. The media disseminates information on matters most relevant to trust (e.g. fraud) and pressures organisations into implementing accountability mechanisms related to information dissemination (e.g. financial transparency) as a pre-emptive strategy to protect against the impact of negative media coverage.

Finally, the Comité also enhances distribution of information and addresses the information asymmetry. The Comité was founded on the basis that more accountability, particularly more information, was needed to ensure donor trust than Hansmann-type trust based on the intrinsic NPO economic characteristics. The continuing focus on financial transparency – as opposed to good governance or even transparency on governance matters such as with the Form 990 – shows room for additional progress (Comité de la Charte Conference 2008).

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<sup>415</sup> See Section 1.4 on donor perspective.

### **6.6.3 Rose-Ackerman and Salamon**

The Rose-Ackerman analysis of “signal[ing]” trustworthiness proves particularly relevant to both the donor trust rationale for increasing accountability and the underlying tension between accountability and freedom of association. Salamon’s suggestion that accountability (specifically performance evaluation) has become the means of demonstrating trustworthiness is also crucial to the donor trust analysis.

First, the analysis of the benefits of a reputation for reliability versus the effort and expense of accountability mechanisms to further such reputation reflected in the empirical findings links to Rose-Ackerman’s notion of “one-sided reliability” and “signal[ing]” trustworthiness (Rose-Ackerman 2001, 6). Arguably, VAMs and other voluntary accountability mechanisms could be considered “purchasing trust” (Rose-Ackerman call 2008). The strategic assessment then becomes how much to invest in implementation of accountability mechanisms and with the expectation of generating how much trust. The former is more quantifiable (e.g. time and financial cost) than the latter. One example of such “signal” of “one-sided trust” is the Comité Group’s fear of the negative consequences for donor trust of the loss or absence of the Comité logo addressed in Section 6.4.2 and the resulting willingness to continue to invest in the membership process.

In addition, the strategic assessment of accountability relates to image of trustworthiness in the reverse sense. The perceived negative impact of administrative expenses required to implement accountability mechanisms balanced against program expenditures results in a fear of negative “signalling” – both within individual organisations and across the French nonprofit sector – that potentially affects both transparency and the underlying financial analysis.<sup>416</sup> The choices behind the allocation of expenses to particular budget categories are complex and often skewed and/or opaque to the reader (e.g. the percentage of the Director General’s salary allocated to fund-raising costs or whether the Director General’s flight to Africa to review a local director is an administrative or program expense).<sup>417</sup>

In many cases, the balance between freedom of association and accountability emerged as a key cost of “signal[ing]” in the strategic assessment of VAMs,

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<sup>416</sup> The underlying accountability implications of decisions relating to administrative expenses should be important as well.

<sup>417</sup> See e.g. Section 4.2.2 “*Financial Transparency*,” Section 7.3, and Note 262, *supra*.

particularly in the smallest, most resource-constrained organisations. Even some large organisations highly focused on accountability consider even the appearance of infringement on the democratic 1901 Law ideals a key cost component of strategic assessment of accountability (Organisations 22 and 27).

Second, almost all respondents citing donor trust support Salamon's argument that trust-related VAMs and other voluntary accountability mechanisms (particularly performance evaluation) have become indispensable supplements to the nondistribution constraint as a basis for trust – whether or not extending the definition of accountability to include performance evaluation. Similarly, even respondents that did not cite donor trust as the primary reason for increasing accountability viewed any *de facto* positive impact of accountability efforts as a complement to Hansmann's trust.<sup>418</sup> Salamon's accountability (e.g. through VAMs) also relates to Rose-Ackerman's institutional reform point as institutional practices (i.e., accountability in this case) generating and/or compensating for trust (Rose-Ackerman 2001, 2; Salamon 2003, 24-5). However, none of the respondents citing donor trust as the primary motivation for increasing accountability view accountability as a strategy for mitigating risk to donor trust of scandal. Perhaps this recalls Rose-Ackerman's view of the "difficulty of producing trustworthiness" (2001, 2). Finally, as noted above, within the donor trust group even those respondents prioritising freedom of association recognise the required strategic balance between the need for accountability to support trust and freedom of association.

## 6.7 Conclusion

The empirical findings show that donor trust is an important but nonetheless the second most oft-cited rationale for increasing accountability. Response levels for the donor trust rationale for increasing accountability were somewhat higher in the Comité Group but similar in both respondent groups with respect to the various related aspects of the issue discussed throughout the chapter and summarised below. This conclusion suggests that the hypothesis of this thesis is only correct with respect to the respondents specifically citing the donor trust rationale. However, two related conclusions emerge

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<sup>418</sup> See Section 2.2.1 "*Supporting Versus Replacing Hansmann's Trust*" for importance of the distinction between replacing and supplementing trust.

that colour respondents' strategic assessment of accountability – irrespective of cited rationale for increasing accountability. For all respondents, donor trust remains fragile, as well as fundamental to financial health and independence – even respondents prioritising ethical, effective management (and explicitly refuting donor trust). Moreover, even the respondents citing ethical, effective management recognise the de facto positive impact of accountability on donor trust – just not donor trust as a direct motivation for accountability.

Three areas suggest evolution in organisations' views of increasing accountability and donor trust. First, the perspectives of Comité Group respondents have evolved from donor trust as the overwhelming reason for joining the Comité to greater emphasis on ethical, effective management as the primary rationale for increasing accountability at the time of this thesis. This shift echoes the ranking of donor trust as the second most oft-cited rationale for increasing accountability. Second, emerging interest in both volunteer trust and public trust indicate broadening of the individual strategic assessment process. Control Group respondents expressed greater concern with public trust than Comité respondents. Third, respondents' positioning of accountability as increasing/maintaining trust versus remedying/mitigating mistrust shows adaptability – particularly to scandal even though scandal is not seen as a rationale for increasing accountability.<sup>419</sup>

While all three potential forces driving increasing accountability in furtherance of donor trust reflect the dynamic nature of accountability as defined in this thesis, two of the three (donor pressure and the media) do not directly influence respondents' accountability efforts. The third vehicle, the Comité, did emerge as a vehicle for change, primarily through implementation of Comité accountability requirements. However, paradoxically, the Comité does not necessarily achieve the statutory objective of donor trust directly via the logo given the widely criticised low level of awareness of the logo among donors and the public.

The size and international engagement variables proved less important to respondents citing donor trust than to those citing ethical, effective management. Similarly, while leadership was generally important, the specific actions of leaders proved less important among donor trust respondents.

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<sup>419</sup> See Section 7.2.

Finally, Hansmann's theory as applied to the donor trust rationale highlights the tension between accountability and freedom of association. The Rose-Ackerman emphasis on "signalling" trustworthiness applies directly to VAMs and other voluntary accountability mechanisms motivated by donor trust. Respondents citing donor trust also align with Salamon's view of accountability as a prerequisite for trust. Chapter 7 continues the thread of the strategic assessment and the Hansmann-Salamon trust theoretical spectrum, broadening the analysis to integrate the relevance of the non-regulatory external variables.

## Chapter 7

### The Challenges

***Completing the Analysis of External Variables:  
the Welfare State Environment and Scandal***

“Without hesitation...our roots are welfare state dependence [author translation] (Organisation A).”

“It’s genetic for French people. They are not concerned about others [author translation] (Organisation J).”

“There can’t be one single weak link in the chain [author translation] (Organisation 20).”

“The trauma of l’ARC affected *everyone* [author translation] (Organisation K).”

### **Introduction**

This chapter broadens the empirical analysis to evaluate the relevance of the two non-regulatory external variables on the empirical findings: the welfare state and scandal. The assessment closes the four-part frame of external variables started in Chapter 3 with the two regulatory external variables (accountability regulation and the tax system). The focus is on how these variables influence respondents’ strategic assessment, views of the rationales for increasing accountability, and positioning of individual organisations’ accountability within or outside the Hansmann-Salamon trust theoretical framework. The analysis also looks outward at respondents’ views of the impact of increasing accountability on these two challenges to the sector.

Section 7.1 explores the third external variable: the relationship between the welfare state environment and increasing accountability. Notwithstanding the significant influence of the welfare state on the French nonprofit sector addressed generally in Section 2.3, the key conclusion is that overall respondents in both groups do not consider the welfare state environment a direct motivation for increasing accountability or related to the trust theoretical analysis.

Section 7.2 explores the fourth external variable: scandal. The concept that all respondents and other sector participants interviewed referred to as “scandal” is defined as a combination of failure of accountability together with broad public notoriety (always involving the media to some degree). Scandals are dynamic, changing in intensity over time. Not all fraud or other illegal or criminal activity of the same type

and/or same scale develops into scandal. The three most significant French nonprofit sector scandals – l'ARC, the 2004 Asian tsunami, and Zoe's Ark – reveal a paradoxical combination: overwhelming concern with scandal generally; increasing accountability; yet failure to link accountability to mitigation of the risk or impact of scandal within an organisation or involving another NPO. Scandal is not perceived as a direct rationale for increasing accountability beyond the exceptional and specific collective effort to found the Comité in either respondent group.<sup>420</sup> The section concludes by challenging the limits of respondents' views by arguing that, while unproven, accountability might have mitigated the negative impact of scandal irrespective of donor or other external reaction in each of the key scandals.

Section 7.3 analyses the implications of the analyses of the welfare state and scandal for the theoretical framework. The analysis of these external variables suggests a triangular relationship among accountability, trust, and Hansmann's nondistribution constraint. All three remain necessary, but the equilibrium among them may vary depending on the internal variables and other organisation-specific aspects of the strategic assessment.

Through all three sections of this chapter, the largely internally-driven, bottom up origin of accountability emerging in the previous chapters remains evident, irrespective of the potential influence of the welfare state and scandal on accountability. The collective impact of these individual accountability efforts also explains in large part the sense of an environment of increasing accountability irrespective of, and indeed rather than, these external variables.

## **7.1 Empirical Findings: The Relationship Between Increasing Accountability and the Welfare State Environment**

The welfare state is the most oft-cited environmental influence on the French nonprofit sector – both in the literature and among respondents – and considered largely responsible for the lag behind the US nonprofit sector in terms of giving to NPOs.<sup>421</sup> However, the overwhelming separation in respondents' views of the relevance of the welfare state environment as a motivation for increasing accountability recalls the gap

<sup>420</sup> Despite extensive press on scandal. See Section 7.2.1.

<sup>421</sup> See Note 77, *supra* and the discussion of the welfare state in Section 2.3.

in the France-focused literature regarding accountability matters. Similarly, the internal, organisation-driven increasing accountability is considered necessary and helpful to the organisations but generally not a solution to the welfare state challenges to the French nonprofit sector.<sup>422</sup>

In light of the extensive focus in the literature on the welfare state as essential backdrop to the French nonprofit sector (particularly as a negative influence on giving to NPOs), the interviews included detailed questions regarding the relevance of the welfare state influence on the French nonprofit sector. The key point was to test respondents' perception of the importance of the welfare state to the public and to their organisations against the views expressed in the literature. How important or effective are NPOs' accountability efforts targeting donor trust in an environment where, according to the literature, the financial and social service aspects of the welfare state significantly influence donor behaviour? Do organisations even consider the welfare state in the strategic assessment of accountability? Does the importance of the welfare state to the public and respondent organisations differ depending on the cited rationale for increasing accountability? This welfare state context contributed to more accurate interpretation of interview responses, including any relationship between the welfare state and the strategic assessment. This context also established necessary foundation for considering how the research findings contribute to addressing the gap in the literature on accountability noted in Section 2.3.

Respondents were asked to prioritise and comment on three classic explanations for any lagging behind in giving levels there may be in the French nonprofit sector relative to Anglo-Saxon countries, Germany, or other European countries. These are: the welfare state explanation that donors expect the French state to assume responsibility for financing and delivering social services (both due to high tax levels and historical assumption of responsibility by the French state); French culture (i.e., excessive individualism and lack of concern for others reflected in lower giving and volunteering levels); and the tax system's lower incentives to giving and higher levels of taxation (recognising the recent improvements to deductibility of gifts to NPOs).<sup>423</sup>

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<sup>422</sup> An analysis of economic trends is beyond the scope of this thesis and deliberately omitted because none of the respondents in either group at any point in the interview raised sector-wide economic factors as linked to accountability.

<sup>423</sup> Two respondents asserted that the sector was not "lagging behind" in giving, but these responses reflected growth in the sector rather than comparison to the US and certain other countries (Organisations 8 and B; e.g. Toullec 2007). See also Section 2.3.1.

Overwhelmingly, respondents in both groups considered the welfare state the key explanation for the lagging behind of the US in giving.<sup>424</sup> 23 (70%) Comité Group and six (50%) Control Group respondents cited the welfare state without hesitation. Similarly low levels in both groups (five (three in the Comité Group and two in the Control Group)) affirmatively did not consider the state's role an important factor (Organisations 11, 15, 29, C, and K). Thus there was no significant difference between the two respondent groups with respect to the welfare state variable.

As in the literature, the most important theme in the interviews was the pervasiveness of the state's intervention and resulting dependency. The state is viewed as having extensive reach, creating in turn a habit of reliance and expectation that the state is best suited to address a variety of issues. One respondent highlighted the increasing grasp of the French state under President Sarkozy whose "hand is in everything" (Organisation D). As another Director General noted, "We are Gallic...dependent!" (Organisation 14). The public both waits for the state to solve issues and waits for opportunities to complain and criticise the state's intervention (Organisations 14, 16, and D). Moreover, this cyclical dependent relationship contributes to a lack of public recognition of the complementarity of the French nonprofit sector, which in turn dissuades donors who believe that the state takes care of social and medical services (Organisations 13 and H).

Respondents' comments also closely paralleled the literature in focusing primarily on a two-pronged source of welfare state influence on the French nonprofit sector: financial concerns and appropriate allocation of responsibility for social service delivery. Responses were similar in both the Comité Group and the Control Group. First, as noted in Section 2.3.2, the financial element turns primarily on the high level of personal taxes. Four respondents felt their donors and the general public believed that they have "already paid" through the tax system and therefore should not need to support the French nonprofit sector as well (Organisations 23, 24, F, and J).<sup>425</sup> Approximately 50% of remaining respondents referred to the "already paid" problem less directly. Organisations perceive donors as expecting the state to assume responsibility for social and medical matters given that the public pays for such services through the tax system. The effect, if any, of the state's perceived role as the biggest donor through the tax system on donors' or the public's perception of "having already

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<sup>424</sup> See a related policy recommendation relating to the multitude of associations in Section 8.2.1.

<sup>425</sup> See Section 2.3.2.

paid" remains unclear to virtually all respondents (Organisation 31; Coignard (Le Point) 2007).

Second, respondents in both groups believe the French public considers social service delivery in large part most appropriately and effectively handled by the state. This allocation of responsibility reflects in part a concern with ensuring (and an assumption of) fair access and quality when the state handles certain matters (medical research the most oft-cited example), as well as in part the reverse fear of ineffective handling of such matters by the private sector. This view of the state becomes somewhat a "chicken-and-egg" question of considering the state's appropriate role based on habit.<sup>426</sup> Comité representatives also believe that the French public rejects NPOs stepping in for the state to deliver social services (Comité senior management call/interview 2008).<sup>427</sup> Again, these findings echo the attention to allocation of social services in the literature.<sup>428</sup>

Respondents also highlighted the French state's persistence in maintaining the welfare state system. Interview responses doubting that the system would change significantly in the near future aligned with the hesitation regarding future progress in the literature on recent developments in the welfare state noted in Section 2.3.1 (e.g. Archambault 1997b and 1999b; Worms 2002). Two respondents specifically acknowledged that the state was rapidly approaching the financial limits of the system but did not extend the comment to the impact on the French nonprofit sector (Organisations 19 and 33). Even political rhetoric, for example Prime Minister François Fillon's keynote speech at the February 2008 Davos World Economic Forum summarising the Sarkozy administration's proposed changes compared to "the past," ignored the French nonprofit sector near the end of the first year in office (Fillon 2008).<sup>429</sup>

The key conclusion is that respondents consider the significant general influence of the welfare state on the French nonprofit sector separate from the strategic assessment of accountability within respondent organisations. The empirical findings show that increasing accountability and the underlying strategic assessment is not

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<sup>426</sup> See Chapter 2.3.1.

<sup>427</sup> L'ARC exceptionally was widely considered an essential player in France in cancer research as a funder of many public and parapublic-public research projects, while French state funding financed mostly permanent research infrastructure (Cour des comptes 2005c, 8; Organisation 7).

<sup>428</sup> See Section 2.3.2.

<sup>429</sup> This is despite President Sarkozy's pre-election commitment in his book to copy US models of NPOs (Sarkozy 2006, 245-6).

motivated by, or viewed as mitigating, the negative fall-out of the welfare state on giving to NPOs – irrespective of the primary rationale cited for increasing accountability.<sup>430</sup> No respondent in either the Comité Group or Control Group connected the welfare state to accountability positively or negatively. Examples of such a connection might have included associations as preferable providers of social services due to more understandable accountability for resources than government (suggested by Organisation 22) or complications to accountability arising from the complex government-NPO “partnership” relationships (described in Section 2.3.2). The internal focus of respondents citing ethical, effective management highlights the separation of the welfare state environment (and all other external variables) from the organisation-driven lens of internal justification of accountability efforts to achieve ethical, effective management. However, even respondents citing donor trust separate the strategic assessment of accountability from welfare state influences on the sector generally or the attitudes and behaviour of their donors towards giving and allocation of social service responsibility.<sup>431</sup>

This separation of strategic assessment from the welfare state raises the question of the extent to which accountability generated on the basis of individual organisational priorities benefits only the organisations themselves or also benefits the sector irrespective of organisations’ motivations. As seen in Section 6.3.2, some respondents citing ethical, effective management as the primary rationale for increasing accountability feel that accountability efforts do benefit the public and potentially increase public trust. However, no respondents linked increasing accountability as explored in this thesis to mitigation of the consequences of the welfare state.<sup>432</sup>

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<sup>430</sup> The details of increasing accountability within the government budget are beyond the scope of this thesis. However, no respondents felt that changes in the French state’s approach to budgetary accountability affected their decision-making in accountability matters (other than indirectly as funder accountability requirements in limited cases) – even those technically subcontracting French state services.

<sup>431</sup> See Section 2.3.

<sup>432</sup> Additional research is necessary to explain fully the relationship between the welfare state and NPO behaviour. Only a few specific cultural manifestations of the welfare state surfaced in the interviews that could affect accountability, most significantly the general attitude of discretion in discussing financial matters that could relate to disclosure of management salaries. However, even the few respondents that mentioned this attitude do not link decisions regarding implementation of voluntary accountability mechanisms to this attitude.

## 7.2 Empirical Findings: Impact of Pivotal French Nonprofit Sector Scandals on Accountability and Donor Trust

A Harvard Business Review article on trust in NPOs begins, “When...[NPOs] are good, they are very good...But when [they] ...are bad, they are horrid” (Herzlinger 1996, 1). The impact of scandal on the strategic assessment of accountability is the final stage of the empirical analysis of increasing accountability.

This section starts with background on the key scandals – l’ARC, the 2004 Asian tsunami, and Zoe’s Ark – most relevant to accountability and trust. The analysis of the relationship among scandal, increasing accountability, and trust demonstrates that these scandals, rooted in three different types of failure of accountability, remain overwhelmingly at the forefront of respondents’ concerns for both their own organisations and the sector. However, respondents generally did not link scandal directly to their own strategic assessment process or consider scandal a direct motivation for increasing accountability – across both respondent groups and irrespective of cited rationale for increasing accountability. The founding of the Comité is the only evidence of direct adaptability to scandal or indeed any of the external variables. The founding of the Comité represents, therefore, a collective response to this external variable with, in turn, an impact on individual organisations.<sup>433</sup>

The empirical findings reveal a difficulty reconciling three parallel perceptions. Respondents express a combination of continuing fear of scandal erupting from failure of accountability within individual NPOs, the conviction of the importance of increasing accountability, and the failure to link efforts to increase accountability to protection against scandal either internally or elsewhere in the sector. These three separate tracks nonetheless reflect consistency with the themes of bottom up accountability, a diminishing reliance on trust based on the nondistribution constraint, and the strategic assessment explored throughout the empirical findings on ethical, effective management and donor trust in Chapters 5 and 6, respectively. Finally, the section includes an analysis showing that, while unproven, more effective accountability policies and practices might have mitigated the impact of these scandals on the sector. In particular, VAMs and other voluntary accountability mechanisms providing independent oversight of use and audit of funds, conflicts of interest, and oversight of significant expenditures

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<sup>433</sup> See Section 1.2.1.

and exceptional programs could more closely monitor any intentional fraud, misuse of funds, or other illegal behaviour.<sup>434</sup> In other words, the thesis questions respondents' judgment that scandal should not factor into the strategic assessment directly.

### **7.2.1 Key Accountability Scandals: L'ARC, the Tsunami, and Zoe's Ark**

L'ARC: The First and Continuing “Reference” Scandal. The l'ARC scandal first discovered in 1988 by l'IGAS is the landmark scandal in the history of the French nonprofit sector. L'ARC was at the time widely considered the “wake-up call” on accountability and donor trust issues and has since become the “Richter scale” for evaluating scandal (often referred to as a “booster shot” reminding of the need for accountability) (Organisations 4 and 7; Organisation D, respectively). The l'ARC scandal involved the indictment of the founder and President of 34 years at the time the scandal was revealed, Jacques Crozemarie, for misuse of funds for personal benefit and mismanaging donor funds (Cour des comptes 2005c, 5). The scandal continued throughout the early 1990s until a public announcement in 1996 of the firing of the entire management team and Crozemarie's trial.<sup>435</sup> Most infamously, less than 30% of all annual resources had been allocated to the mission of cancer research (Cour des comptes 2005c, 7). Most relevant to the accountability and donor trust analyses, l'ARC noted a failure of oversight of accountability matters by the *conseil d'administration*. The new *conseil d'administration* subsequently increased allocation of revenues to the mission to 70% and has since maintained the commitment (Cour des comptes 2005c, 7).

The key governmental oversight events show the duration of the l'ARC investigation. These involved, in order: a 1988 l'IGAS warning criticising Crozemarie's personal intervention in the distribution of research grants; a 1991 l'IGAS report denouncing significant expenditures for administration and publicity (72% of the €3.5 million in donor funds); and 1993 and 2005 Cour des comptes reports following up on the l'IGAS investigation and looking forward (Cour des comptes 2005b, 3-4; Cour des comptes 2005c, 6).

L'ARC suffered a shock to donor revenue as a result of the scandal and, more generally, conceived of the problem as directly related to donor trust. L'ARC referred to

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<sup>434</sup> See Section 7.2.3.

<sup>435</sup> Crozemarie received a four-year prison sentence and fines exceeding €30.5 million (Cour des comptes 2005c, 5). The Director of Communications Michel Simon was also charged with fraud-related crimes and sentenced with a prison term and fine (Cour des comptes 2005c, 5).

the post-recovery as the “return to trust” in 2004 (Cour des comptes 2005a, 4). In 1996, the year of the exposure of the scandal, the Cour des comptes press release noted a loss of 2/3 of donors (400,000 donors), comprising approximately 75% of revenues from fund-raising (Cour des comptes 2005a, 4; Cour des comptes 2005b, 10, respectively). 1995 donor revenue exceeded €20 million but fell to €6.4 million in 1996 and as of 2003 had still only reached a level of half of the pre-1996 in terms of revenue amounts (Cour des comptes 2005b, 11).<sup>436</sup> As of 2007, l'ARC still had only 220,000 donors, compared to 228, 824 in 2003 (Cour des comptes 2005b, 10; L'ARC 2008a, respectively).

The sector-wide ripple of l'ARC and the depth and breadth of detailed awareness was the clearest message in the empirical findings. Neither l'ARC nor the term “scandal” was mentioned in any interview question asked, directly or indirectly. Zoe's Ark and the tsunami were not mentioned either. *Nonetheless, every respondent in both the Comité Group and the Control Group spontaneously mentioned l'ARC at some point early on in the interview.* Moreover, irrespective of the importance of donor trust to the interviewees' assessment of their organisation's own increasing accountability efforts, every respondent described the impact of l'ARC as both sector-wide and on individual organisations. Both groups shared emphatically the most commonly used term – “trauma” – to describe the l'ARC scandal (Organisations 18 and J, as well as over 50% of respondents in both groups). Those Comité Group organisations in the medical field (especially directly cancer) reported both the impossibility of not being a Comité member after l'ARC and the lingering confusion in the public's mind about any French cancer organisations.<sup>437</sup> One of many anecdotes shared illustrating the public's confusion between l'ARC and other cancer organisations involved an emotional taxi driver refusing to donate to his passenger's (i.e., the interviewee's) totally unrelated organisation in 2001 because of the l'ARC scandal over 10 years prior. Finally, a range of other experts and participants outside the groups interviewed all also spontaneously mentioned l'ARC (Kemoun call 2007; Binder meeting 2007; Charhon meeting 2005; Soublin interview 2007; de Guerre meeting 2007).

The longevity of the impact of l'ARC continues to concern virtually all respondents in both groups. Two respondents described this comment sentiment as

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<sup>436</sup> As of 2003, l'ARC had not recovered fully despite a 44% increase in total donations between 1998 and 2003 (Cour des comptes 2005b, 10).

<sup>437</sup> Organisation codes are omitted to protect confidentiality.

l'ARC being still “very, very present even in 2007” and “not yet healed” (Organisations 20 and 21, respectively). The fact that a study undertaken in 2007-08 such as this one reveals such a universal preoccupation with l'ARC – across size, international engagement, initiative and profile of leader, sector of activity, political affiliation, and even profile of donors – testifies to the severity and duration of the impact. While the implications for donor trust and the general gravity of the problem were widely and passionately discussed among all respondents, the specific impact on respondents' donor revenue of l'ARC was rarely mentioned (Organisations 15 and 23). Most respondents were not concerned with the quantitative impact on donor revenue or the number of donors. Rather, those that discussed revenue viewed actual impact on past revenue as irrelevant to the level of conviction and fear with which respondents spoke of the possibility of a similar future scandal.<sup>438</sup>

L'ARC's own internal strategy for repairing and preventing future damage focused almost exclusively on a rapid and thorough transformation of accountability (as defined for this thesis) standards, policies, and procedures (L'ARC 2008b). All of these accountability efforts related to the VAMs and other voluntary accountability mechanisms explored in previous chapters. First, l'ARC and the French nonprofit sector recognised that the fault lay both with Crozemarie *and* with the *conseil d'administration*'s failure of oversight (including conflicts of interest and inadequate financial transparency) (Cour des comptes 2005b, 4). In 1996, l'ARC underook a major reconstruction of the *conseil d'administration*, including: separation of the President's expenses and payment (by the Treasurer); limitation of *administrateur* terms (to avoid the 34-year term Crozemarie had served at the time of scandal); open bids for suppliers; a scientific commission overseeing all requests for subsidies or grants; and prohibition on applications by *administrateurs* for research grants from l'ARC (Cour des comptes 2005b, 4; l'ARC interview for this study 2007). L'ARC also established a budgeting process, as well as better defined research themes, internal control processes, and allocation of revenue (Cour des comptes 2005b, 5). In order to address the previously discussed negative impact of the association membership structure on governance, l'ARC modified the voting system to allow only vote by correspondence, with a distinction between member status (paying a membership fee) and donor status (making

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<sup>438</sup> However, a Fondation de France survey showed that certain non-donors use scandals such as l'ARC as an excuse not to give (Fondation de France-Observatoire de la Fondation de France/Wei Etudes qualitatives 2005a, 8).

a gift). Under Crozemarie the two were mixed and left many blank votes in Crozemarie's hands (Cour des comptes 2005b, 4). The Comité requirements address many of these l'ARC-initiated improvements, such as the open bids and control of financial conflicts of interest involving *administrateurs* (Comité 2008a).

Since the scandal, l'ARC has been among the, if not *the*, most resolutely accountable NPOs in France. L'ARC was recently honoured by the Cour des comptes at its bicentennial as a model of accountability (L'ARC 2008b). L'ARC also remains the only organisation in the study to engage a double external audit, obtaining both Bureau Veritas Quality International certification and a successful 2005 Cour des comptes audit, in addition to Comité membership and an independent scientific audit (Cour des comptes 2005a, 3; l'ARC interview for this study 2007 (Appendix 1-A)).

*The December 26, 2004 Asian Tsunami.* In the wake of l'ARC, the unprecedented international donor response to the 2004 Asian tsunami immediately raised accountability issues (National Assembly Foreign Affairs Commission 2007, 5). Unlike the intentional fraud, deception, and conflict of interest with l'ARC, the scrutiny of giving to the tsunami focused on justification of use of funds even within legal and frequently organisation-approved and appropriate activities. These issues also fall squarely within the definition of accountability addressed in this thesis and relate to a number of VAMs and other individually adopted voluntary accountability mechanisms.

The tsunami resulted in an unprecedented influx of donor funds for many organisations and the sector more broadly (National Assembly Foreign Affairs Commission 2007, 5 and 18).<sup>439</sup> For example, the Director General of the Red Cross reported receiving approximately €115.8 million (approximately five times the contributions as for the 1999 ethnic conflicts in Kosovo, their second biggest revenue influx for a humanitarian disaster), and UNICEF France received approximately €57.5 million (Red Cross and UNICEF France interviews for this study 2007 (Appendix 1-A); Cour des comptes 2007, 13; Cour des comptes 2006b, 51-55). The Comité Group and Control Group self-completion questionnaires included an open question requesting comments on whether and how revenue varied significantly during the five years preceding the study. Nine Comité Group organisations cited the tsunami. The only Control Group respondent with a mission related to humanitarian or emergency aid,

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<sup>439</sup> See also Fondation de France-Observatoire de la Fondation de France/Wei Etudes qualitatives 2005b on donor response to levels of tsunami giving.

Doctors Without Borders/Médecins Sans Frontières, also reported unusually significant gifts due to the tsunami.

The record fund-raising quickly led to accountability concerns regarding appropriate and timely use of funds. The tsunami highlighted the so-called “mission creep” risk – i.e., accepting funds that do not fall within an organisation’s stated statutory mission and/or ad hoc expansion of activities without verification of fit with the mission solely based on an unexpected influx of funds. The gravity of both depended in large part on how much long-term restructuring, and therefore longer term holding of funds, could be justified on the basis of the organisation’s existing mission-derived activities. The most highly publicised positive case, Doctors Without Borders/Médecins Sans Frontières, stopped accepting tsunami-restricted giving within only a few days of the tsunami because their mission of emergency medical relief limited the scope of their work to a shorter time frame (de Torrente discussions 2005 and 2008; National Assembly Foreign Affairs Commission 2007, 20, 21, 23-4, and 36; Cour des comptes 2006a, 12).<sup>440</sup> A longer term example, the French Red Cross, still had not spent a significant percentage of funds as of the end of 2007 due to their mission driven long-term involvement (Red Cross interview for this study 2007 (Appendix 1-A); Cour des comptes 2006b, 51-55).

The change in rapidity and intensity of the government’s response to the exceptional flow of donor funds during the tsunami exemplifies the deepened sensitivity l’ARC created. Despite less concern with fraud than in the l’ARC case, the accountability-related use of funds issues triggered questions of whether the humanitarian organisations deserved the trust placed in them. The Cour des comptes rapidly began investigating in-depth the allocation and timing of use of funds among the 32 largest recipients of donor funds and issued an unprecedented series of detailed reports within less than two months of the tsunami (Cour des comptes 2006b; Charasse and Gouteyron 2005). In comparison, the 1993 Cour des comptes l’ARC report came years after the initial 1988 l’IGAS warnings and even the more official 1991 l’IGAS

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<sup>440</sup> The author has been a member of the Advisory Board of Doctors Without Borders/Médecins Sans Frontières USA since 2001 but was not involved in the decision-making relating to the tsunami. Unrestricted gifts were halted on January 3, 2005 (approximately one week after the December 26, 2004 tsunami) (de Torrente discussions 2005 and 2008; Bennhold (International Herald Tribune) 2005; Cour des comptes 2006b, 1997). UNICEF France and Handicap International were the only other two organisations assessed by the Cour des comptes that followed this model in late January (Cour des comptes 2006a, 12).

report. Even several years post-tsunami, the Foreign Affairs Commission Report following up on the tsunami warned of the need to avoid repetition of a new “l’ARC type scandal” and specifically questioned the use of investment proceeds from tsunami funds for other uses (National Assembly Foreign Affairs Commission 2007, 47 and 5-6, respectively).<sup>441</sup>

Generally respondents perceived, and believed the public perceived, the tsunami as another scandal or potential scandal possibly affecting a range of organisations from those directly involved through the Cour des comptes investigation to those not involved in tsunami-related activities at all. The primary evidence of abuse was allocation of donor funds to activities outside the statutory mission and/or failure to spend donor funds in a timely manner. (The reference to “potential” scandal that could be revealed well after the tsunami relates to the fact that allocation of resources is not necessarily immediately evident to donors and the public but may surface months or even years later after an audit or other review.) The tsunami scandal was less identified with a particular organisation or sector of activity than with a specific accountability issue. As with l’ARC, none of the organisations raised the impact of the use of funds issue on giving within their own organisations. Soublin also confirmed that Comité members did not express concern with impact on their own revenue (Soublin call June 2008). Rather, respondents focused on related accountability questions. Three respondents raised the need to ask regularly the questions “Who are we? Is this what we do?” when considering both programs and restricted gifts (Organisations 25, D, and E). Many included the tsunami in the discussion of fear of Zoe’s Ark described below, thus continuing the “chain” of scandal in respondents’ minds.

*The 2007 Zoe’s Ark Scandal: The Most Recent Shock to the Sector.* The 2007 Zoe’s Ark scandal, the most recent shock wave in the French nonprofit sector, differed considerably from l’ARC and the tsunami in stretching the accountability analysis from financial wrong-doing in France to alleged national and international criminal and humanitarian law/protocol violations and lying to French government officials (e.g. Chayet et al. (Le Figaro.fr) 2007; Ministère des Affaires Etrangères et Européennes 2008b).<sup>442</sup> Zoe’s Ark is a small NGO founded immediately following the tsunami to aid

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<sup>441</sup> See Section 3.2.1 “Key Provisions of Accountability Regulation” for a discussion of the debate surrounding the Statement of Use of Funds, particularly the Cour des comptes’ position on recent regulation.

<sup>442</sup> Most of the Zoe’s Ark sources are press reports from reputable French newspapers, cross-checked against each other (generally at least three in each case). The French Government Ministry of Foreign

orphans. The scandal involved conviction in Chad of Zoe's Ark President Eric Breteau and two other employees for child trafficking. Breteau and his colleagues attempted to transfer 103 Chadian children claimed to be orphans from war-torn Darfur to French families for paid adoption (e.g. L'Arche de Zoe 2007; Ministère des Affaires Etrangères et Européennes 2008b, No.11; Nougayrède (Le Monde.fr) 2007). Even if the children had been orphans and the adoptions legitimate, respondents with expertise in the field accused Zoe's Ark of failing to respect protocol for international adoption (Laurent (Elle) 2007).<sup>443</sup> The Zoe's Ark defendants' sentence in Chad (eight years of hard labour and a fine exceeding €6 million) was modified in France pursuant to an international treaty between the two countries and then in March 2008 pardoned by the Chadian government (French Government and Chad Government 1976).<sup>444</sup>

With lingering heightened sensitivity from l'ARC and the tsunami, the fear of a sector-wide impact was quickly clear – exacerbated by widespread media coverage and the emotional character of international kidnapping charges (e.g. Le Monde (Service France avec AFP et Reuters) 2007). The criminal and competency aspects of the events echoed l'ARC and therefore immediately resonated throughout the sector in a way the tsunami did not. 24 of the 33 Comité Group interviews for this thesis had been completed at the time Zoe's Ark was revealed. Yet five of the next eight spontaneously and emotionally mentioned Zoe's Ark and the fear of impact on the sector. The concern was serious and a high priority for all. Two engaged in a sector of activity similar to Zoe's Ark, but in all cases the concern was explicitly extended to general impact on the sector. All were among the largest and most well-known organisations in the study,

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and European Affairs also provides some information, which reflects a uniquely government perspective (e.g. Ambassade de France 2007). The Zoe's Ark web site contains no relevant factual information. Access to the French tribunal papers for the trial in Paris was obtained only after months of interaction with the Ministry of Justice and proved of limited value for perspective on the case (Ministère de la Justice 2008). As of the date of this thesis, the Cour des comptes had not reviewed the organisation – perhaps because the issue involved a level of criminal activity and diplomatic engagement extending well beyond use of funds. The absence of primary sources remains an issue, and verification of the media reports impossible in most cases. Over 300 press articles were read during the period from the October 2007 announcement of the scandal to March 31, 2008, the date of the official pardon of the defendants, and beyond (L'EXPRESS.fr 2008c). (80 of these that were used to triangulate points in the thesis are listed in the References.) Only two of these articles mentioned accountability-related issues (both by the same journalist) (Baudet (Le Monde.fr) 2007 and 2008). Finally, for Breteau's perspective, see Breteau 2008.

<sup>443</sup> Respondent code numbers are omitted to protect confidentiality.

<sup>444</sup> See also Bordenave (Le Monde) 2008a and 2008b; Le Monde.fr (avec AFP) 2007; Ministère des Affaires Etrangères et Européennes 2008b, No.1 and No. 8. The Chad government pardon did not include the fine (LeMonde.fr (avec AFP) 2008c; Libération.fr 2008). See also Le Monde.fr (avec AFP) 2008c; NouvelObs.com 2008b; Le Monde.fr (avec AFP) 2008a.

compared to a small NGO that most had not heard of prior to the extensive media coverage just days or weeks earlier. As with l'ARC, those engaged in similar activities such as the international adoption divisions of Médecins Du Monde and UNICEF France expressed deep concern, particularly regarding impact on other humanitarian agencies (Laurent (Elle) 2007; Chayet et al. (Le Figaro.fr) 2007). UNICEF France was visible in the press in response to Zoe's Ark, partly to reinforce their own international adoption protocol (e.g. CBC News 2007; LeMonde.fr (avec AFP) 2008a; Le Figaro.fr (avec AFP et AP) 2008; LeMonde.fr (avec AFP et Reuters) 2007). Thus in this case both accountability and management's handling of operations and procedures shocked.

The humanitarian/criminal/international nature of Zoe's Ark does not mitigate the internal failure of accountability that contributed to the illegal actions or the fear of the sector-wide impact of this failure of accountability.<sup>445</sup> Yet there is a discrepancy between the focus of the press coverage and respondents' concerns reflecting an ongoing absence of attention to the potential accountability implications. For example, according to press reports, several phone calls to the Ministry of Foreign and European Affairs from potential adoptive families questioning the adoption fee of several thousand euros triggered an in-person warning of the international adoption protocol from Rama Yade, Secretary of State for Human Rights, to Breteau (Chayet et al. (Le Figaro.fr) 2007; Ministère des Affaires Etrangères et Européennes 2008a). Thus a question of fees was a key trigger for government intervention. Yet there does not appear to be subsequent consideration of the accountability and *conseil d'administration* oversight aspects of fee structures. Finally, the post-Zoe's Ark senate testimony of Minister of Foreign and European Affairs Bernard Kouchner on NGOs concluded that the range of accountability-related controls already in place (e.g. Cour des comptes, funder accountability requirements, and for members the Comité) was adequate (Senate 2007, 6-7).<sup>446</sup>

More generally, there is virtually no mention of Zoe's Ark's *conseil d'administration* or any other form of internal oversight responsibility in any of the

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<sup>445</sup> Press coverage in this case revealed a focus on diplomatic issues rather than attention to government oversight of NPO accountability. Widely mediatised diplomatic issues include President Sarkozy's personal interventions (e.g. trips to Chad to repatriate journalists prior to trial and request of a pardon from President Deby) (Ministère des Affaires Etrangères et Européennes 2008b, No. 1 and No. 5; L'EXPRESS.fr 2008h; Omara-Otunnu (Black Star News) 2007; V.F. et al. (LeFigaro.fr) 2008; Prier (Le Figaro.fr) 2007a; Le Monde.fr (avec AFP) 2008c).

<sup>446</sup> Without questioning Mr. Kouchner's intentions, his background as one of the founders of Doctors Without Borders/Médecins Sans Frontières perhaps is relevant to his views on NGOs.

press articles researched or any subsequent writing – even as late as January 28, 2008, the date of the ruling of the French tribunal (Ministère de la Justice 2008; Tribunal de Grande Instance de Créteil call 2009; Rémy (Le Monde.fr) 2007a on the “extreme confusion”). The only exception is Soublin’s statement in articles by one journalist (Baudet (Le Monde.fr) 2007 and 2008). Nor do any of the press reports or any respondents comment on the flagrant lack of transparency.

### **7.2.2 Empirical Findings: Does Scandal Directly Influence Strategic Assessment of Accountability?**

Against the broad awareness among respondents of the background context, accountability issues, and potential contagion of fall-out from scandal, the key question becomes the extent to which scandal influences organisations’ strategic assessment of accountability. The findings show that overwhelmingly organisations across both the Comité Group and the Control Group do not consider scandal a direct motivation for increasing accountability and do not link implementation of accountability mechanisms to protection against future scandal. The founding of the Comité following l’ARC is the only example of a direct collective effort to adapt accountability efforts post-scandal.

First, respondents in both groups widely agreed on the central paradox combining fear of scandal, emphasis on increasing accountability, yet failure to connect accountability to protection from scandal.<sup>447</sup> Respondents’ reactions reflect the components of the definition of scandal in the introduction to this chapter.

While several respondents did link the media with scandal, so few cited the media as a direct influence on increasing accountability, and all in second place, that the fear of mediatisation of scandal is not driving accountability (Organisations 4, 5, and E). Rather, as noted above, the media comprises part of the basic definition of scandal – i.e., the requirement of notoriety (Organisation 5 (“reveal the scandal”)). This parallels the results of The Johns Hopkins Nonprofit Listening Post Project surveying approximately 460 US NPOs that concluded limited link between accountability efforts and the media (Salamon and Geller 2005, 9).<sup>448</sup>

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<sup>447</sup> Only a few respondents specifically described accountability as counting “in the reverse”: the absence of accountability is dangerous even if the presence of accountability does not prevent failure of accountability (Organisation 13 and 21).

<sup>448</sup> See also Section 6.4.3 on the media and donor trust.

In addition, even during the lengthy discussion of the accountability failures associated with the scandals, and even for those respondents commenting that much changed “since l’ARC” in terms of increasing accountability, no respondents in either group linked increasing accountability with success in protecting against future scandal. Even in a case where the accountability “fixes” within organisations relate directly to the accountability failure underlying a scandal in another organisation such as l’ARC, no respondents considered accountability mechanisms implemented a solution for the fear of another similar l’ARC-type scandal – let alone a different type of scandal such as the tsunami or Zoe’s Ark. The importance of ethical, effective management (and the declining importance of donor trust and increasing importance of ethical, effective management among Comité Group participants during times of increasing awareness of scandal) also aligns with this the concern with accountability independent of scandal. Thus inside out strategic assessment has resulted in increasing accountability irrespective of the actual or potential efficacy of accountability as a deterrent from scandal.

Finally, the response to l’ARC exemplifies the individual bottom up, organisation by organisation initiatives seen throughout the empirical analysis. L’ARC improved accountability internally to recover from the scandal. However, as noted in Section 3.2.1, in France there was no sweeping regulatory response such as the Sarbanes-Oxley Act reaction to scandal or the improvements in the Form 990 implementing an umbrella mandatory prevention and response program. Accordingly and logically, there was no broad trickle-down accountability fall-out from regulation as was seen with state law, self-regulatory organisations such as Independent Sector, and the US sector voluntary best practice more broadly post-Sarbanes-Oxley Act (e.g. Independent Sector and Board Source 2006). The Comité represents the lone example of self-regulation but also emerged from organisations’ bottom up efforts rather than from regulatory fall-out. Thus overall respondents in both groups consider their own accountability efforts independently of l’ARC’s or other NPOs’ response to specific scandal and scandal more generally – even if scandal is an on-going concern in the sector. Moreover, respondents feel that despite the heightened sensitivity among individual organisations, accountability is not the, or not the only necessary, preventive measure. This sense of inability to control scandal elsewhere may explain at least in part the little direct connection in respondents’ answers between scandal and efforts to increase accountability. Though unproven, this perhaps also explains in part why the

Comité was such an important response to scandal as seen below – i.e., a collective effort was seen as the only potential influence on other NPOs.

*The Comité, Accountability, and Scandal.* Despite respondents' separation of scandal from their own motivation for, and/or benefit from, accountability, the founding of the Comité in anticipation of the consequences of l'ARC does exemplify a collective effort to increase accountability in response to scandal. As noted above, l'ARC is widely considered the panic impetus for the initial reflection on the relationship between accountability and donor trust. L'ARC also represents the symbol of on-going concern with nurturing and protecting donor trust. Almost all of the founding members interviewed relayed the concern at the time of founding about the potential effects of the l'ARC scandal on the public's perception of their own organisations and the French nonprofit sector more broadly as the primary reason for founding the Comité (respondent interviews (Appendices 1-A and 1-D); Soublin interview 2007).<sup>449</sup> Almost all cited the desire to demonstrate accountability and the need to react quickly. Three organisations expressed this as the l'ARC "problematic" and "starting point," as well as the need to be "part of a clean group" at that time (Organisations 14, 17 and 5, respectively). As noted in Section 6.3.1, several respondents used the expression "join the movement" to indicate that the l'ARC phenomenon had become a dynamic social and business force within the sector. This effort to unite with potential competitors at the founding is evidence of the depth of impact of l'ARC and a key example of adapting accountability practices to the threat of scandal.

The active Comité response to the tsunami also demonstrates the Comité's on-going concern with the potential impact of scandal. The Comité outlined good accountability practice for tsunami matters for Comité members in several different press releases, an unusually intensive response for the Comité (e.g. Comité 2005a, 2005b, and 2005c).<sup>450</sup> The advice included detailed questions about the mission, respecting the Comité's Charter, the collection of funds, amounts spent, distribution of funds, periodic revision of plans for remaining balances, and internal control procedures for tracing funds (Comité 2005a). The Comité also organised a working group soon after the tsunami, and on the occasion of the tsunami's anniversary published an

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<sup>449</sup> See Appendix 1-D for a list of the founding members of the Comité. See Section 6.3.1 on donor trust as the principal reason for the founding of the Comité.

<sup>450</sup> Section 6.4.3 "*The Comité and the Media.*"

unedited synthesis of member association accountability-related actions (Comité 2005c).

Nonetheless, as noted in Section 6.4.2, despite the clarity of the context of the Comité's founding and the response to the tsunami, the on-going role of the Comité remains ambiguous. All nine of the Comité Group respondents interviewed post-Zoe's Ark insisted that the Comité must act on behalf of its members to minimise the impact of Zoe's Ark specifically and potentially other French nonprofit sector scandals.<sup>451</sup> Approximately 50% of the Comité Group respondents interviewed prior to Zoe's Ark also consider the Comité a defensive move to protect against a decline in donor trust in the event of a future problem, including arguing for a more sophisticated, thoughtful approach to the media generally and more targeted commentary on best practice and perspective on scandals.<sup>452</sup> No one offered more specific ideas as to how the Comité should intervene, however. Finally, none of the Control Group suggested that Comité membership would offer protection from scandal.

The Comité acknowledges the need to increase media exposure in relation to scandal (Comité management interview 2008; Soublin interview 2007). Comité management also acknowledges the lack of communication on Zoe's Ark specifically (Comité senior management call/interview 2007). From the perspective of Comité management, Zoe's Ark reinforces the need to define universally in France the term "accountability." Expected Comité reaction might have been communication on the unique complexities of a Zoe's Ark issue to avoid misunderstanding and sector-wide fall-out. For example, the Comité could have explained Zoe's Ark as intentional criminal activity of a leader and therefore a rare criminal case and not a common example of failure of NPO leadership or accountability (as did the Fondation de France (Charhon 2007)). The Comité might also have explained how the Comité's requirements improve accountability oversight to limit the risk of a similar scandal among members. Such explanations would, nonetheless, need to address the limitations of accountability procedures with respect to preventing certain intentional illegal acts such as well-hidden fraud.<sup>453</sup> In addition, the Comité might also have issued guidelines

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<sup>451</sup> This group includes four Comité Group respondents among the most internationally respected NGOs.

<sup>452</sup> Respondent code is omitted to protect confidentiality.

<sup>453</sup> See policy recommendation in Section 8.4. Even the highest level accountability practices (e.g. a US stock-exchange listed corporation respecting the Sarbanes-Oxley Act) do not protect against intentional fraud, grossly negligent management, or other such illegal behaviours. For example, the major accounting firms for both for-profit companies and NPOs focus their audit letters on procedures undertaken and exclude an opinion on the preventive efficacy of the internal controls (The David and Lucile Packard

for improving oversight of accountability matters following Zoe's Ark as they issued guidance following the tsunami (particularly *conseil d'administration* oversight of criminal matters and the role of independent *administrateurs* in approving exceptional budget items and program projects).

One main difference in the Comité's position in the two cases is that potentially a number of Comité member organisations shared tsunami use of funds issues, whereas Zoe's Ark was cast as important to the sector but not likely "at home." The Comité has not offered this explanation, however. As of January 14, 2009, approximately 16 months after the initial major media coverage, the Comité has not acted or addressed the issue on its web site.

### **7.2.3 Would Better Accountability Have Helped Protect Against Scandal?**

The underlying question of whether, and if so how, accountability protects an organisation from scandal requires further exploration. This section aims to question and respond to interviewees' almost universal failure to link increasing accountability with improved protection against scandal. It explores whether the accountability standards as articulated by the law, the Comité in the case of the Comité Group, and the VAMs and other voluntary mechanisms discussed in this thesis might have prevented any consequences of the scandals. While unproven, the analysis argues that although even the most draconian accountability policies and procedures do not prevent intentional dishonest or criminal activity such as the three different issues raised in the scandal cases discussed, improved accountability systems might have mitigated the impact and duration of the crises. Finally, this additional perspective on scandal reinforces the inside out, bottom up increasing accountability that underlies the overall analysis.

This exercise represents more than speculation. Rather, the analysis works through the potential implications of certain US best practice recommendations adopted in response to the US scandals (e.g. Red Cross blood and Liberty Fund scandals and corporate scandals reviewed in Section 3.1.1). In addition, the analysis highlights the fact that the response to the scandals in France (from l'ARC in the case of the l'ARC scandal and from the Comité guidance in the case of the tsunami) included a number of

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Foundation 2006). (See also e.g. recent Société Générale fraud (Gauthier-Villars et al. (The Wall Street Journal) 2008).)

VAMs and other related voluntary accountability mechanisms. This a posteriori reaction to apply accountability remedies further emphasises the question of why respondents do not link accountability to prevention of scandal. In other words, if the appropriate reaction after the scandal is accountability, why would voluntary accountability-based recommendations not at least be perceived as useful in mitigating the potential impact of scandal if implemented preventively? Thus, while this assessment is unproven, the exercise is rooted in the US background and empirical findings.

The key theme of independent oversight emerging from the empirical research is a crucial link between accountability and protection from scandal. The greater the board or *conseil d'administration* oversight through such mechanisms as an independent audit committee (that controls conflicts of interest, closely reviews the audit process (including management's audit role), insists on high levels of transparency, and pre-approves significant expenditures) the less likely cases of fraud and mismanagement of funds. These accountability mechanisms erect at least some barrier to intentional wrongdoing and facilitate discovery should a problem occur – for example, by regular and more intensive review with the auditors of the financial situation and management behaviour. Therefore, the impact of potential problems may be mitigated. Examples relating to the three major French scandals are cited below. Other examples might include an audit committee requiring a second signature on checks by an independent director for all amounts above a certain threshold or requiring detailed explanations by the auditors of the internal controls used to ensure proper tracking of funds.

First, in the case of l'ARC, while the types of accountability analysed in this thesis would not have prevented the initial intentionally fraudulent actions, the internal accounting staff and *conseil d'administration* might have detected the problem at a much earlier stage. Moreover, many of the contributing factors might have been prevented. Conflict of interest procedures and independent directors might have identified and controlled the myriad of conflicts of interest among *administrateurs* that allowed Crozemarie to engage in cronyism for grants and to control blank *assemblée générale* votes. The failure of *conseil d'administration* oversight and insufficient internal controls that exacerbated the magnitude and duration of the criminal behaviour and the impact of the scandal might have been mitigated with pre-emptive accountability policies and procedures such as internal controls, an audit committee, and oversight of executive compensation. Indeed the impressive range of accountability measures l'ARC subsequently undertook to repair the damage all fall within the VAMs

and other voluntary accountability mechanisms noted in this thesis.<sup>454</sup> Moreover, many of the voluntary accountability mechanisms l'ARC implemented in response to the scandal relate to US best practice.<sup>455</sup>

Second, the tsunami issues combining mission creep and appropriate and timely use of tsunami-restricted donor funds are also susceptible to prevention or early stage mitigation of the individual and collective impact.<sup>456</sup> Again, a well-functioning *conseil d'administration* and management team would have immediately considered the implications of such an exceptional influx of funds to the French nonprofit sector generally and the organisation in particular. At a minimum, the *bureau*, audit committee, or an ad hoc committee specifically appointed to address tsunami financial matters would have analysed the level of donor funds justifiable within the mission for tsunami-relief activities. With this baseline analysis, such committee could have also addressed appropriate public communication to ensure transparency regarding use and management of tsunami-restricted funds, a plan for future expenditure of unused funds, and accounting procedures allowing tracking of restricted gifts and use of funds. The Comité recommended most of these approaches. However, even under public pressure for accountability NPOs such as Action contre la Faim immediately criticised Doctors Without Borders/Médecins Sans Frontières' halting donations for these accountability-based reasons as dangerously communicating a general lack of need for humanitarian funds (e.g. Bennhold (International Herald Tribune) 2005; Agence France Press 2005).<sup>457</sup>

Finally, while unproven, the evaluation of Zoe's Ark demonstrates that even basic improvements in accountability might have contributed greatly to preventing the debacle.<sup>458</sup> The opacity of the organisation to the general public and the complex combination of political, criminal, and accountability matters complicated the situation.<sup>459</sup> However, none of the media, the government, or other commentators

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<sup>454</sup> See "L'ARC: The First and Continuing Reference Scandal" in Section 7.2.1 above. See Sections 8.2.2 and 8.3 for policy recommendations stemming from l'ARC.

<sup>455</sup> See Table 4-1 and Section 4-2.

<sup>456</sup> See also the Comité's suggestions in Section 7.2.2 "The Comité, Accountability, and Scandal."

<sup>457</sup> Public authorities, including then New York District Attorney Elliot Spitzer, commended the Doctors Without Borders/Médecins Sans Frontières approach much later (e.g. de Torrente discussion January 2007; Cour des comptes 2006b, 97 and 100; National Assembly Foreign Affairs Commission 2007, 20-21; Elliot Spitzer letter to the board read by the author (not publicly available)).

<sup>458</sup> The political and criminal aspects are beyond the scope of this thesis.

<sup>459</sup> As of October 31, 2007 and January 14, 2008, the Zoe's Ark web site had no management or *conseil d'administration* roster, no financial information (including whether they charge fees for services, accept membership fees, or fund-raise), no membership procedures, and no donor-related information. The

focused on the range of accountability weaknesses that contributed to the magnitude of the issue. Most importantly, if significant programs such as the repatriation of children from Chad had been appropriately examined by the *conseil d'administration* for formal prior approval (even in the normal course of programmatic and budget oversight), the *conseil d'administration* could have vetoed the project and perhaps taken steps (even blocking funds) to stop the Executive Director from carrying out an illegal act. Thus while accountability cannot prevent intentional violation of child trafficking or other criminal conduct, the link between accountability and criminal conduct is critical. Moreover, codes of ethics sensitise organisations, whether or not enforced. One small Control Group organisation has a Code of Professional Protocol that, while not addressing governance matters, specifically prohibits and sanctions illegal conduct involving sexual abuse or kidnapping, thereby sensitising all involved, including the *conseil d'administration* (Organisation K).

Moreover, Zoe's Ark exemplifies the problem of the number and range of 1901 Law associations as discussed in Section 1.3.1.<sup>460</sup> As eight respondents argued, smaller organisations far too often escape adequate oversight (Organisations 5, 7, 21, 22, 26, 32, 33, and E). The larger organisations are more likely to be caught by at least one of the *commissaires aux comptes*, the Cour des comptes, l'IGAS, or tax review (even if less tied to accountability than in the US) – perhaps the one positive outcome of the criticised regulatory overlap.<sup>461</sup> More generally, the failure of accountability regulation at both the legislation and application levels discussed in Section 3.2.1 – particularly independent oversight of financial and accounting matters by the *conseil d'administration* – demonstrates the importance of the organisation upward accountability approaches suggested in this analysis.<sup>462</sup>

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absence of information on the Chad mission was perhaps expected given the legal proceedings at that stage. Two anonymous “potential donor” requests by the author to a cell phone number (the only contact information on the web site) for a copy of the annual report and financial statements to be sent to a local Paris address (to avoid postage issues) were ignored (L'Arche de Zoe 2007; L'Arche de Zoe 2008).

<sup>460</sup> See also Section 3.2.1 and Section 8.2.1 for a related policy recommendation.

<sup>461</sup> It is somewhat surprising that a governmental organisation relating to child welfare did not intervene as many of the Comité Group organisations engaged with children report significant oversight. See e.g. Section 4.2.1 “Whistleblower Mechanism” regarding whistleblower procedure required for organisations serving children. Organisation codes are omitted to protect confidentiality.

<sup>462</sup> See Table 3-1 and Section 4.2.

### 7.3 Theoretical Implications of the Non-Regulatory External Variables

The extension of the accountability analysis into the sector – the welfare state and scandal variables – further supports the three-part conclusion relating to the theoretical framework emerging throughout the thesis. The empirical findings show the perceived insufficiency of trust derived from the nondistribution constraint alone; the on-going importance of trust to all respondents; and the need for accountability as a complement to the nondistribution constraint and to support trust.

First, the l'ARC and tsunami scandals offer examples of the types of risk Hansmann's nondistribution constraint should address but may either fail to address and/or address with inadequate enforcement. While Zoe's Ark involved criminal activity beyond straightforward mismanagement of funds, the nondistribution constraint should have offered some protection there as well. Some consider scandal the proof of the inadequacy of the nondistribution constraint (Brody 2002, 477). Arguably such "proof" is unnecessary. While Hansmann's nondistribution constraint functions to deter the incentive of controlling persons to misappropriate funds and engage in other such misconduct, Hansmann acknowledges that the nondistribution constraint is insufficient in some cases – even short of these types of scandal (e.g. personalised service delivery) (Hansmann 1980, 871).

Hansmann also offers indications of sources of support for the weaknesses in the nondistribution constraint and/or failure in legal enforcement. Hansmann's suggestion of the potential additional protection from a certain profile of leader (i.e., more interested in service and less interested in financial gain) pre-sages the importance of leadership to accountability (Hansmann 1980, 876 and Appendix). On a positive side, Hansmann's distinction among leaders is reflected in the importance of the leaders' initiative to increase accountability throughout the empirical findings. However, the scandal cases demonstrate the opposite extreme – leaders entirely focused on their own gain or even non-financial objective such as Crozemarie and Breteau, respectively. In addition, Hansmann's suggestion that "social norms" may reinforce the likelihood of ethical behaviour failed in the l'ARC, tsunami, and Zoe's Ark cases (Hansmann 1980, 875).<sup>463</sup> Hansmann's comment that social norms are more likely to be enforced in larger organisations given the scrutiny by a larger number of employees and the

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<sup>463</sup> See Section 2.1.2.

bureaucratisation was proven false with l'ARC and even certain of the problematic tsunami examples (Hansmann 1980, 876). In those cases, conflicts of interest and mismanagement of the mission and arguably donor revenue, respectively, trumped the social protection assumed to be provided by a larger structure.

Other theory-derived themes relating to the inadequacy of the nondistribution constraint relate to the analysis of scandal and smaller organisations. As noted in Section 4.5, Hansmann's theory applies to a lesser extent in smaller organisations due to limited incentives to misappropriate funds because the excess funds available above normal salaries and expenses is less (Hansmann 1980, 871 (and 876 on lesser value of normative constraints in smaller organisations)). Yet smaller organisations still have a high risk of failure of accountability due to more limited resources for, and arguably at least perceived reduced benefit from the expense of, accountability (Rose-Ackerman's analysis). Zoe's Ark has become the key example of this potentially damaging failure of accountability in a small NPO, although arguably beyond just the adaptation of strategic assessment to small size. The problem of the multitude of (especially smaller) associations also exacerbates this risk of failure of accountability because smaller organisations are less likely to fall above thresholds for formal regulatory review, particularly in France.<sup>464</sup> The different types of non-economic scandal that do not directly relate to the nondistribution constraint as with Zoe's Ark also complicate the analysis. In addition, weaknesses in accountability regulation in France echo Hansmann's remarks that state authorities do not adequately enforce the law, thereby failing as a deterrent – again particularly with smaller organisations (Hansmann 1980, 874-5).<sup>465</sup>

Even Hansmann, in 1980 before NPO accountability became such an important subject of discussion, recognises the need for accountability in the for-profit world where trust is less important (because of the absence of nondistribution constraint basis for trust and therefore greater incentive to misappropriate funds). As noted in Section 2.2.1, Hansmann does not directly link accountability to the nonprofit sector. However, using the example of CARE, Hansmann suggests that were CARE a for-profit institution, due to the skewed incentives and the need to protect shareholders from management/controlling persons significant VAM-type accountability mechanisms

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<sup>464</sup> See Note 36, *supra* contrasting the US thresholds for accountability regulation for smaller organisations.

<sup>465</sup> See Section 3.2.1 “*Empirical Findings...*”

would be required (Hansmann 1980, 847).<sup>466</sup> As Salamon argues, the increasing complexity and professionalisation of the nonprofit world – i.e., the narrowing of the differences between for- and non-profit functioning and public expectations – now requires extending accountability as protection from controlling persons into the French nonprofit sector to support trust. L'ARC's Crozemarie and Zoe's Ark's Breteau again offer rare but relevant examples. Thus the analysis is no longer the nondistribution constraint and trust duo. It has become a nondistribution constraint, trust, and accountability trio in the context of the evolving nonprofit sector. Yet like trust, accountability within one organisation is not viewed as protecting that organisation or others from scandal.

Criticisms of the on-going relevance of Hansmann's theory are unconvincing. As discussed in Section 5.2, trust based on the intrinsic qualities of the nonprofit form remains essential even if supported by accountability. The insufficiency of the nondistribution constraint alone critics cite does not mean the intrinsic elements of the nonprofit form do not establish a stronger base against illegal behaviour, a compelling basis for trust, and a positive influence on the sector (e.g. Brody 2002, 477). Law-abiding controlling persons respecting a NPO charter and applicable laws have a significantly reduced incentive, compared to for-profit organisations, to misappropriate funds.

Furthermore, as discussed in Section 5.5.3, the levels of accountability in a NPO will never reach those in the for-profit world – due to both the regulatory and cultural constraints described throughout this thesis and the implications for the strategic assessment (costs and benefits) of individual organisations. In particular, the accepted range of expenditure of donor revenue on administration will limit the implementation of VAM-type mechanisms even post-scandal. In France the greater attention to administrative expenditures referred to in Sections 4.4.2 and 6.6.3, compared to US best practice focusing on ensuring adequate administrative expenditures on legal, accounting, and other good management, parallels the difference in maturity of levels of accountability (Panel on the Nonprofit Sector 2007, 22).<sup>467</sup> Thus while the relative importance of the three sides of the triangle may be evolving toward greater emphasis on accountability as a means of enhancing trust, Hansmann's trust remains essential – because accountability remains insufficient, inaccessible, or both and notwithstanding

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<sup>466</sup> See Section 2.1.2.

<sup>467</sup> See Section 4.2.2.

the insufficiency or poor enforcement of the nondistribution constraint. This conclusion holds across both the Comité Group and the Control Group, and irrespective of cited rationale for increasing accountability and/or views on appropriate levels of accountability.

Finally, the sector-wide impact of Hansmann's trust remains unclear (Hansmann 1980, 897). Trust in an organisation does not necessarily protect against the contagion of scandal within another organisation at some levels.

#### 7.4 Conclusion

This chapter brought the discussion full circle from the analysis of the two regulatory external variables (accountability regulation and the tax system) in Chapter 3 to an analysis of the two non-regulatory external variables (the welfare state and scandal). The chapter also broadened the perspective on the empirical findings in Chapters 3 through 6 to include key elements of the nonprofit sector other than regulation. These non-regulatory external variables reinforce respondents' on-going view of the inside out approach to accountability and corresponding limited influence of external variables on accountability efforts.

First, the welfare state is widely perceived as an on-going negative influence on the French nonprofit sector generally and giving in particular across both respondent groups. Nonetheless, respondents did not connect the welfare state to increasing accountability. Second, the l'ARC scandal triggered a lasting, heightened sensitivity to the risk of scandal and, along with other subsequent scandals, established fertile ground for increasing accountability. Nonetheless, respondents refute the direct influence of scandal on the strategic assessment of accountability. Rather, the strategic assessment and resulting increasing accountability is primarily driven by the internal motivations analysed in Chapters 5 and 6. The one notable exception is the collective reaction to form the Comité following the l'ARC scandal.

In addition, none of the three elements among the nondistribution constraint, trust, and accountability prevents intentional criminal activity, effectively compensates for regulatory weakness, or overcomes welfare state infrastructure. Moreover, respondents do not see further increasing accountability as a solution for welfare state

challenges or the threat of scandal. However, while unproven, pre-emptive and responsive accountability might have substantially mitigated the damage in all three major scandals and, therefore, supported donor trust as a complement to the nondistribution constraint.

Finally, the trust theoretical framework remains relevant in four principal ways. First, trust remains essential for all respondents. Second, the nondistribution constraint continues to limit the misappropriation of funds by controlling persons and therefore establishes a base for trust – even if no longer the exclusive basis of trust. Third, as Salamon argues, as the nonprofit sector approaches for-profit world complexity and competition, accountability becomes increasingly necessary to support Hansmann's trust – notwithstanding the apparently limited influence of the external variables. The key question in this chapter is why the external variables have so little direct influence on organisations' strategic assessment – irrespective of cited primary rationale for increasing accountability. Finally, the accountability, trust, nondistribution constraint trio remains a dynamic balance with all three parts of continuing importance. This triangular relationship links directly to the policy objectives and related policy and voluntary best practice recommendations in Chapter 8, the final chapter.

## Chapter 8

### Conclusions and Policy Recommendations

#### *“Nothing Prevents Another l’ARC (Organisation 21)”...?*

“For several years now, French NGOs have absorbed the idea that it is necessary to display a certain level of financial transparency. This is why they all publish annual financial reports. However, their responsibility to donors should not stop there. In accordance with the initiatives of Anglo-Saxon NGOs, French NGOs must not only account for their expenses but more broadly for their actions, in a word their behaviour” [author translation] (National Assembly Foreign Affairs Commission 2007, 9).

#### **Introduction**

This chapter summarises the key findings, analyses, and conclusions explored in the thesis. The thesis aimed to explain the increasing accountability in the French nonprofit sector. The theoretical framework positioned the empirical investigation and analysis as the “next step” or “supply side query” following Hansmann’s demand side theory of trust based on intrinsic NPO characteristics. The research aimed to explore how and why organisations behave as they do with respect to accountability in the increasingly competitive nonprofit environment and in the French context. The analysis explored the rationales for increasing accountability through a lens of organisations’ individual, inside out strategic assessment of accountability – including the underlying driving forces, the relevance of US models, and the impact of internal and external variables on strategic assessment.

Section 8.1 reviews synthetically key empirical findings and relevant theoretical implications with a view to distilling the highest priorities for policy objectives and related recommendations. The first section concludes with suggested broader implications of the research.

The remainder of the chapter proposes policy objectives (Section 8.2) and a series of related recommendations based on the research findings. Recommendations aim to address the most pressing concerns of the respondents individually and on behalf of their organisations (Section 8.3); the Comité as a separate organisation and on behalf of its members (Section 8.4); and the relevant gaps in French law and practice relative to the US approach to accountability (integrated throughout).

The overriding policy objectives are independent oversight of NPO accountability and enhanced quality and accessibility to the public of information relating to

accountability. Within these objectives, a series of specific recommendations reflecting the strategic assessment process link policy to regulatory and voluntary best practice initiatives. Many recommendations derive from US regulation and best practice but adapted to the French nonprofit context.

## **8.1 Key Findings, Analyses, and Conclusions**

This section highlights the key empirical findings of bottom up, increasing accountability through the strategic assessment process and related conclusions. In addition, this section traces the Hansmann-Salamon spectrum of trust and accountability as relevant to the empirical findings and policy recommendations later in the chapter. Section 8.1.3 draws on both to suggest possible next steps in the research. Throughout these discussions the limited differences in the findings between the Comité Group and the Control Group, including with respect to the relevance of the variables, emerges as an overarching theme.

### **8.1.1 Empirical Analysis**

The findings confirmed the underlying assumption that accountability in the French nonprofit sector is increasing. With one exception, all respondents in both groups, as well as Comité management, confirmed increasing accountability, both within their own organisations and across the sector more broadly. Evidence includes a range of reflection on accountability issues, implementation of VAMs and other voluntary accountability mechanisms, plans to introduce additional accountability mechanisms in the future, and a less tangible sense that accountability is “in the air” within the nonprofit sector and beyond. The most relevant evidence of increasing accountability within both the Comité Group and the Control Group reflects a bottom up, organisation by organisation-driven process of strategic assessment of accountability – in contrast with the more regulatory-driven, top down movement of increasing accountability in the US. This, in turn, results in a collective impact on the external accountability context and sense that accountability is “part of being modern” (Organisation H).

Accountability was defined in both general terms (i.e., having to answer for one's behaviour) and operationalised terms (i.e., the VAMs derived from US best practice). The definition offered applicability in the French context despite the absence of a formal French language definition of accountability, as well as comparability among research participants and with US best practice. The definition also addressed the complexity of multiple stakeholders and range of types of accountability. The most noteworthy types of accountability excluded from the definition, primarily for reasons of relevance to the core accountability issues and measurability challenges, were mission and performance effectiveness.

Nonetheless, with the exception of a few large, internationally engaged respondents, increasing accountability in the French nonprofit sector continues to lag behind the reference standard of the US regulatory, self-regulatory, and voluntary best practice models. Standards of accountability also remain uneven across the Comité Group and Control Group respondents despite the level of renown among study participants. The most essential areas of on-going weakness in accountability relate to independent oversight of accountability matters and quality and accessibility of information relating to accountability to the public. In particular, the Sarbanes-Oxley Act, related state law follow-on, and nonprofit sector best practice (in part through national self-regulatory organisations such as Independent Sector) impose and suggest a range of accountability priorities. Key examples of US accountability mechanisms still infrequent in France include: independent and financial expert directors; independent expert audit committees; widely disseminated accountability information; and the whistleblower mechanism. More generally, the more top down US approach and emphasis on sector-wide best practice leads to greater homogeneity in publicly available information than the largely individually generated accountability efforts among French respondents. Nonetheless, certain trends emerge, particularly with respect to respondents' views of the importance of the internal variables and overriding lack of importance of the external variables. These are addressed in more detail in the policy recommendations in Section 8.2 and 8.3 below.

Against the hypothesis of trust as the primary explanation for increasing accountability, two overriding explanations for increasing accountability emerge. The research shows ethical, effective management as the most frequently cited rationale. The Control Group showed a moderately higher response level citing ethical, effective management but no significant differences within the nuances of the analysis. Donor trust was a relatively close second most oft-cited rationale in both respondent groups. This

shows the inadequacy of Hansmann's trust theory as the sole or primary explanation for increasing accountability. Moreover, the dynamic nature of increasing accountability offers evidence of an evolving relationship between accountability and trust across both respondent groups. In particular, evidence of movement from donor trust as the primary rationale by far for joining the Comité at the time of joining to ethical, effective management as the rationale for increasing accountability at the time of this thesis across the Comité Group (and reinforced by the views of the Control Group) highlights the importance of observing the evolving nature of accountability (as first mentioned in the definition of accountability in Section 2.2.2(a)) – both in this study and in future research.

Evidence of increasing accountability in furtherance of ethical, effective management appears primarily in organisation-specific initiatives. In many cases, respondents citing ethical, effective management considered that increasing accountability in response to ethical, effective management achieves a higher level of accountability than those motivated by donor trust. The most significant improvements in accountability in furtherance of ethical, effective management occur primarily through two vehicles: corporatisation and the transfer of international standards of accountability (largely overlapping given the extensively US origin of both). A third vehicle, funder accountability requirements, does *de facto* result in increasing implementation of accountability mechanisms. However, because funder accountability requirements relate to a specific funding opportunity, the requirements are almost always limited to the application for, and stewardship of, the funding rather than general efforts to increase accountability.

Donor trust remains essential to financial stability and therefore the survival of the organisation for all respondents. However, for an increasing number of organisations donor trust does not directly drive accountability decisions even if donor trust *de facto* benefits from accountability efforts. Donor trust is widely viewed as fragile, even for organisations benefiting from considerable donor trust independently of accountability efforts. Among respondents citing donor trust, two potential triggers for increasing accountability proved relatively unimportant: donor pressure and the media. In contrast, Comité membership appears to influence changes in accountability practice – notwithstanding widespread criticisms of the recognisability and appreciation of the value of the Comité logo and the aforementioned movement from donor trust to ethical, effective management.

Finally, the enduring emphasis on freedom of association, as well as lingering cultural impediments to excessive integration of corporate and/or international practices, affects the strategic assessment for respondents across both respondent groups and both

primary rationales for increasing accountability. Certain of the VAMs (particularly the whistleblower mechanism, the election of independent directors, and disclosure of individual management compensation) are particularly susceptible to cultural resistance.

A specified set of internal and external variables relating to the costs and benefits of accountability were assessed throughout the study. The internal variables size of organisation and initiative and profile of leader emerge as the two most important variables for both respondent groups. International engagement is also important with respect to the integration of international standards. Trends showing the importance of these internal variables are clear. However, the complexity of interrelationships among variables, particularly the individuality of leaders' initiatives and a range of other potential factors not addressed in this study, prevents clear conclusions linking internal variables with a general level of accountability and/or the implementation of specific VAMs or other voluntary accountability mechanisms.

Large organisations have greater resources to dedicate to accountability and/or greater incentive and benefit from accountability efforts. With few exceptions, all of the most complex VAMs were implemented by the larger organisations. Smaller organisations have more limited resources, some relying more on close interaction with team members as a substitute. The increased need to implement accountability mechanisms with increasing size of organisation links to Hansmann's explanation that the higher the earnings, the higher the risk of unreasonable distribution of funds to controlling management (Hansmann 1980, 871). The more internationally engaged organisations show greater openness to international standards of accountability.

Initiative of leaders is more organisation- and person-specific. The strategic assessment process and initiative of the leader with respect to accountability decisions proves more important than leaders' backgrounds, although certain leaders in the ethical, effective management group had a more corporate-focused approach. Even Hansmann suggests differentiating between financially-focused and cause-focused leaders (1980, 876 and Appendix). The subjectivity and individuality of the leaders' views and initiatives results in variation even among organisations of a similar size. No two organisations had identical approaches to accountability.

The external variables (accountability regulation, the tax system, the welfare state, and scandal) are not generally perceived as driving increasing accountability in either respondent group, even if important background context and influence on the French nonprofit sector generally. Rather, the key finding is a general sense of increasing

accountability as “normal” or a “sign of the times” arising in large part from the collective impact of individual NPOs’ accountability efforts on the sector – i.e., an awareness of organisations’ practices as more relevant than external regulatory or non-regulatory variables.

Respondents rarely connect the regulatory external variables to individual accountability efforts through the strategic assessment process. Accountability regulation is considered largely “enough” but not effective, clear, well-enforced, or overall motivating increasing accountability within individual organisations or across the sector – even if de facto accountability increases somewhat through regulation. Similarly, unlike the US “gatekeeper” framework, the tax system is viewed as separate from accountability. Again, responses were relatively consistent between the respondent groups.

Despite frequent references to both the enduring welfare state environment and scandal (the two non-regulatory external variables), neither directly influence respondents’ strategic assessment of accountability. Respondents view the welfare state as a historically and currently important negative influence on the French nonprofit sector (particularly with respect to levels of giving), affecting the sector through a range of policy areas such as tax, state budget, and allocation of responsibility and resources for social services. However, no respondents consider the welfare state a rationale for increasing accountability or, conversely, increasing accountability efforts as positively affecting the welfare state influences. Similarly, despite a series of highly mediatised scandals and virtually universal fear of contagion of scandal, no respondents directly linked increasing accountability efforts to protection against scandal. The only exception is the founding of the Comité in anticipation of the impact of the l’ARC scandal.

### **8.1.2 Theoretical Implications of the Empirical Findings**

Hansmann’s demand side theory of trust as an explanation for the nonprofit form and necessary to meet competition was the starting point for the supply side empirical research. As outlined in Section 2.1.2, Hansmann’s foundational “contract failure” theory rests on an economic basis of NPOs as a “reasonable response” to a particular type of market failure due to an inability on the part of consumers to police producers through ordinary contracts (1980, 845). NPOs are perceived not to exploit the advantage over the consumer resulting from this “contract failure,” largely due to the nondistribution constraint that reduces management incentive to misuse or inefficiently allocate resources.

Hansmann's originally US-based form functions like a "collective contract" through which the state Attorney General brings suit to enforce the nondistribution constraint on behalf of donors and potentially other stakeholders (1980, 853). The French system has a similar restriction on profits and state-driven enforcement mechanisms.

This trust-based NPO form is not, even in Hansmann's theory, a perfect solution to protect donors or even beneficiaries of services – due to both the substantive limits of the nondistribution constraint and the weak enforceability. The findings reveal a perception that Hansmann's trust no longer suffices to meet competition in an increasingly complex nonprofit world. Accountability has emerged as the key mechanism for cultivating/maintaining trust or remedying/mitigating mistrust through both regulatory and voluntary mechanisms.

Rose-Ackerman's notion of "signal[ling]" trustworthiness suggests the strategic assessment concept through which organisations weigh up the quantitative and non-quantitative costs of accountability efforts mechanisms against the expected benefits. This strategic assessment approach applies to accountability efforts in both the ethical, effective management and donor trust groups and across the range of VAMs and other voluntary accountability mechanisms explored. However, in the case of donor trust, the effort "signals" trustworthiness, whereas the ethical, effective management group interprets strategic assessment with a view to achieving ethical, effective management objectives. Performance evaluation, the most complex and costly voluntary accountability mechanism, suggests that for the most sophisticated organisations in terms of types and extent of accountability efforts this further step is needed to keep pace with competition. Thus the strategic assessment process is becoming increasingly complex as the French nonprofit sector becomes increasingly professional, international, and competitive. Finally, as noted above, this strategic assessment in turn reflects an effort to adjust accountability in accordance with internal variables as appropriate but generally disregards external variables.

The key forces driving increasing accountability in furtherance of ethical, effective management and donor trust also relate to the theoretical framework. Integration of corporate and/or international standards may relate to trust as de facto supporting donor trust and/or indicative of a need to supplement the nondistribution constraint based trust – irrespective of the generally ethical, effective management motivation. Funder accountability requirements have perhaps become a prerequisite for trust mitigating the information asymmetry – but limited to the specific funder and funding opportunity. Donor

pressure, the media, and Comité membership all function to provide additional information, again addressing Hansmann's information asymmetry.

Salamon's suggestion that accountability (particularly performance evaluation) has become the modern prerequisite for trust and a necessary supplement to the nondistribution constraint as a basis for trust was both reflected in the findings and irrelevant to the findings. Every respondent in both the Comité Group and Control Group clearly confirmed the on-going importance of donor trust, irrespective of the cited rationale for increasing accountability. For ethical, effective management respondents, trust itself is not outdated, but accountability is separate from trust. For the donor trust respondents, most agreed with Salamon that accountability complements trust. On the spectrum from Hansmann's trust based entirely on the intrinsic nonprofit characteristics to Salamon's trust earned through accountability, for most NPOs the cost of accountability will outweigh the benefits well before reaching the "replacement level."<sup>468</sup> This differs from for-profit corporations, which adopt a different basis for strategic assessment of accountability given the absence of the nondistribution constraint protection. Therefore, Hansmann's trust still counts along with accountability – particularly in France where the NPO accountability environment has not matured sufficiently for such extensive focus on performance evaluation. Moreover, Hansmann, and indeed respondents, expect and accept that NPOs are less efficient than for-profit firms.<sup>468</sup> This translates into the expectation that mechanisms to increase accountability will not "go too far," for example toward corporatising or integrating international standards. In the French context, the preoccupation with freedom of association adds a particularly sensitive balancing consideration.

### **8.1.3 Potential for Extension of Research**

This study establishes a preliminary basis for diverse subsequent research. Within France, there is a wide range of legal and non-legal topics that merit further consideration. Examples might include: investigation of the reasons behind the lack of independent oversight (many of which may cross cultural, legal, and French nonprofit sector lines); more in-depth analysis of the impact of scandal; how the various governmental/regulatory entities work together; French corporate law models for the nonprofit world; the relationship of the welfare state to accountability; and a larger sampling of current views

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<sup>468</sup> See Section 2.1.3.

and practices of smaller NPOs on accountability. In addition, as US-based accountability mechanisms become increasingly common, more in-depth research on the impact of specific accountability improvements internally and externally would be valuable. Finally, more quantitative research on the true costs of implementing various accountability mechanisms, as well as comparative quantitative research against the US and other welfare state countries, might inform policy.

Internationally, the internal, organisation-driven nature of much of the increasing accountability in furtherance of both ethical, effective management and donor trust suggests the extension of the research into other countries where past research has primarily focused on external governmental and/or cultural barriers to French nonprofit sector accountability. These include other welfare state countries such as Germany. These also include countries such as China where organisation upward accountability might relate to foreign funding opportunities and, therefore, increasing legitimacy vis-à-vis the government.

## **8.2 Policy Objectives and Related Recommendations**

Having examined the empirical findings and theoretical implications of the research, the challenge becomes identifying the key policy objectives and determining how the related recommendations should tackle the issues identified in an effective, yet practical and culturally sensitive, manner. The overriding policy objectives are reinforcement of independent oversight of NPO accountability and improvement of quality and accessibility to the public of information relating to accountability.

The recommendations within these two objectives emerging from the empirical analysis fall within three categories. All aim to institutionalise improved accountability. First, improvement of independent oversight of accountability matters from within the organisation, primarily through the composition and functioning of the *conseil d'administration*, should be the highest priority. Second, more understandable, comparable, and readily available financial transparency methods should be implemented. Third, the tax system should be more closely linked to accountability and tied to the first two objectives. This section recommends addressing these larger areas through targeted regulatory recommendations rather than broad reform or sweeping changes. This approach should assuage cultural and governmental sensitivities to change and increase both regulatory and

organisational efficiency. Finally, voluntary best practice recommendations and recommendations for the Comité related to the objectives of independent oversight and information accessibility to donors follow in Sections 8.3 and 8.4, respectively.

The recommendations supporting the policy objectives, while both regulatory and practical in nature, also logically relate to the theoretical findings. The recommendations address the implications in the current French nonprofit environment of Hansmann's trust, the related Rose-Ackerman and Salamon extensions of the theory, and the internal and external variables, to complete an updated empirical/theoretical/policy triangle. Both the regulatory and voluntary proposals address the types of accountability mechanisms necessary to support Hansmann's trust in the current competitive and accountability-driven environment, including the on-going challenge of the separation of the donor from the beneficiary of NPO services triggering the increased need for trust (Hansmann 1980, 846-7). Rose-Ackerman's suggestion of a process like strategic assessment underpins both the regulatory recommendations in this section and the voluntary best practice recommendations and recommendations for the Comité in Sections 8.3 and 8.4, respectively.

Of the key internal variables underlying the strategic assessment analysis – size, extent of international engagement, and initiative and profile of leader – size is the overriding variable for the policy recommendations. International engagement becomes a second-tier concern for both independent oversight and financial transparency. Leadership depends on the individual but is inherent in the recommendations insofar as many require leadership initiative. The policy recommendations also address the regulatory external variables accountability regulation and tax policy. None address the welfare state environment directly in light of the separation in respondents' view of the welfare state and accountability. Finally, implementation of these policy recommendations should de facto result in diminished risk of failure of accountability leading to scandal and/or mitigation of the impact in the event of scandal arising from intentional, unpreventable misconduct.

### **8.2.1 Accountability Regulatory Recommendations: 1901 Law Modifications – Separating Fund-Raising Organisations**

The threshold policy recommendation is to modify the pivotal 1901 Law to distinguish between those associations fund-raising from the general public and those that do not (including ARUPs).<sup>469</sup> Segregating fund-raising associations targets the unwieldy coverage from the perspective of accountability of the 108-year old 1901 Law addressed in Section 1.3.1.<sup>470</sup> This threshold segregation of fund-raising NPOs underlies all subsequent regulatory and best practice policy recommendations. Foundations and FRUPs that fund-raise from the public should be segregated as with 1901 Law associations and ARUPs and subject to the same independent director, financial expertise, and audit committee requirements discussed in Section 8.2.2 below. While foundations are not limited by the 1901 Law association practices regarding election of *administrateurs* by members, many foundations do not elect appropriately skilled and independent *administrateurs*.<sup>471</sup> As discussed in Section 1.3.1, the overriding consensus among respondents is that the decisive criterion for common application of standards is fund-raising from the general public. Most generally, the 1901 Law, law governing ARUPs, and related regulation should impose on fund-raising associations and foundations a level of accountability that assures access to information relevant and adequate to making the “investment” decision that charitable giving implies (e.g. United Way 2008a).<sup>472</sup>

This global separation of fund-raising and non-fund-raising organisations relates to the theoretical framework. In contrast to fund-raising associations, associations funded from membership contributions may require a lower standard of general accountability because the cost of the membership fee relative to membership benefits is a clear, in some cases, commercial choice. Although unproven, the necessary accountability effort should be lower among co-members of a tennis club, for example, all of whom pay the same

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<sup>469</sup> Direct modification of the 1901 Law may prove politically impossible. An alternative would be to address the separation within each of the subsequent laws and best practice recommendations.

<sup>470</sup> As noted in Section 1.3.1 “*Associations and the Associative Sector*,” the 1901 Law covers approximately 1.1 million associations. The variation in sector of activity, size, management structure, relationship to government, and interaction with the public through fund-raising and/or service delivery complicates such broad application of a single law (Tchernonog 2007b, 31). See Appendices 1-B and 1-G.

<sup>471</sup> See Section 1.3.1.

<sup>472</sup> See Section 3.2.1 on confusion in existing regulation. Certain laws do distinguish fund-raising organisations somewhat (e.g. the law requiring a Statement of Use of Funds, which must be publicly available at the association’s head office) (French Government 1991a, Articles 3 and 4 respectively). However, there is no systematic and clear regulation of organisations generating revenues from fund-raising.

membership fee and enjoy the same rights but none of whom give solely for the benefit of others.<sup>473</sup>

### **8.2.2 Accountability Regulatory Recommendations: Requirements for Independent Oversight – Independent Administrateurs, Financial/Accounting Expertise Requirements, and Audit Committees**

The second over-arching regulatory recommendation addresses the lack of independent, expert oversight of accountability matters in a member-elected *conseil d'administration* system through enhanced regulation of independent financial expert *administrateurs* and a modified version of US-style audit committees. The objectives are to address the governance and experience inadequacies resulting from member-elected *administrateurs* and to impose independent, more objective checks and balances.<sup>474</sup> Accountability regulation should be modified to require both a minimum number of independent *administrateurs* (as defined below) and a minimum number of *administrateurs* with financial, accounting, and/or governance expertise (which may overlap). These requirements should apply to all associations and foundations fund-raising – whether from the general public and/or government/corporate/institutional donors – above a minimum size threshold (based on annual revenue as in the CNIA).<sup>475</sup> The appropriate level of this threshold would depend on an in-depth analysis of the number of organisations at various revenue levels and closer investigation of the governance practices of the smaller organisations.

First, member-elected *conseil d'administrations* should generally be supplemented by a requirement of at least one-third independent *administrateurs*.<sup>476</sup> Ideally, a majority would be independent, particularly for the largest, more complex organisations such as the international NPOs. However this is unlikely to succeed from a legislative and/or cultural

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<sup>473</sup> Note the relationship to Hansmann's theory. In the case of clubs the purchaser is essentially the consumer (e.g. of membership benefits) (Hansmann 1980, 892-3). Therefore, the alignment mitigates the reliance on trust (as opposed to the classic scenario of fund-raising NPOs of separation of the "purchaser" (i.e., the donor) and the beneficiaries). Commercial NPOs fall in between the two as requiring accountability but less trust given the absence of information asymmetry (Hansmann 1980, 843). Hansmann notes other reasons for clubs adopting the nonprofit status, such as search for a common social status and lack of need to distribute dividends (1980, 892-3).

<sup>474</sup> See Section 4.2.1 "Independent Directors."

<sup>475</sup> The CNIA requires \$2 million in revenue (California State Senate 2004, Section 12586 (e)(1)). All of the respondents in both groups would meet this threshold. See Appendix 1-G.

<sup>476</sup> See Sections 7.2.1 and 7.2.3 for the failure of governance in the member-driven system of electing *administrateurs*, as well as the role of lack of independent expert oversight in the major scandals.

perspective in light of the historically rooted tradition of freedom of association.<sup>477</sup> The definition of independent would be borrowed from the US model in Section 4.2.1.<sup>478</sup>

Second, the *conseil d'administration* should be required to have a minimum of one *administrateur* with financial, accounting, and/or investment expertise and experience (perhaps more for the larger, more complex organisations). Financial expert *administrateurs* may overlap with fulfilment of the independent director requirement. An independent, expert perspective would significantly improve oversight of accountability matters, particularly conflicts of interest, internal controls, and relationships with *commissaires aux comptes* and other auditors – largely by making an audit committee possible. (See below.)<sup>479</sup>

The independent and expert director requirements would not unduly interfere with the democratic philosophy of associations or the process of member election of *administrateurs*. Members would still nominate and elect the independent and expert *administrateurs*. They would just be required to elect a specified number of the total number of *administrateurs* with a specified profile. Reflection on appropriate composition of the *conseil d'administration* in terms of profile of *administrateurs* is crucial to protect the organisation from failure of accountability, as well as to protect innocent *administrateurs* and management individually in such a case.

Third, regulations should require a US-style audit committee for organisations above the same specific size threshold as for independent expert *administrateurs*. The audit committee is an extension of, and depends on, both the independent *administrateur* and expert *administrateur* requirements explained above and rendered de facto impossible by the current system of member-appointed *administrateurs* in 1901 Law associations (Soublin interview 2007). Audit committees should comprise at least two (and in any case a majority of) independent *administrateurs* with financial and accounting experience.<sup>480</sup> The recommendation adapts US models to the French *commissaire aux comptes*

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<sup>477</sup> See Section 4.2.1 “Independent Directors.” See also Section 5.3.2 “The Comité and International Standards” on cultural resistance within the Comité process of electing independent directors.

<sup>478</sup> This definition would exclude anyone employed by, paid any salary, fees or other remuneration by, or engaged in any commercial operations with the organisation, any of its employees or affiliates. Independent *administrateurs* could not be a member of the executive committee/bureau of, or provide consulting or legal services to, the NPO (US Government 2002, Section 301(3); Jackson 2006, 54). Board service on other competitive and/or commercially related organisations or government entities should also be excluded.

<sup>479</sup> See Section 4.2.1 for Soublin’s support of independent directors by praising the US “trustee” role that is deemed to oversee an association’s assets “in trust” (Soublin call December 2007; e.g. California Government 2006, Section 12582).

<sup>480</sup> One outside non-*administrateur* financial or accounting expert could be permitted as an alternative in compelling circumstances such as temporary lack of expertise on the *conseil d'administration*.

procedures, perhaps re-organising existing finance committees or the *bureau* to segregate audit oversight (US Government 2002, Section 301; California State Senate 2004, Section 12586(e)(1)).

The primary purpose of the audit committee is to institutionalise – internally and legally – a relationship between the external auditors (the *commissaires aux comptes*) and the independent *administrateurs*.<sup>481</sup> This allows a cross-check on management's policies, procedures, and cooperation with auditors, as well as the scope and content of the audit and selection of auditors, free of management conflict of interest or biased perspective. Independent *administrateurs* also assess financial risk and address unusual events (e.g. the handling of unexpected tsunami income or fraud).<sup>482</sup>

Audit committees could be adopted on a voluntary basis absent a regulatory solution. In addition, the recommendation is to extend audit committees to voluntary best practice even for smaller organisations that are not required by law to prepare formal external audits (addressed in Section 8.3.2) following Independent Sector guidelines for the US (Jackson 2006, 91; Panel on the Nonprofit Sector 2007, No. 21, 20).

### 8.2.3 Accountability Regulation: Universal Disclosure Form – Alternative Modular Disclosure

Presently there is no publicly available filing of updated important financial and organisational information for associations and foundations in France. The policy recommendation is to implement a universal annual disclosure form publicly available on-line similar to the Internal Revenue Service Form 990 but adapted to French regulations (USGDTIRS 2007b and 2008a). As with the independent director, financial expertise, and audit committee requirements, the universal disclosure form would apply to organisations fund-raising from the general public under the amendment proposed in Section 8.2.1 (Organisations 1, 7, 8, B, K, and I particularly supporting this idea).<sup>483</sup> This form would replace, in whole or in part, a range of other filings currently required.

The key objectives of a universal disclosure are to establish a base for both initial approval of legal establishment of association and foundation status and on-going updated

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<sup>481</sup> See Table 2-1 and Section 4.2.1 “Audit Committee.” The audit committee, like all other *conseil d’administration* committees, should have a written charter detailing responsibilities. Ultimate approval of the accounts and hiring of the auditors should, in most cases, require a full *conseil d’administration* vote on the basis of audit committee recommendation.

<sup>482</sup> See Sections 7.2.1 and 7.2.3.

<sup>483</sup> No respondents opposed the idea if efficiency were enhanced.

reporting.<sup>484</sup> In addition, the universal disclosure form would begin to address respondents' criticisms of reporting requirements: inconsistency in form and application; random controls (e.g. unpredictably timed l'IGAS or Cour des comptes audits); inadequate compliance and enforcement; and failure of regulatory authorities to read the documents.<sup>485</sup>

The form would have a core disclosure section with the most essential financial and organisational information guaranteeing a minimum basis of transparency for individual and institutional donors. The structure would allow for incremental additional disclosure addressing specialised circumstances (e.g. international expansion) or characteristics (e.g. size) to be completed only as applicable (modelled on the Form 990 (USGDTIRS 2008a)). Efficiency at all size levels should be enhanced because only those organisations triggering certain requirements would complete the more detailed, time-consuming, and costly sections. Small organisations would, however, still be required to complete the basic form (thereby addressing the Zoe's Ark case).

The universal disclosure form would enhance the quality and accessibility of accountability efforts.<sup>486</sup> First, the exercise of preparing a publicly available form disciplines management and should improve the quality of disclosure. The process also educates the *conseil d'administration* and obligates the *conseil d'administration* to review the most important financial matters (including management compensation, major risks, and general financial health) and other organisation issues – all in an efficient “once a year in one document” manner that is currently impossible with the disparate system.<sup>487</sup> An annual filing ensures availability of updated, consistently presented information.<sup>488</sup> Third, a web site (perhaps modelled on the Internal Revenue Service site) could publish comparable information to the general public at no cost. However, as currently even many of the Comité members and Control Group respondents do not publish all information on-line, the comparability element is likely to trigger some resistance in the sector. The Comité only started publishing its own financial information on-line in May 2008 (although not legally required to do so) as a model to members. Due to on-going objection from members the

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<sup>484</sup> The form should be useable for ARUPs and FRUPs as well, with additional information required as necessary to meet the more substantial legal requirements.

<sup>485</sup> See Section 3.2.1 “*Empirical Findings: Confusion and Criticism Surrounding French Accountability Regulation.*”

<sup>486</sup> Even if all donors do not have the incentive and/or capability to read and assess the disclosure, some will. Moreover, the universal form should improve readability of an organisation's information over time.

<sup>487</sup> The current changes to the Form 990 even include a box to check regarding whether the full board reads the Form 990 (USGDTIRS 2008a, Part VI A 10).

<sup>488</sup> Even the Foreign Affairs Commission Report emphasised the importance of NPOs' considering accountability from the donors' perspective and the need for simplicity (National Assembly Foreign Affairs Commission 2007, 32).

Comité is not likely to change its policy not to publish comparable information relating to member organisations but should require member organisations to publish key financial and accountability-related information on their own web sites (Comité senior management calls/interviews 2007 and 2008).

The question of resources should not preclude implementation of a universal disclosure form in France. The consistent format, number, and types of filings and streamlining of disclosure to only the necessary information should improve efficiency and the overlap respondents complained of – particularly after the first year when the basic information and formatting need only be updated.<sup>489</sup> The administrative burden and cost to controlling agencies such as l'IGAS and the Cour des comptes, and even to individual and institutional donors, should be reduced when all use the same standard base.<sup>490</sup>

Finally, even if resource issues limited the extent of regular review of NPOs, the information would be readily available should there be a need for an audit by tax or other governmental authorities or donor institutions due to unusual circumstances (e.g. suspicion of a failure of accountability).<sup>491</sup> While it is impossible to force an increase in reading of required documents by officials, a common format and organised system should improve authorities' ability to target and efficiently review organisations of interest. Nonetheless, given the limited likelihood of government implementation of this proposal, the range of organisation up and more basic legislative proposals should take priority.

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<sup>489</sup> An alternative to universal disclosure could be at least a few core modules of basic financial and organisational information that the Cour des comptes, l'IGAS, the tax authorities, and French state donor organisations could agree to use as a baseline.

<sup>490</sup> Information specific to governmental/corporate/institutional donors could be requested in addition to the recognised and accepted base, such as more detailed justification of use of funds or program effectiveness, and perhaps not made public as appropriate.

<sup>491</sup> In ordinary circumstances, the majority of the organisations will not go on to be audited by l'IGAS, the Cour des comptes, the Minister of Foreign Affairs, or other government divisions. Even for those that do, the starting point could be this preliminary review step. Ideally, there should also be a joint centralised authority combining tax and compliance review of the universal forms. However, the government is unlikely to create such an entity (meeting with Ministry of Finance representatives 2007).

#### **8.2.4 Tax Regulatory Recommendations**

The overriding policy objective for the tax system should be to link the tax deduction privileges more closely to accountability. Within this accountability focus, the two proposed modifications to current tax regulation seek to ensure that in the newly internationally competitive tax deduction scheme regulators maintain fair treatment in the application of threshold amounts and availability of deductions among different types of associations and foundations.<sup>492</sup> These recommendations are complicated by the French state's numerous non-tax objectives tied to the tax system (and resulting in part from the welfare state environment).<sup>493</sup> In particular, the government's prioritisation of certain areas of interest in delivery of social services such as food and shelter for the needy and reintegration into society emerges.

First, the dual deduction scheme allowing a deduction of 66% of the value of a gift from income taxes but 75% in the case of a limited group of NPOs offering food, shelter, and other services to the needy is confusing to donors and considered unfair.<sup>494</sup> A compromise position might be to allow the higher tax deduction rate for organisations that comply with a certain number of accountability requirements in addition to those "grandfathered" in by the current regulations (suggested by Director General of Organisation 25; Institut Montaigne 2004, 13). Nonetheless, eliminating the dual level deductions requires challenging the government's prioritisation of services to the needy and not exclusively fiscal concerns.

One means of efficiently monitoring such accountability-based tax privilege would be the universal disclosure form – either the basic form or additional appendices. Such a form would also eliminate the irregular process of approving charitable deductions through which donors often learn of the availability of the deduction (or refusal of the request for deduction) only post-gift and post-submission of the tax receipt.<sup>495</sup>

Second, as addressed in Section 3.2.2, the recent addition of a deduction from the wealth tax for donations to FRUPs engaged in specified education and reintegration activities unfairly favours certain charitable foundations over ARUPs because of their foundation structure. The main criterion should be the level of accountability overall rather

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<sup>492</sup> See Section 3.2.2.

<sup>493</sup> See Sections 2.3 and 7.1.

<sup>494</sup> See Section 3.2.2.

<sup>495</sup> See Section 3.2.2.

than the type of legal structure – even within a specified service delivery area.<sup>496</sup> At a minimum, associations engaged in the same priority areas as foundations benefiting from the wealth tax deduction should be granted the same wealth tax deduction privileges. Preferably, privileges should be linked to NPOs' compliance with accountability measures (including voluntary efforts such as those noted in Section 8.2.2) rather than penalising associations or ARUPs as a group. Nonetheless, this recommendation also faces potential political challenge given the long history of the strategic outsourcing to NPOs on the basis of the welfare state's inability to finance and/or lack of competence or capacity certain social services.<sup>497</sup>

### **8.3 Voluntary Best Practice Recommendations**

In order to address the importance of voluntary accountability mechanisms to increasing accountability both in the US model and *de facto* in the French environment, the policy analysis includes voluntary best practice recommendations beyond the law and existing Comité requirements. While the industry approach in the US has been aggressive adoption of voluntary mechanisms, partly in an effort to forestall excessive legislative intervention, this balance between regulatory and voluntary should not be interpreted as a temporary status (Panel on the Nonprofit Sector 2007, Introductory Letter). Rather, given the tremendous variety in size, degree of international engagement, sector of activity, and management structure, the ideal accountability should balance regulatory compliance with the most relevant and effective organisation-specific voluntary efforts on an on-going basis.<sup>498</sup>

The highest priority recommendations all target overriding policy objectives of improved independent oversight and accessibility of NPO accountability and, therefore, accompany the recommendations under Section 8.2. Similarly, the recommendations

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<sup>496</sup> The French state's policy unjustly focuses on financing certain government social service priorities and discriminating against even ARUPs within those areas, all of which have endured lengthy pre-approval processes and met stringent government oversight standards similar to FRUPs (e.g. Archambault 1997b, 5; Berthet call 2008; Teissier 2008). Moreover, as the rationale for this distinction is not widely understood, the government appears to suggest through this tax initiative that associations may be less trustworthy and/or of less benefit to society than foundations (Berthet call 2008).

<sup>497</sup> See Section 2.3.

<sup>498</sup> As noted above, some US and French regulation distinguishes at least among size, and at certain levels, international engagement but also among other categories of organisations.

consider both the strategic assessment process (including the relevance of the internal and external variables) and the French legal and cultural constraints.

### **8.3.1 Written Conflict of Interest Policy Declarations**

The current weaknesses relating to conflicts of interest include the absence of detailed written policies, inconsistency in organisational oversight of conflicts, failure to address most non-financial conflicts, and failure to address the appearance of conflicts.<sup>499</sup> Conflicts of interest are at the heart of the Sarbanes-Oxley Act and the policy recommendations set forth in Section 8.2 above addressing weaknesses in independent oversight of accountability matters by French NPO *conseils d'administration*.

The recommendation is to supplement the existing French law requirements with best practice, including both substantive assessment of non-financial conflicts and a pre-emptive annual declaration form (Panel on the Nonprofit Sector 2007, No. 3, 9). A written policy signed by *administrateurs*, senior staff, and “every person who has the ability to influence decisions of the organization,” together with a questionnaire disclosing all financial and non-financial conflicts (including professional and voluntary service to other for-profit entities or NPOs as appropriate) of such persons and/or family members, should be collected annually (Panel on the Nonprofit Sector 2007, No. 3, 9). An appropriate *conseil d'administration* committee such as the audit or executive committee, as well as the *commissaires aux comptes*, should review the declarations.

Such a policy permits appropriate management of both financial and non-financial conflicts of interest and the appearance of conflicts of interest (such as the l'ARC examples).<sup>500</sup> This approach also reminds *administrateurs* and others to disclose their conflicts on an on-going basis when necessary (e.g. at a meeting when a relevant topic arises).

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<sup>499</sup> See Section 4.2.1 “*Conflicts of Interest*.”

<sup>500</sup> See Sections 7.2.1 and 7.2.2 on conflicts of interest and scandal.

### **8.3.2 Financial Review**

Organisations not legally required to have externally audited financial statements (i.e., associations with less than €153,000 in revenue), should nonetheless consider audited financial statements. Both the Cour des comptes tsunami reports and Independent Sector recommend an audit or financial review from an outside accountant even if not legally required (Cour des comptes 2007, 19; Panel on the Nonprofit Sector 2007, No. 21, 20).<sup>501</sup> NPOs that do have a financial review or audit, whether or not legally required, should also consider the audit committee addressed in Section 8.2.2 (Panel on the Nonprofit Sector 2007, No. 21, 20).

### **8.3.3 Whistleblower Mechanism**

Although the whistleblower mechanism is one of only two Sarbanes-Oxley Act legally mandated accountability mechanisms for US NPOs, given the deep cultural resistance and even legal barriers to whistleblower procedures in France, the policy recommendation falls within the best practice discussion rather than the legal policy category (US Government 2002, Section 806).<sup>502</sup> All organisations regardless of size should consider such a confidential mechanism given the low cost and minimal effort involved and the potential utility in prevention and identification of failure of accountability. The whistleblower procedure may be a simple on-line service allowing confidential e-mails to report wrong-doing at a nominal cost (e.g. The Network 2008). The internal variables are relevant as the larger and more complex and international the organisation, the more compelling the whistleblower mechanism becomes. In particular, French NPOs that are part of a US-based network should consider the consequences of accountability procedures inferior to their US counterparts.<sup>503</sup> The whistleblower mechanism should be linked to the audit committee or, absent an audit committee, the *bureau* to review any complaints.

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<sup>501</sup> See Section 7.2.1.

<sup>502</sup> See Section 4.2.1 “Whistleblower Mechanism.”

<sup>503</sup> See Section 4.2.1 “Whistleblower Mechanism” and Table 4-1.

## 8.4 Policy Recommendations for the Comité de la Charte<sup>504</sup>

Policy recommendations for the Comité are important because of its unique position as the only nonprofit self-regulatory organisation in the accountability field to influence the French nonprofit sector and potentially the government. In addition, the Comité directly influences 56 (and growing) sector leaders, who in turn influence best practice among organisations and expectations of donors and the public (Soublin call October 2008). The Comité recommendations emphasise disclosure and include only recommendations that all could be equally relevant to organisations outside the Comité that consult the Comité as a guideline on specific issues.<sup>505</sup> Key areas include: first, understandability of financial statements; second, context for financial ratios and management compensation; third, clarification of the value of disclosure; and fourth, establishing a “materiality” standard for disclosure (as defined below). Moreover, all echo the themes throughout the mandatory and best practice policy recommendations: targeting independent oversight of accountability areas; tailoring international models appropriately to the French context; and efficiency. Further relationship to the theoretical framework and internal variables is noted as appropriate.

First, a concise commentary by management on key financial and operating trends would improve understandability of financial statements (including the Statement of Use of Funds).<sup>506</sup> The summary should address significant trends or changes in trends (e.g. a decline in a particular donor base or rising personnel costs). The summary should also emphasise extraordinary items (e.g. a political event or natural disaster such as the tsunami affecting financial matters, or change in strategy or mission) and any important points not readily understandable from reading the financial statements (e.g. calculations that may reflect policies on resource allocation such as division of the Director General salary among different categories).<sup>507</sup>

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<sup>504</sup> Soublin confirmed the validity of all of the proposals after thorough review of this section (call December 2008).

<sup>505</sup> The most recent example of such consultation was the Comité’s practice on the Statement of Use of Funds that has become used by non-Comité member NPOs (Soublin call April 2008). (See Table 3-1 and Section 3.2.1.)

<sup>506</sup> See Sections 1.4 and 3.1 “*The Sarbanes-Oxley Act and Accountability*” on donor attention to accountability information. A strong majority of respondents believe that the general public does not understand the Comité-required financial information, including the legally mandated Statement of Use of Funds.

<sup>507</sup> This is the author’s recommendation to the Comité and exceeds current US practice.

Second, financial ratios and disclosure of management compensation prove attractive financial disclosure, in part due to ease of readability. However, both require context in order to avoid miscommunication or opacity. The Comité should develop standard language explaining the risks of reliance on financial ratios (e.g. cost of fundraising or administrative costs relative to overall donor revenues) and how to read ratios (Comité 2008f). The Comité already provides guidelines on the content of the numerator and denominator. However, these guidelines still result in varied application and target the organisation preparing the ratios and not the reader (Comité 2008f; e.g. Organisation 18). In addition, disclosure of management compensation numbers should provide adequate context. Examples include practices across NPOs in a particular sector of activity or relevant economic and/or NPO compensation trends in France (e.g. Independent Sector 2007, 2 and 10-11).

Third, in light of both the respondents' overriding concern with the potential impact of scandal, together with the assumption that donors and the public read organisation disclosure with failure of accountability in mind, the Comité should draft a succinct standard statement explaining the appropriate level of expectations regarding the protection that the Comité logo and underlying accountability practices can offer. In addition to the Comité's current web site statement regarding the purpose and meaning of Comité accreditation, the Comité should more clearly communicate the extent of appropriate reliance on organisations' disclosure in prevention and detection of scandal (currently absent from the Comité 2007 annual report) (Comité 2008o; Baudet (Le Monde.fr) 2007). In particular, the fact that the Comité targets best practice in governance and transparency but cannot (like any NPO) investigate or prevent intentional fraud (e.g. l'ARC) or other illegal behaviour (e.g. Zoe's Ark) should be emphasised. Such a statement could be similar to the major audit firms' audit letters that focus on procedures covered and explicitly do not guaranty absence of fraud (e.g. The David and Lucile Packard Foundation 2003).

Fourth, an over-arching standard of "materiality" for disclosure is needed among Comité members (and ultimately across the sector). Currently, the Comité's *censeur* review relies somewhat on individualised judgments and results in varying levels of review of dossiers, for example some focusing excessively on minor details or small regional sites. The policy recommendation is to adopt a concept of "materiality" modelled on the reasoning of corporate disclosure in the US: providing all "material" information that a "reasonable donor" would take into account. The level of disclosure required for most public companies in the US or France would be financially and organisationally untenable

for NPOs in both countries (e.g. United States Securities and Exchange Commission 2008; Keating and Frumkin 2000, 20-21). However, the standard of all information that a “reasonable donor” would consider important in making a decision to give to a NPO could guide the organisations and ensure donors and the public adequate, but not excessive, information.<sup>508</sup> Moreover, the materiality assessment would support donor trust by effectively, efficiently mitigating Hansmann’s information asymmetry.

Finally, the Comité’s reflections should consider the relationship between size and accountability requirements apparent in the trust theory, the empirical findings, US practice, and Rose-Ackerman’s cost-benefit analysis of “signalling” trustworthiness (e.g. Independent Sector’s recommendation of financial oversight in a “manner appropriate to the organization’s size and scale of operations”) (Panel on the Nonprofit Sector 2007, 20).<sup>509</sup> Even if in general the Comité maintains uniformly applicable standards across different NPO sizes, the relatively significant burden of joining the Comité and on-going compliance for smaller organisations could be mitigated by a step-up in reaching eligibility criteria and/or compliance over a slightly longer time frame. In addition, reduced technical requirements that do not sacrifice the functionally key areas (e.g. conflicts of interest and disclosure) could reduce the cost of membership to smaller organisations. The materiality standard could also help protect against dedicating resources to unnecessary details. These suggestions parallel the multi-tiered approach in US law, including, for example, with the Form 990 varied filing requirements for different revenue levels (USDTIRS 2008a).

## 8.5 Conclusion

This chapter began with a targeted summary of the theoretical basis for the thesis and the empirical findings. The overview primarily aimed to offer perspective and refine key points for consideration for policy recommendations. Details of the findings were then addressed throughout the policy discussion.

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<sup>508</sup> Even if some donors that give for the “cause” would not pay attention to broad application of such a standard, *de facto* such donors might benefit from industry-wide (or at least Comité-wide) alignment of standards.

<sup>509</sup> Approximately one-third of Comité Group respondents felt that reaching out to expand membership to smaller organisations is an important method of increasing membership and therefore increasing accountability across the sector. Most Comité Group respondents opposed a two-tier set of requirements.

The policy recommendations target regulatory, voluntary best practice, and Comité requirements. All pre-suppose a regulatory separation of fund-raising and non-fund-raising associations within or related to the 1901 Law, ARUPs, and foundations. The policy objective should be assuring independent oversight of accountability matters and improving the quality and public availability of disclosure relating to accountability. This includes, in turn, on a regulatory level independent expert *administrateurs*, more effective and accessible disclosure of financial and organisational matters, more effective, efficient regulatory oversight processes such as the proposed universal disclosure form, and greater overlap between tax benefits and accountability measures taken. In addition, organisations should consider a series of voluntary best practice recommendations addressing specific issues key to independent oversight and accessibility of accountability-related information. High priority voluntary accountability mechanisms include a written policy and declaration addressing conflicts of interest, a financial review alternative to audited financial statements, and the whistleblower mechanism. Finally, recommendations for the Comité also all buttress these specific voluntary areas and the larger objectives of independent oversight and accessibility of accountability. The Comité's focus should be on clarifying disclosure: context for ratios and accountability-related information generally, as well as a materiality standard for disclosure.

The specific recommendations also aim to demonstrate sensitivity to the 1901 Law freedom of association objective and other cultural matters, as well as to integrate the relevant theoretical links. The internal and external variables discussed in the analysis of the empirical findings re-emerge in the policy recommendations at the level of the government, individual organisations, and the Comité. In particular, size and, secondarily, extent of international engagement should be considered in implementing almost all of the recommendations. The recommendations also address the two regulatory external variables, accountability regulation and the tax system. Conversely, the policy recommendations do not address the non-regulatory external variables, the welfare state and scandal. Both were widely perceived as less directly relevant to accountability decision-making and without apparent access points for change.

Finally, the research offers a tribute to the thoughtful, creative, charismatic leaders in the French nonprofit sector who have not waited for the external regulatory, tax, or even donor environment to inspire them toward significant improvements in accountability. Moreover, their individually conceived and implemented accountability efforts result in a marked collective impact on the sector. The future of the sector will depend in large part on

the French state catching up with these individuals and their organisations – aligning with the highest international standards of accountability in a global nonprofit environment while respecting the French cultural and nonprofit tradition. The sector must reconcile the concept of independent oversight with democratic governance in order to keep pace within France and internationally. In addition, organisations cannot hide behind the 1901 Law – and/or confusion of, or gaps in, the network of accountability regulations – as an excuse for anything less than full financial and organisational transparency. Finally, in an era of interdependence of government (including an increasingly advantageous French tax system), the business world, and the French nonprofit sector, sector leaders must view the general public as a stakeholder in accountability and apply the same standards of accountability to all stakeholders.

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<sup>524</sup> Dates correspond to the most recently updated version of the Internal Revenue Code of 1986 as per Bluebook Guide recommendations for citing updated statutes ([http://www.ll.georgetown.edu/guides/bluebook5\\_7.cfm](http://www.ll.georgetown.edu/guides/bluebook5_7.cfm))

<sup>525</sup> The older versions of the Form 990 is also of interest for evolution in requirements. United States Government Department of the Treasury Internal Revenue Service. Form 990 Return of Organization

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<sup>526</sup> This reference provides the historical background and chronology of developments for the other Internal Revenue Code items cited (page 1).

<sup>527</sup> For further detail on other sections of Section 501 see United States Government Department of the Treasury Internal Revenue Service (2008). "United States Internal Revenue Code." Title 26, Subtitle A, Chapter 1, Subchapter F, Part 1, Section 501. Retrieved October 24, 2008, from <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t26t28+444+2++%>.

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<sup>528</sup>Earlier versions were retrieved November 25, 2008, from [www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1251-1300/sb\\_1262\\_bill\\_20040213\\_introduced.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1251-1300/sb_1262_bill_20040213_introduced.pdf), [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1251-1300/sb\\_1262\\_bill\\_20040826\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1251-1300/sb_1262_bill_20040826_enrolled.pdf), and <http://law.justia.com/california/codes/gov/12580-12599.7.html>.

<sup>529</sup>Senate Bill S.4836—B and Assembly Bill 10239 have not been passed but are of value for historical context.

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<sup>530</sup> For general background, see Comité de la Charte Dossier De Presse (2008g).

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Comité de la Charte. (2008s). "Vous êtes journaliste| Communiqués de presse." Retrieved January 28, 2009, from  
[http://www.comitecharte.org/ewb\\_pages/j/journaliste\\_communiques.php](http://www.comitecharte.org/ewb_pages/j/journaliste_communiques.php).

#### **IV. Interviews (other than respondents of Comité Group and Control Group)<sup>532</sup>** by Susan Liautaud

1. Archambault, Edith (Professor Emeritus, Université Paris 1 – Panthéon-Sorbonne), discussion in Paris, December 10, 2008 (on Comité de la Charte and accountability priorities)
2. Arrillaga, Laura (Founder, SV2), discussion in Palo Alto, California, August 28, 2007 (on SV2)

<sup>531</sup> The related Rapport financier du Comité de la Charte for fiscal year 2007 is available on request but is not available on the web site (2008o, 18).

<sup>532</sup> Certain of the interviews and calls are not directly cited in the text but provided important background information and/or a second confirmation of various points.

3. Bazin, Sébastien (Principal, Managing Director Europe, Chief Executive Officer of Colony Capital SAS), call, October 7, 2005 (on structuring nonprofit initiatives in the real estate sector)
4. Berthet, Eugénie (Avocate at Landwell & Associés/PricewaterhouseCoopers Paris)
  - a. call, February 18, 2008
  - b. teleconference, September 2, 2008, also including Patrick Frotiée (Partner specializing in nonprofit work), Philippe Durand (Tax Partner), and Francis Chartier (Senior Manager) (all at Landwell & Associés/PricewaterhouseCoopers Paris) (on accountability regulation and accountability mechanisms in France)
5. Binder, Olivier (Senior Partner), meeting at Cejex-Alexen Paris office, November 22, 2007 (on impact of culture on nonprofit accountability and on public utility foundations)
6. Bradshaw, Patricia (Associate Professor, York University), call, August 6, 2008 (on contingency theory and consulting)
7. Charhon, Francis (Executive Director, Fondation de France), meeting at Fondation de France Paris, October 25, 2005
8. Chartier, Francis (Senior Manager at Landwell & Associés/PricewaterhouseCoopers Paris Office)
  - a. teleconference, January 7, 2008, with Patrick Frotiée (on VAMs important in the US and differences with implementation in France and increasing accountability in France)
  - b. teleconference, September 2, 2008, also including Eugénie Berthet (Avocate), Philippe Durand (Tax Partner), and Patrick Frotiée (Partner specializing in nonprofit work) (all at Landwell & Associés/PricewaterhouseCoopers Paris) (on accountability regulation and accountability mechanisms in France)
9. Cohas-Bogey, Cyrille (Executive Director, Comité de la Charte)
  - a. formal study interview at Comité de la Charte Paris office, September 12, 2007
  - b. call, November 20, 2007
10. David-Weill, Hélène (President, Musée d'Arts Décoratifs), discussion in Paris, April 2006 (on fund-raising practices for the new museum)

11. Dawson, Stephen (Co-founder, Chairman and Volunteer Executive, and Sloane, Nat (Co-founder, Vice Chair and Volunteer Executive, Impetus Trust), meeting at Impetus Trust London office, February 24, 2006 (on Impetus Trust)
12. de Guerre, Olivier (Co-Founder/Partner PhiTrust), meeting at PhiTrust Paris offices with Sébastien Gervais de Laffond (French venture capitalist), February 12, 2007 (on venture philanthropy and my research)
13. de Montalembert, André (Directeur – Contrôle, Comité de la Charte), interview, September 24, 2007 (on international issues and accountability generally)
14. de Torrente, Nicholas (Executive Director, Doctors Without Borders/Médecins Sans Frontières (MSF) USA)
  - a. discussion at MSF New York office, January 8, 2005 (on general matters and the December 26, 2004 Asian tsunami)
  - b. discussion at MSF event in London, January 10, 2008 (on a range of current accountability issues)
15. Doubleday, Diane (and colleagues) (Consultant, Mercer), multiple teleconferences in 2005-06 (on US best practice in compensation matters (particularly benchmarking and Internal Revenue Service intermediate sanctions) for service on the Lucile Packard Foundation for Children's Health Board)
16. Durand, Philippe (Tax Partner at Landwell & Associés/PricewaterhouseCoopers Paris)
  - a. call December 16, 2007 (on tax aspects of French NPOs)
  - b. teleconference, September 2, 2008, also including Eugénie Berthet (Avocate), Patrick Frotié (Partner specializing in nonprofit work), and Francis Chartier (Senior Manager) (all at Landwell & Associés/ PricewaterhouseCoopers Paris) (on accountability regulation and accountability mechanisms in France)
17. Fries, Richard (Visiting Fellow, London School of Economics), meeting at London School of Economics, November 2, 2006 (on general UK accountability issues)
18. Frotié, Patrick (Partner at Landwell & Associés/PricewaterhouseCoopers Paris, specialising in nonprofit work)
  - a. teleconference, January 7, 2008; with Francis Chartier (on VAMs important in the US and differences with implementation in France and increasing accountability in France)

- b. teleconference, September 2, 2008, also including Eugénie Berthet (Avocate), Francis Chartier (Senior Manager), and Philippe Durand (Tax Partner) (all at Landwell & Associés/PricewaterhouseCoopers Paris) (on accountability regulation and accountability mechanisms in France)

19. Hansmann, Henry (Augustus E. Lines Professor of Law, Yale Law School), call, September 11, 2008 (on confirming updated understanding of the trust theory)

20. Howell, Jude (Director of the Centre for Civil Society, London School of Economics and primary adviser for this thesis)<sup>533</sup>

- a. meeting October 25, 2006 (comments on thesis)
- b. meeting January 8, 2007 (comments on thesis)
- c. meeting, April 29, 2008 (comments on thesis)

21. Jaffe, Michael (Partner at Landwell & Associés/PricewaterhouseCoopers Paris), Philippe Durand (Tax Partner), and Eugénie Berthet (Avocate) (both at Landwell & Associés/PricewaterhouseCoopers Paris), teleconference, December 10, 2007 (on the French nonprofit tax system)

22. Kemoun, Ingrid (Executive Director, [jeveuxaider.com](http://jeveuxaider.com)), call July 10, 2007 (on the study and various aspects of the French nonprofit sector)

23. Le Grand, Julian (Professor, Social Policy Department, LSE Health, London School of Economics)

- a. meeting at London School of Economics, February 7, 2007 (Major Review Presentation)
- b. meeting at London School of Economics, April 30, 2007 with Dr. David Lewis (Reader in Social Policy, Department of Social Policy, London School of Economics) (comments on Major Review Presentation at London School of Economics)

24. Lucile Packard Foundation for Children's Health, interviews, November 2005 (with individual board members while author served as Chairman of the Committee on the Board (on Board governance))

25. Lucile Packard Foundation for Children's Health, interviews, September - November 2006 (board interviews while author served as Chair of Committee on the Board 2006 (on various governance issues))

26. Mangen, Steen (Program Director, European Social Policy, Department of Social Policy, London School of Economics and secondary adviser for this thesis), meeting, May 2, 2008 (comments on thesis)

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<sup>533</sup> Numerous other advising sessions with Jude Howell were omitted from the References as not directly relevant to citations.

27. Meier, Linda (Co-Chair, Stanford Campaign), meeting at Stanford University, March 31, 2008 (on current and past campaigns at Stanford University)
28. Miller, Doug (Founder, European Venture Capital Association)
  - a. meeting at Institute of Directors in London, July 6, 2006 (on EVPA business)
  - b. call, September 25, 2006 (on EVPA business)
29. Oddo, Philippe (Managing Partner, Oddo et Cie), meeting at Oddo et Cie Paris office, May 21, 2007 (on corporate social responsibility)
30. Paris, Christophe (Executive Director, AFEV), meeting at AFEV Paris office, December 12, 2005 (on governance issues)
31. Pratten, Belinda (Development Officer reporting to Karl Wilding, Head of Research), meeting at NCVO London, December 4, 2006 (on issues of trust, donor motivation, and NCVO initiatives such as Impact Coalition)
32. Robin, Jean (Executive Director, Fidesco), meeting in London, November 7, 2006 (on accountability research and donor issues)
33. Rose-Ackerman, Susan (Henry R. Luce Professor of Jurisprudence (Law and Political Science)), Yale Law School and Department of Political Science, Yale University), call, October 8, 2008 (on "signalling" trust and confirming strategic assessment process)
34. Salamon, Lester M. (Director, Center for Civil Society Studies, Institute for Policy Studies, Johns Hopkins University), call, September 24, 2008 (on trust as a replacement for accountability and recent US studies)
35. Soublin, Michel (President, Comité de la Charte)<sup>534</sup>
  - a. call, September 13, 2006 (on miscellaneous accountability issues)
  - b. meeting at Schlumberger Paris office, November 22, 2006 (on Comité restructuring, research proposal, trust, and interview process)
  - c. meeting at Schlumberger Paris office, December 29, 2006 (confirming research proposal approval by *conseil d'administration* and on the restructuring of Comité (need for independent board (profile and election process), restructuring commission not under board authority, and use of strategic plan as mechanism for accountability)
  - d. call, January 11, 2007 (on various issues relating to the study)

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<sup>534</sup> Numerous other informal calls and e-mail exchanges with Michael Soublin are not noted in the References.

- e. formal study interview at Paris office, October 16, 2007
- f. call, October 27, 2007 (on using Comité as research case study, questions, potential Comité structural changes, and lack of impact of tax changes in France)
- g. call, December 17, 2007 (on independent directors and structure of US-style boards of directors versus French *conseils d'administration*)
- h. meeting at Comité de la Charte Paris office, February 19, 2008 (on comments on report to Comité members on summarising research findings)
- i. call, April 29, 2008 (on the details of the Statement of Use of Funds)
- j. call, June 20, 2008 (on paying *administrateurs* and impact of the 2004 Asian tsunami on giving)
- k. call, October 28, 2008 (on miscellaneous accountability and Comité issues)
- l. meeting at Comité de la Charte Paris office, November 24, 2008 (on update on thesis issues)
- m. call, December 19, 2008 (confirming comments on policy recommendations and corrections in draft chapters)

36. Tribunal de Grande Instance de Créteil call January 14, 2009 (regarding publication of Zoe's Ark court documents)<sup>535</sup>

#### **V. Conferences and Group Meetings Attended**

1. Comité de la Charte Conference on Financial Transparency, at Ordre de Malte Paris office, May 20, 2008 (author attended as a guest speaker on international perspective with Denis Metzger, President, Action contre la Faim; Stéphane Rozès, Directeur Général et Directeur du Département Opinion-Corporate de l'Institut CSA (Conseil Supérieur de L'Audiovisuel) and Maître de Conférence en Sciences Politiques à Sciences Politiques; and Michel Soublin, President, Comité de la Charte)
2. Comité de la Charte General Assembly (assemblée générale), at Ordre de Malte Paris office, May 20, 2008
3. Common Purpose Festival of Leadership, at Peterhouse College, Cambridge, England, July 2, 2008

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<sup>535</sup> Call made by research assistant.

4. EVPA Conference on Venture Philanthropy, at Le Sénat, Paris (Fiona Halton remarks, Chief Executive of Pilotlight UK), September 15, 2006
5. Léo Jégard & Associés: Conférence: Appel à la générosité du public: Le nouveau compte d'emploi des ressources répond-il aux besoins des donateurs ? (Avis 2008-08 du CNC: ce qui change? ...), at Maison des Associations de Solidarité in Paris, May 27, 2008 (on Statement of Use of Funds)
6. Les 2èmes Ateliers de la Philanthropie PhiTrust, at Paris office of Fondation Simone et Cino del Duca de L'Institut de France Paris office, June 28, 2007. Retrieved December 12, 2008, from [http://www.ethinvest.asso.fr/offres/gestion/actus\\_all\\_80\\_1179-1/phitrust-jeudi-28-juin-les-2emes-ateliers-de-la-philanthropie.html](http://www.ethinvest.asso.fr/offres/gestion/actus_all_80_1179-1/phitrust-jeudi-28-juin-les-2emes-ateliers-de-la-philanthropie.html).
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<sup>536</sup> The Zoe's Ark Press section includes both articles that are directly cited in the thesis (indicated by a "\*\*\*") and additional articles that were used for backup verification in light of the limited primary sources available at the time of this thesis. See also Note 397, *supra*. All items marked with a "\*\*\*" indicate that the original source is no longer available on the Internet. In some cases, an abstract is available as noted.

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## VII. E-mails<sup>537</sup>

### To Susan Liautaud

1. Arrillaga, Laura (Co-Founder, SV2), April 16, 2008 (on Social Venture Partners International and SV2)
2. Berlincourt, Christine (Administrator, Comité de la Charte)
  - a. November 21, 2008 (on average gifts for Comité members)
  - b. December 15, 2008 (on founding members of the Comité)
3. Berthet, Eugénie (Avocate at Landwell & Associés)
  - a. February 15, 2008 (on wealth tax and various issues relating to foundations)
  - b. March 21, 2008 (on reviewing tax summary for accuracy)
  - c. April 30, 2008 (on reviewing tax exemption for donors)
  - d. August 19, 2008 (on accountability regulations for charities)
  - e. September 8, 2008 (on law for foundations equivalent to the 1901 law for associations)
  - f. September 15, 2008 (on law for foundations equivalent to the 1901 law for associations)
4. Bradshaw, Patricia (Associate Professor, York University), June 4, 2008 (on contingency theory and consulting)
5. Chartier, Francis (Senior Manager, PricewaterhouseCoopers Audit, Paris Office), September 2, 2008 (on legal texts relating to associations and foundations)
6. Clegg, Sally (Research Publications Officer, Charities Aid Foundation), May 23, 2008 (on the definition of social security contribution as used in CAF documents)
7. Cohas-Bogey, Cyrille (Executive Director, Comité de la Charte)
  - a. March 25, 2008 (on comments on the Internal Revenue Service Form 990)
  - b. May 14, 2008 (on Conseil de Deontologie)
  - c. September 1, 2008 (on an organisation being expelled from the Comité)

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<sup>537</sup> This selection of e-mails was cited in the thesis and represents only a small number of the numerous e-mails used to confirm data.

- d. September 1, 2008 (on 4 organisations refused by Comité in 2007)
- e. September 18, 2008 (on document retention policy, independent directors and difference between Comité de Surveillance and Commission d'Agrement de Contrôle)
- f. December 8, 2008 (on Comité limitations on religious organisations)

8. Durand, Philippe (Tax Partner at Landwell & Associés/PricewaterhouseCoopers Paris), May 22, 2008 (on tax issues, FRUP status, and foundation boards)

9. Grant, Robert N., (US Attorney at Law specializing in estate planning and nonprofit institutions)

- a. March 31, 2008 (regarding California state law on nonprofit organisations and director/officer insurance)
- b. December 3, 2008 (on director duty of care and duty of loyalty)

10. Howell, Jude (Professor and Director of the Centre for Civil Society, London School of Economics)

- a. June 25, 2008 (on comments on thesis)
- b. September 17, 2008 (on Draft Chapter 1: Introduction)
- c. September 27, 2008 (on Draft Chapter 7 (Conclusion))
- d. March 24, 2009 (on final comments on thesis)

11. Jackson, Peggy (Co-Author, Sarbanes-Oxley For Nonprofits and Sarbanes-Oxley For Small Businesses), September 16, 2008 (regarding Sections 802 and 806 of the Sarbanes-Oxley Act of 2002 and their application to nonprofits)

12. Joly, Caroline (Avocate, Landwell & Associés), September 5, 2008 (on actions regarding fraudulent acts of charities management)

13. Quenin, Marine (Former Executive Director Samusocial International), November 30, 2008 (confirming revenue level for appendices)

14. Soublin, Michel (President, Comité de la Charte)

- a. January 6, 2007 (responding to Independent Sector Accountability Checklist and Comité de la Charte requirements)
- b. February 10, 2007 (reconfirming board approval and attaching minutes of board meeting)
- c. April 23, 2008 (on performance evaluation requirements)

- d. October 28, 2008 (on organisations that have left the Comité)
- e. January 20, 2009 (on confirming the revenue threshold for market share)

**From Susan Liautaud**

- 1. Bradshaw, Patricia (Associate Professor, York University), June 4, 2008 (on contingency theory)
- 2. Cohas-Bogey, Cyrille (Executive Director, Comité de la Charte)
  - a. September 1, 2008 (on organisations expelled from the Comité)
  - b. September 16, 2008 (on California Nonprofit Integrity Act)
- 3. Hansmann, Henry (Augustus E. Lines Professor of Law, Yale Law School), August 13, 2008 (on scheduling a meeting to review my thesis)
- 4. Lottier, Marie (Chef du bureau des associations et fondations, Ministère de l'Intérieur, de l'Outre-mer et des Collectivités territoriales, Direction des Libertés Publiques et des Affaires Juridiques), January 9, 2009 (on ARUP statistics)
- 5. Soublin, Michel (President, Comité de la Charte)
  - a. January 5, 2006 (requesting confirmation of applicability of Independent Sector checklist to Comité de la Charte)
  - b. November 23, 2007 (research proposal for Comité de la Charte board of directors)
  - c. October 28, 2008 (on organisations that have left the Comité)

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## APPENDIX 1-A

**Comité Group and Control Group Study Participants**  
**(in alphabetical order)<sup>1</sup>**

<b>Comité Group Members<sup>2</sup></b>		<b>Legal Form</b>	<b>Interview Date<sup>3</sup></b>
1.	<b>Action contre la Faim</b> ( <a href="http://www.actioncontrelafaim.org">www.actioncontrelafaim.org</a> ) <sup>4</sup>	ARUP <sup>5</sup>	16 Oct. 2007
2.	<b>Aide et Action</b> ( <a href="http://www.aide-et-action.org">www.aide-et-action.org</a> ) *	ARUP	16 Oct. 2007
3.	<b>Amnesty International France</b> ( <a href="http://www.amnesty.fr">www.amnesty.fr</a> ) <sup>**</sup>	ARUP	29 Nov. 2007
4.	<b>Association des Paralysés de France</b> ( <a href="http://www.apf.asso.fr">www.apf.asso.fr</a> ) *	ARUP	22 Oct. 2007
5.	<b>Association Petits Princes</b> ( <a href="http://www.petitsprinces.com">www.petitsprinces.com</a> ) *	1901 Law	17 Oct. 2007
6.	<b>Association pour la Recherche sur le Cancer</b> ( <a href="http://www.arc.asso.fr">www.arc.asso.fr</a> ) *	ARUP	13 Sept. 2007
7.	<b>Association Valentin Haüy</b> ( <a href="http://www.avh.asso.fr">www.avh.asso.fr</a> ) *	ARUP	28 Jan. 2008
8.	<b>Care France</b> ( <a href="http://www.carefrance.org">www.carefrance.org</a> ) **	1901 Law	4 Oct. 2007
9.	<b>Cimade</b> ( <a href="http://www.cimade.org">www.cimade.org</a> ) *	1901 Law	18 Sept. 2007
10.	<b>Comité Catholique contre la Faim et pour le Développement</b> ( <a href="http://www.ccfd.asso.fr">www.ccfd.asso.fr</a> ) *	ARUP	3 Oct. 2007
11.	<b>Croix-Rouge Française</b> ( <a href="http://www.croix-rouge.fr">www.croix-rouge.fr</a> ) **	ARUP	29 Oct. 2007
12.	<b>Fondation d'Auteuil</b> ( <a href="http://www.fondation-auteuil.org">www.fondation-auteuil.org</a> ) *	FRUP	5 Dec. 2007
13.	<b>Fondation de France</b> ( <a href="http://www.fdf.org">www.fdf.org</a> ) *	FRUP	19 Sept. 2007
14.	<b>Fondation Hôpitaux de Paris - Hôpitaux de France</b> ( <a href="http://www.fondationhopitaux.fr">www.fondationhopitaux.fr</a> ) *	FRUP	11 Sept. 2007
15.	<b>Fondation pour la Recherche Médicale</b> ( <a href="http://www frm.org">www frm.org</a> ) *	FRUP	3 Oct. 2007
16.	<b>Gefluc</b> ( <a href="http://www.gefluc.org">www.gefluc.org</a> ) *	ARUP	4 Sept. 2007
17.	<b>Handicap International</b> ( <a href="http://www.handicap-international.org">www.handicap-international.org</a> ) **	ARUP	10 Sept. 2007
18.	<b>Jeunesse au Plein Air</b> ( <a href="http://www.jpa.asso.fr">www.jpa.asso.fr</a> ) *	1901 Law	7 Nov. 2007

<sup>1</sup> In order to protect confidentiality, the numbers and letters in the Comité Group and Control Group lists, respectively, do not correspond to the citations throughout the thesis but rather correspond to an alphabetised list.

<sup>2</sup> Other Comité members not participating in the study are: A Chacun Son Everest, Action des Chrétiens pour l'Abolition de la Torture, Agronomes et Vétérinaires sans Frontières, Association Française des Sclérosés en Plaques, Bureau International Catholique de l'Enfance (BICE), Centre Français de Protection de l'Enfance, Comité Français pour la Solidarité Internationale, Délégation Catholique pour la Coopération, Fondation Abbé Pierre pour le logement des défavorisés, Fondation Aide à toute détresse, Foyer de Cachan, Frères des Hommes, Habitat et Humanisme, Institut Pasteur, Maisons d'accueil l'Illet, Organisation pour la Prévention de la Cécité, Orpheopolis - Orphelinat Mutualiste de la Police Nationale, Partage, Secours Populaire Français, SOS Sahel International France and Terre des Hommes France.

<sup>3</sup> All interviews were conducted by Susan Liautaud.

<sup>4</sup>\* Organisation operates exclusively or almost exclusively in France.

<sup>\*\*</sup> Organisation operates internationally and/or is linked to an international network.

<sup>5</sup>ARUP is public utility association (*association reconnue d'utilité publique*). FRUP is public utility foundation (*fondation reconnue d'utilité publique*).

19.	<b>La Chaîne de l'Espoir</b> ( <a href="http://www.chainedelespoir.org">www.chainedelespoir.org</a> ) *	1901 Law	19 Nov. 2007
20.	<b>Les petits frères des Pauvres</b> ( <a href="http://www.petitsfreres.asso.fr">www.petitsfreres.asso.fr</a> ) *	ARUP	10 Oct. 2007
21.	<b>Les Restos du Cœur</b> ( <a href="http://www.restosducoeur.org">www.restosducoeur.org</a> ) *	ARUP	12 Sept. 2007
22.	<b>Ligue Nationale Contre le Cancer</b> ( <a href="http://www.ligue-cancer.net">www.ligue-cancer.net</a> ) *	ARUP	2 Oct. 2007
23.	<b>Médecins du Monde</b> ( <a href="http://www.medecinsdumonde.org">www.medecinsdumonde.org</a> ) *	ARUP	29 Oct. 2007
24.	<b>Œuvre des Pupilles Orphelins et Fonds d'Entraide des Sapeurs-Pompiers en France</b> ( <a href="http://www.pompiers.fr">www.pompiers.fr</a> ) *	ARUP	19 Nov. 2007
25.	<b>Ordre de Malte France</b> ( <a href="http://www.ordredemaltefrance.org">www.ordredemaltefrance.org</a> ) **	ARUP	23 Oct. 2007
26.	<b>Perce-Neige</b> ( <a href="http://www.perce-neige.org">www.perce-neige.org</a> ) *	ARUP	29 Oct. 2007
27.	<b>Secours Catholique</b> ( <a href="http://www.secours-catholique.asso.fr">www.secours-catholique.asso.fr</a> ) **	ARUP	11 Sept. 2007
28.	<b>Société Nationale de Sauvetage en Mer</b> ( <a href="http://www.snsm.net">www.snsm.net</a> ) *	ARUP	27 Sept. 2007
29.	<b>Sol En Si</b> ( <a href="http://www.solensi.org">www.solensi.org</a> ) *	ARUP	27 Sept. 2007
30.	<b>SOS Villages d'Enfants</b> ( <a href="http://www.villages-enfants.asso.fr">www.villages-enfants.asso.fr</a> ) *	ARUP	19 Sept. 2007
31.	<b>Un Enfant par la Main</b> ( <a href="http://www.unenfantparlamain.org">www.unenfantparlamain.org</a> ) *	1901 Law	13 Sept. 2007
32.	<b>Unicef France</b> ( <a href="http://www.unicef.fr">www.unicef.fr</a> ) **	ARUP	29 Nov. 2007
33.	<b>Vaincre la Mucoviscidose</b> ( <a href="http://www.vaincrelamuco.org">www.vaincrelamuco.org</a> ) *	ARUP	2 Oct. 2007

### Control Group Members

A.	<b>Ashoka France</b> ( <a href="http://www.ashoka.asso.fr">www.ashoka.asso.fr</a> ) **	1901 Law	25 Sept. 2007
B.	<b>Association de la Fondation Étudiante pour la Ville</b> ( <a href="http://www.afev.org">www.afev.org</a> ) *	1901 Law	27 Sept. 2007
C.	<b>Fidesco</b> ( <a href="http://www.fidesco-international.org">www.fidesco-international.org</a> ) **	1901 Law	19 Sept. 2007
D.	<b>Fondation de la 2<sup>e</sup> Chance</b> ( <a href="http://www.deuxiemechance.org">www.deuxiemechance.org</a> ) *	FRUP	11 Sept. 2007
E.	<b>Fondation Nicolas Hulot pour la Nature et l'Homme</b> ( <a href="http://www.fondation-nicolas-hulot.org">www.fondation-nicolas-hulot.org</a> ) *	FRUP	20 Feb. 2008
F.	<b>Greenpeace France</b> ( <a href="http://www.greenpeace.org/france">www.greenpeace.org/france</a> ) **	1901 Law	18 Sept. 2007
G.	<b>Institut Montaigne</b> ( <a href="http://www.institutmontaigne.org">www.institutmontaigne.org</a> ) *	1901 Law	26 Sept. 2007
H.	<b>Les Arts Décoratifs</b> ( <a href="http://www.lesartsdecoratifs.fr">www.lesartsdecoratifs.fr</a> ) *	ARUP	3 Oct. 2007
I.	<b>Médecins Sans Frontières</b> ( <a href="http://www.msf.fr">www.msf.fr</a> ) *	ARUP	13 Oct. 2007
J.	<b>Samusocial International</b> ( <a href="http://www.samu-social-international.com">www.samu-social-international.com</a> ) *	GIP <sup>6</sup>	22 Nov. 2007
K.	<b>Sidaction</b> ( <a href="http://www.sidaction.org">www.sidaction.org</a> ) *	ARUP	12 Sept. 2007
L.	<b>WWF-France</b> ( <a href="http://www.wwf.fr">www.wwf.fr</a> ) **	ARUP	3 Oct. 2007

<sup>6</sup> GIP is a special status called public interest grouping (*Groupement d'Intérêt Public* (GIP)) due to the unique relationship to the City of Paris.

## APPENDIX 1-B

Sector of Activity<sup>1</sup>

Primary Sector of Activity	Comité Group		Control Group		Total Combined Groups	
	# Orgs	%	# Orgs	%	# Orgs	%
Medical Emergency	0	0	1	10	1	3
Health and Medical Research (e.g. cancer research)	5	17	1	10	6	15
Medical Care	2	7	1	10	3	8
Mental Health	0	0	0	0	0	0
Human Rights	2	7	0	0	2	5
Youth and Leisure	0	0	0	0	0	0
Culture (e.g. arts and literature)	0	0	0	0	0	0
Sport	0	0	0	0	0	0
Education	2	7	1	10	3	8
Social Services	0	0	1	10	1	3
Children	1	3	0	0	1	3
Environment	0	0	1	10	1	3
Support for Handicapped Persons	3	10	0	0	3	8
Aid to Developing Countries/Development	5	17	0	0	5	13
Other <sup>2</sup>	9	31	4	40	13	33
<b>TOTAL</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>39</b>	<b>100</b>

Secondary Sector of Activity	Comité Group		Control Group		Total Combined Groups	
	# Orgs	%	# Orgs	%	# Orgs	%
Medical Emergency	0	0	0	0	0	0
Health and Medical Research (e.g. cancer research)	2	7	1	10	3	8
Medical Care	0	0	0	0	0	0
Mental Health	1	3	0	0	1	3
Human Rights	1	3	0	0	1	3
Youth and Leisure	1	3	0	0	1	0
Culture (e.g. arts and literature)	0	0	0	0	0	0
Sport	0	0	0	0	0	0
Education	1	3	1	10	2	5
Social Services	0	0	2	20	2	5
Children	2	7	0	0	2	5
Environment	0	0	0	0	0	0
Support for Handicapped Persons	0	0	0	0	0	0
Aid to Developing Countries/Development	6	21	2	20	8	21
Other <sup>3</sup>	15	52	4	40	19	49
<b>TOTAL</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>39</b>	<b>100</b>

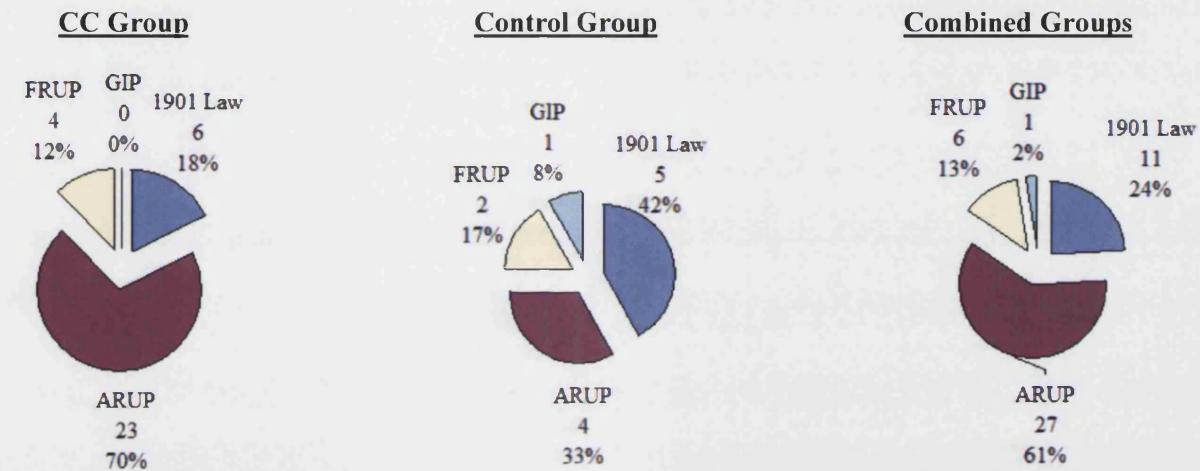
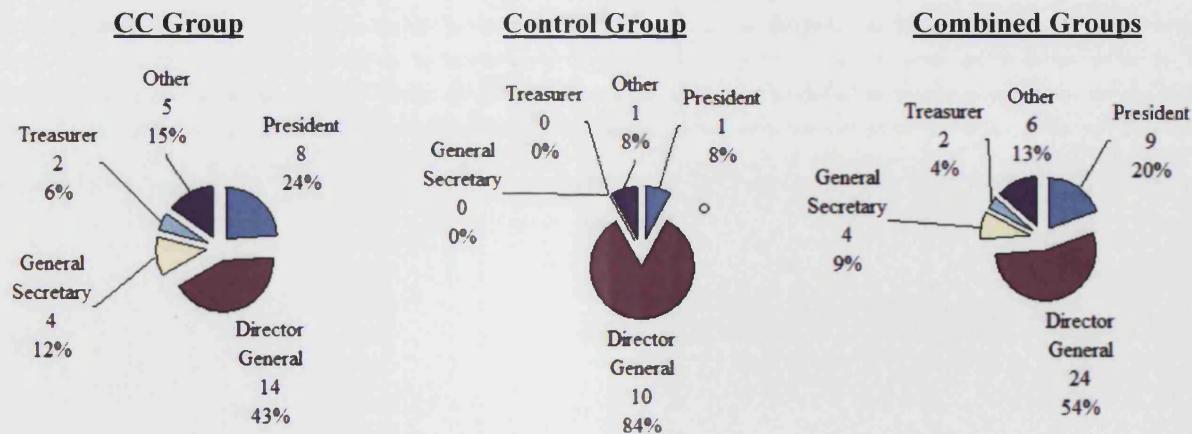
<sup>1</sup> Figures are based on respondents participating in the written self-completion questionnaire.

<sup>2</sup> The Comité Group "Other" responses, with two exceptions too specific to reveal for confidentiality reasons (each applying only to one organisation), all would have fit within the pre-set categories Health and Medical Research, Children, Support for Handicapped Persons, and Aid to Developing Countries/Development. The Control Group "Other" included two activities too specific to disclose for confidentiality reasons and two that would have fit within the pre-set categories Culture and Education.

<sup>3</sup> The Comité Group "Other" included seven respondents with no secondary activity; one exceptional activity too unique to specify for confidentiality reasons; and seven others that would have fallen within one of six different pre-set categories. The Control Group "Other" included two activities that would have fallen within two pre-set categories and two activities unique to one respondent organisation.

## APPENDIX 1-C

**Legal Form of Organisations**  
**Position of Interviewees in the Organisation**

**Legal Form of Organisations****Position of Interviewees<sup>1</sup>**

<sup>1</sup> Positions of interviewees within each organisation are not provided on an organisation by organisation basis in order to maintain the confidentiality of the individual participating.

**APPENDIX 1-D****Founding Comité de la Charte Members**  
**Participating in the Study**

1. Action contre la Faim
2. Association des Paralysés de France
3. Association Valentin Haüy
4. Comité Catholique contre la Faim et pour le Développement
5. Fondation de France
6. Fondation pour la Recherche Médicale
7. Les petits frères des Pauvres
8. Les Restos du Cœur
9. Ligue Nationale Contre le Cancer
10. Médecins du Monde
11. Secours Catholique
12. Unicef France

**Other Founding Comité de la Charte Members**

1. Institut Pasteur
2. Fédération nationale des associations d'accueil et de réadaptation sociale
3. Secours Populaire Français
4. Union Nationale des Associations de Parents d'Enfants Inadaptés
5. UNIOPSS
6. Association Française contre les Myopathies

## APPENDIX 1-E

Total 2006 Annual Revenue<sup>1</sup>

Total 2006 Annual Revenue	Comité Group		Control Group		Total Combined Groups	
	# Orgs	%	# Orgs	%	# Orgs	%
€500,000 - 750,000	2	7	1	10	3	8
€1 - 2 million	3	10	2	20	5	13
€2 - 3 million	0	0	2	20	2	5
€3 - 4 million	0	0	0	0	0	0
€4 - 5 million	1	3	1	10	2	5
€5 - 10 million	2	7	1	10	3	8
€11 - 30 million	4	14	2	20	6	15
€31 - 50 million	8	28	0	0	8	20
€51 million or more	9	31	1	10	10	26
<b>TOTAL<sup>2</sup></b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>39</b>	<b>100</b>

<sup>1</sup> Figures are based on respondents participating in the written self-completion questionnaire.

<sup>2</sup> 16 (55%) Comité Group respondents and nine (90%) Control Group respondents responding to the self-completion questionnaire reported a significant variation in revenue during the preceding five years. Nine and zero respondents, respectively, connected this variation to the 2004 Asian tsunami.

## APPENDIX 1-F

### 2006 Revenues by Category of Revenue Source<sup>1</sup>

	Public Funding <sup>2</sup>				Commercial Activities				Individual Donors				International Aid Multilateral Agencies				EU or Foreign Governments				Corporations or Private French Foundations			
	Comité Group		Control Group		Comité Group		Control Group		Comité Group		Control Group		Comité Group		Control Group		Comité Group		Control Group		Comité Group		Control Group	
	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%
0	6	21	3	30	14	48	8	80	0	0	1	10	21	72	8	80	18	62	7	70	10	34	1	10
1-10%	6	21	2	20	11	38	1	10	5	17	4	40	7	24	1	10	6	21	2	20	16	55	4	40
11-20%	2	7	1	10	1	3	1	10	4	14	0	0	1	3	0	0	2	7	0	0	0	0	1	10
21-30%	1	3	2	20	1	3	0	0	6	21	0	0	0	0	1	10	1	3	1	10	2	7	0	0
31-40%	2	7	0	0	0	0	0	0	3	10	0	1	0	1	1	1	1	3	0	0	0	0	1	10
41-60%	5	17	1	10	2	7	0	0	7	24	0	0	0	0	0	0	0	0	0	0	0	0	1	10
61-80%	6	21	0	0	0	0	0	0	3	10	1	10	0	0	0	0	1	3	0	0	1	3	2	20
81-95%	1	3	1	10	0	0	0	0	1	3	2	20	0	0	0	0	0	0	0	0	0	0	0	0
96-100%	0	0	0	0	0	0	0	0	0	0	2	20	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>29</b>	<b>100<sup>3</sup></b>	<b>10</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>

<sup>1</sup> Figures are based on respondents participating in the written self-completion questionnaire.

<sup>2</sup> Public funding includes French state, *départements*, local *collectivités*, social security, ministries such as the Ministry of Foreign and European Affairs, etc.

<sup>3</sup> Total percentages noted as 100 may reflect rounding of up to - 9 of individual percentage numbers.

## APPENDIX 1-G

**Size of Organisations**  
**(Approximate 2006 Revenue Level)<sup>1</sup>**

<b>Comité Group Members</b>		<b>Total 2006 Revenues (in euros)</b>
1.	Croix-Rouge Française	910,190,000
2.	Association des Paralysés de France	506,387,149
3.	Fondation d'Auteuil	231,393,003
4.	Fondation de France	153,348,660
5.	Secours Catholique	130,000,000
6.	Les Restos du Cœur	120,599,000
7.	Ligue Nationale Contre le Cancer	98,600,000
8.	Handicap International	77,554,000
9.	Action contre la Faim	64,865,221
10.	Unicef France	59,100,000
11.	Médecins du Monde	55,444,653
12.	Ordre de Malte France	45,996,651
13.	SOS Villages d'Enfants	45,489,000
14.	Association Valentin Haüy	42,860,000
15.	Association pour la Recherche sur le Cancer	40,673,000
16.	Comité Catholique contre la Faim et pour le Développement	39,281,000
17.	Perce-Neige	38,762,210
18.	Fondation pour la Recherche Médicale	38,676,952
19.	Les petits frères des Pauvres	38,165,384
20.	Aide et Action	22,684,000
21.	Jeunesse au Plein Air	20,778,971
22.	Société Nationale de Sauvetage en Mer	15,522,013
23.	Care France	15,153,000
24.	Amnesty International France	14,855,553
25.	Fondation Hôpitaux de Paris - Hôpitaux de France	13,402,000
26.	La Chaîne de l'Espoir	10,187,000
27.	Vaincre la Mucoviscidose	9,601,552
28.	Cimade	7,095,925
29.	Œuvre des Pupilles Orphelins et Fonds d'Entraide des Sapeurs-Pompiers en France	3,245,625
30.	Un Enfant par la Main	2,774,293
31.	Association Petits Princes	2,248,000
32.	Sol En Si	1,286,290
33.	Gefluc	1,270,614

<sup>1</sup>In descending order by revenue level. Based on information published by the organisations on their website. (See Appendix 1-A.) Presentation of results varied somewhat. Numbers do not correspond to confidential organisation codes used throughout the thesis.

<b>Control Group Members</b>		<b>Total 2006 Revenues (in euros)</b>
A.	Médecins Sans Frontières	147,200,000
B.	Les Arts Décoratifs	33,478,636
C.	Sidaction	23,756,661
D.	WWF-France	10,502,000
E.	Greenpeace France	7,765,000
F.	Fondation Nicolas Hulot pour la Nature et l'Homme	4,573,000
G.	Institut Montaigne	2,701,745
H.	Fondation de la 2 <sup>e</sup> Chance	2,370,159
I.	Fidesco	1,770,090
J.	Samusocial International	1,400,000 <sup>2</sup>
K.	Ashoka France	566,000
L.	Association de la Fondation Étudiante pour la Ville	<sup>-3</sup>

<sup>2</sup> Based on estimate of former Executive Director (Quenin e-mail 2008).

<sup>3</sup> On eight different calls to senior management representatives the data were not provided and is not publicly available.

## APPENDIX 1-H-1A

### Self-completion Questionnaire – Comité Group (original French)

**Enquête du Comité de la Charte: ZOOMERANG QUESTIONNAIRE**  
**Enquête du Comité de la Charte: Projet de recherche de la London School of**  
**Economics sur la notion de responsabilité dans les associations/fondations**  
**françaises.**

**1. Association/fondation:**

- A chacun son Everest
- ACAT
- Action contre la Faim
- Agronomes et Vétérinaires sans Frontières
- Aide et Action
- Amnesty International – section française
- Association des paralysés de France
- Association française des sclérosés en plaques
- Association les petits frères des Pauvres
- Association Petits princes
- Association pour la recherche sur le cancer
- Association V Haüy pour le bien des aveugles
- Care France
- CCFD
- Centre français de protection de l'enfance
- Chaîne de l'espoir (la)
- Cimade Comité français pour la solidarité internationale
- Comité Perce-neige
- Croix-rouge française
- Délégation catholique pour la coopération
- Enfant par la main (un)

- Fondation Abbe Pierre
- Fondation aide a toute détresse
- Fondation d'Auteuil
- Fondation de France
- Fondation de L'avenir
- Fondation des petits frères des Pauvres
- Fondation hôpitaux de Paris-hôpitaux de France
- Fondation pour la recherche médicale (FRM)
- Foyer de Cachan
- Frères des hommes
- GEFLUC
- Habitat et humanisme
- Handicap international
- Institut Pasteur
- Jeunesse au plein air (JPA)
- Ligue nationale contre le cancer (LNCC)
- Maisons d'accueil L'îlot (MAI)
- Médecins de Monde (MDM)
- Oeuvre des pupilles orphelins de sapeurs-pompiers
- Ordre de Malte
- Organisation pour la prévention de la cécité (OPC)
- Orpheopolis – (OMPN)
- Partage
- Restaurants du coeur – relais du coeur (les)
- Secours catholique
- Secours populaire française (SPF)
- Société nationale de sauvetage en mer

- SOL en SI
- SOS Sahel international France
- SOS villages d'enfants
- Terre des hommes France (TDHF)
- Unicef France
- Vaincre la mucoviscidose (VLM)

---

**2. Veuillez saisir vos noms et adresses ci-dessous:**

Votre Nom:

Adresse du siège social de l'association /fondation :

Ville :

Département :

Code postal :

Pays :

Courriel :

---

**3. Quel poste occupez-vous au sein de l'association/fondation?**

- Président du Directoire ou directeur général
- Président du Conseil d'administration
- Administrateur (membre du Bureau)
- Directeur financier
- Directeur général adjoint
- Vice-président
- Directeur de la collecte de fonds
- Directeur des programmes
- Autre (veuillez préciser)

---

**4. Veuillez indiquer le type d'association/fondation dont il s'agit:**

- Association loi 1901 déclarée
- Association loi 1901 Reconnue d'Utilité Publique
- Fondation Reconnue d'Utilité Publique
- Fondation arbitrée

- Autre (veuillez préciser)

---

**5. Quel est le principal secteur d'activité de l'association/fondation?**

- Secours médical (ex : services d'urgence)
- Santé et recherche médicale (ex : lutte contre le cancer)
- Soins médicaux
- Maladies mentales
- Droits de l'homme
- Jeunesse et loisirs
- Culture (ex : arts et littérature)
- Sport
- Education et enseignement
- Services sociaux
- Enfance
- Défense de l'environnement
- Soutien aux handicapés
- Aide au tiers-monde / aide au développement
- Autre (veuillez préciser)

---

**6. Quel est le secteur d'activité secondaire de l'association/fondation?**

- Secours médical (ex : services d'urgence)
- Santé et recherche médicale (ex : lutte contre le cancer)
- Soins médicaux
- Maladies mentales
- Droits de l'homme
- Jeunesse et loisirs
- Culture (ex : arts et littérature)
- Sport

- Education et enseignement
- Services sociaux
- Enfance
- Défense de l'environnement
- Soutien aux handicapés
- Aide au tiers-monde / aide au développement
- Autre (veuillez préciser).

---

**7. Dans quelles zones géographiques intervenez-vous? (Cochez toutes les réponses applicables.)**

- En France uniquement
- En France **ET** en Grande-Bretagne
- En France **ET** aux Etats-Unis
- Dans l'Union européenne
- En Afrique
- En Asie
- Au Canada **OU** au Mexique
- En Amérique du Sud
- Moyen-Orient
- Europe de l'Est
- Autre (veuillez préciser)

---

**8. Dans quelles zones géographiques disposez-vous de bureaux ou autres points de représentation? (Cochez toutes les réponses applicables.)**

- En France uniquement
- En France **ET** en Grande-Bretagne
- En France **ET** aux Etats-Unis
- Dans l'Union européenne
- En Afrique

- En Asie
- Au Canada **OU** au Mexique
- En Amérique du Sud
- Moyen-Orient
- Europe de l'Est
- Autre (veuillez préciser)

---

**9. A combien s'est élevé le total de vos ressources pour l'exercice 2006?**

- De 500 000 à 1 million d'euros
- De 1 million à 2 millions d'euros
- De 2 à 3 millions d'euros
- De 3 à 4 millions d'euros
- De 4 à 5 millions d'euros
- De 5 à 10 millions d'euros
- De 11 à 30 millions d'euros
- De 31 à 50 millions d'euros
- 51 millions d'euros ou plus

---

**10. Au cours des cinq derniers exercices, le total de vos ressources annuel a-t-il varié de manière importante? Si oui, veuillez expliquer pourquoi (ex : catastrophe naturelle de type tsunami ou tout autre événement ayant engendré des dons exceptionnels ou difficultés rencontrées dans l'organisation interne ou au contraire amélioration de celle-ci) dans l'espace réservé à la question 11.**

- Oui
- Non

---

**11. Autres commentaires:**

---

**12. Quel pourcentage représentent des fonds publics (Etat, collectivités locales, sécurité sociale, etc.) dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**13. Quel pourcentage représente le revenu des activités commerciales dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**14. Quel pourcentage représentent les dons individuels dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %

- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**15. Quel pourcentage représentent les organisations internationales humanitaires (« international aid agencies » et « multilateral organisations ») dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**16. Quel pourcentage représentent l'Union Européenne ou des Etats étrangers dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**17. Quel pourcentage représentent les dons émanant d'entreprises ou de fondations privées françaises dans le total de vos ressources 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**18. Quel est le pourcentage approximatif de donateurs individuels sur le nombre total de donateurs contribuant à hauteur d'un maximum de 100 euros?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**19. Combien de donateurs avez-vous approximativement comptabilisé en moyenne au cours des trois derniers exercices?**

- 0-500
- 501-1000
- 1001-2500

- 2501-5000
- 5001-10 000
- 10 001-100,000
- 100,001-250,000
- 251,000-500,000
- 500,000 ou plus

---

**20. Assurez-vous un suivi des donateurs d'une année sur l'autre?**

- Oui
- Non

---

**21. Si oui, quel est le pourcentage approximatif de donateurs ayant renouvelé leurs dons en 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**22. Considérez-vous que la concurrence des autres associations/fondations soit un facteur important dans votre capacité à attirer des donateurs?**

- Oui
- Non

---

**23. Au cours de l'exercice 2006, quel pourcentage de vos ressources privées totales émanait de sources françaises?**

- 0

- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**24. Au cours de l'exercice 2006, quel pourcentage de dons émanait de la Grande-Bretagne ou des Etats-Unis?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**25. Combien de salariés en équivalent temps plein avez-vous en France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

---

**26. Combien de salariés en équivalent temps plein avez-vous à l'étranger (y compris volontaires rémunérés)?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

---

**27. Combien de bénévoles à plein temps ou à temps partiel avez-vous en France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

---

**28. Combien de bénévoles à plein temps ou à temps partiel avez-vous à l'étranger?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

**29. Depuis combien de temps votre association/fondation fait-elle partie du Comité de la Charte?**

- Moins d'1 an
- 1-2 ans
- 3-5 ans
- 5-10 ans
- 10-15 ans
- 15-20 ans

---

**30. En quoi la recherche d'une plus grande confiance des donateurs a-t-elle joué dans votre décision de rejoindre le Comité de la Charte?**

- Pas du tout
- Peu
- Beaucoup
- La motivation essentielle
- La seule motivation

---

**31 . En dehors de la recherche d'une plus grande confiance de vos donateurs, quelle a été la motivation principale de votre décision de rejoindre le Comité de la Charte?**

---

**32. Votre association/fondation a-t-elle dû opérer des changements importants dans ses politiques et pratiques en matière de responsabilité en vue de rejoindre le Comité de la Charte? Si oui, veuillez expliquer brièvement quels ont été les divers types de changements dans l'espace réservé à la question 33.**

- Oui
- Non

---

**33. Autres commentaires:**

**34. Votre association/fondation dispose-t-elle d'un comité spécifique au sein du conseil d'administration en charge des questions de responsabilité (notamment de la communication et de la transparence de l'information financière) ; par exemple, un comité d'audit ou un comité exécutif ? Veuillez précisez dans l'espace réservé à la question 35.**

- Oui
- Non

**35. Autres commentaires :**

**36. Par quels moyens diffusez-vous vos informations financières auditées? (Cochez toutes les réponses applicables.)**

- Via votre site Internet
- Par courrier électronique sur demande des donateurs
- Par courrier sur demande des donateurs
- Par courrier électronique à tous les donateurs
- Par courrier à tous les donateurs
- Par courrier électronique ou par courrier sur demande des non-donateurs
- Autre (veuillez préciser)

**37. Diffusez-vous des versions en anglais de vos rapports annuels et de vos rapports financiers?**

- Oui
- Non

**38. Dans la liste suivante, veuillez cocher les procédures actuellement mises en place au sein de votre association/fondation pour garantir sa responsabilité :**

- Procédures sur les conflits d'intérêt
- Procédures sur la conservation des documents
- Procédures sur l'évaluation des performances

- Procédures sur la communication des informations/ Procédures sur la transparence
- Autre (veuillez préciser)

---

**39. Veuillez ajouter ci-dessous tout commentaire que vous considérez important par rapport aux sujets abordés ci-dessus ou afin de clarifier vos différentes réponses ; veuillez apporter toute précision utile relative aux politiques et pratiques de votre association/fondation en matière de responsabilité.**

---

## APPENDIX 1-H-1B

### **Self-completion Questionnaire – Comité Group** **(English translation by author)**

**Comité de la Charte Questionnaire: ZOOMERANG QUESTIONNAIRE**  
**Comité de la Charte Questionnaire: Research project for the London School of**  
**Economics on accountability in French associations/foundations.**

**1. Nonprofit Organisation:**

- A chacun son Everest
- ACAT
- Action contre la Faim
- Agronomes et Vétérinaires sans Frontières
- Aide et Action
- Amnesty International – section française
- Association des paralysés de France
- Association française des sclérosés en plaques
- Association les petits frères des Pauvres
- Association Petits princes
- Association pour la recherche sur le cancer
- Association V Haüy pour le bien des aveugles
- Care France
- CCFD
- Centre français de protection de l'enfance
- Chaîne de l'espoir (la)
- Cimade Comité français pour la solidarité internationale
- Comité Perce-neige
- Croix-rouge française
- Délégation catholique pour la coopération
- Enfant par la main (un)

- Fondation Abbe Pierre
- Fondation aide a toute détresse
- Fondation d'Auteuil
- Fondation de France
- Fondation de L'avenir
- Fondation des petits frères des Pauvres
- Fondation hôpitaux de Paris-hôpitaux de France
- Fondation pour la recherche médicale (FRM)
- Foyer de Cachan
- Frères des hommes
- GEFLUC
- Habitat et humanisme
- Handicap international
- Institut Pasteur
- Jeunesse au plein air (JPA)
- Ligue nationale contre le cancer (LNCC)
- Maisons d'accueil L'îlot (MAI)
- Médecins de Monde (MDM)
- Oeuvre des pupilles orphelins de sapeurs-pompiers
- Ordre de Malte
- Organisation pour la prévention de la cécité (OPC)
- Orpheopolis – (OMPNI)
- Partage
- Restaurants du coeur – relais du coeur (les)
- Secours catholique
- Secours populaire française (SPF)
- Société nationale de sauvetage en mer

- SOL en SI
- SOS Sahel international France
- SOS villages d'enfants
- Terre des hommes France (TDHF)
- Unicef France
- Vaincre la mucoviscidose (VLM)

---

**2. Please fill out your name and contact details below:**

Your name:

Registered office of the organisation :

Town :

Region :

Postcode :

Country :

E-mail :

---

**3. Which position do you hold within the organisation?**

- President or Director General
- President of the *conseil d'administration*
- Administrateur* (or members of the *bureau*)
- Financial Director
- Deputy Director General
- Vice President
- Head of Fundraising
- Head of Programmes
- Other (please specify)

---

**4. Please indicate which category your organisation belongs to:**

- 1901 law association
- Public utility association (A.R.U.P.)
- Public utility foundation (F.R.U.P.)
- Private foundation

- Other (please specify)

---

**5. What is the organisation's principal sector of activity?**

- Medical assistance (e.g. emergency services)
- Health and medical research (e.g. cancer)
- Medical care
- Mental illness
- Human rights
- Youth and leisure
- Culture (e.g. arts and literature)
- Sport
- Education and teaching
- Social services
- Children
- Protection of the environment
- Support to the disabled
- Aid and development assistance to developing countries
- Other (please specify)

---

**6. What is the organisation's secondary sector of activity?**

- Medical assistance (e.g. emergency services)
- Health and medical research (e.g. cancer)
- Medical care
- Mental illness
- Human rights
- Youth and leisure
- Culture (e.g. arts and literature)
- Sport

- Education and teaching
- Social services
- Children
- Protection of the environment
- Support to the disabled
- Aid and development assistance to developing countries
- Other (please specify)

---

**7. Which geographical areas do you work in? (Please tick all applicable answers.)**

- France only
- France **AND** Great Britain
- France **AND** the US
- EU
- Africa
- Asia
- Canada **OR** Mexico
- South America
- Middle East
- Eastern Europe
- Other (please specify)

---

**8. In which geographical areas do you have offices or other representative agencies? (Please tick all applicable answers.)**

- France only
- France **AND** Great Britain
- France **AND** the US
- EU
- Africa
- Asia

- Canada **OR** Mexico
- South America
- Middle East
- Eastern Europe
- Other (please specify)

---

**9. What was the total sum of your revenue for fiscal year 2006?**

- 500 000 to 1 million euros
- 1 to 2 million euros
- 2 to 3 million euros
- 3 to 4 million euros
- 4 to 5 million euros
- 5 to 10 million euros
- 11 to 30 million euros
- 31 to 50 million euros
- 51 million euros or more

---

**10. Has the total sum of your revenue varied significantly over the past five years?**

If yes, please explain why under question 11 below (e.g. natural disasters such as the tsunami or any other event instigating exceptionally high levels of gifts, changes resulting from internal difficulties within the organisation, or, on the contrary, internal improvements).

- Yes
- No

---

**11. Further comments:**

---

**12. What percentage of your total annual revenue for fiscal year 2006 came from public funds (the State, *collectivités locales*, social security, etc.)?**

- 0

- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**13. What percentage of your total annual revenue for fiscal year 2006 came from revenue raised from commercial activities?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**14. What percentage of your total annual revenue for fiscal year 2006 came from individual donors?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %

- 61-80 %
- 81-95 %
- 96-100 %

---

**15. What percentage of your total annual revenue for fiscal year 2006 came from international humanitarian agencies (e.g. aid agencies or multilateral organisations)?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**16. What percentage of your total annual revenue for fiscal year 2006 came from the European Union or foreign governmental donors?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**17. What percentage of your total annual revenue for fiscal year 2006 came from corporations, corporate foundations, or private foundations?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**18. What percentage of all individual donors donated sums up to a maximum of 100 euros?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**19. Approximately how many donors have you had on average over the past three years?**

- 0-500
- 501-1000
- 1001-2500
- 2501-5000

- 5001-10 000
- 10 001-100,000
- 100,001-250,000
- 251,000-500,000
- 500,000 or more

---

**20. Do you ensure regular follow-up/contact with donors from year to year?**

- Yes
- No

---

**21. If yes, approximately what percentage of donors renewed their donations in fiscal year 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**22. Do you feel that the competition from other organisations has a significant influence on your ability to attract donors?**

- Yes
- No

---

**23. In fiscal year 2006, what percentage of your total private revenue came from French sources?**

- 0
- 1-10 %

- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**24. In fiscal year 2006, what percentage of donations came from Great Britain or the United States?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**25. How many full-time employees do you have in France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**26. How many full-time employees do you have overseas (including paid volontaires)?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**27. How many unpaid full- or part-time volunteers do you have in France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**28. How many unpaid full- or part-time volunteers do you have overseas?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

**29. For how long has your organisation been a member of the Comité de la Charte?**

- Less than 1 year
- 1-2 years
- 3-5 years
- 5-10 years
- 10-15 years
- 15-20 years

---

**30. How significant to your decision to join the Comité de la Charte was the goal of increasing donor trust?**

- Not at all
- Somewhat
- Very
- The principal motivating factor
- The only motivating factor

---

**31. Other than increasing donor trust, what was the principal motivating factor in your decision to join the Comité de la Charte?**

---

**32. Has it been necessary for your organisation to make significant changes to policy and practice as a result of joining the Comité de la Charte? If yes, please explain briefly the different types of changes required in the space provided at question 33 below.**

- Yes
- No

---

**33. Further comments:**

**34. Does your organisation have a specific committee within the *conseil d'administration* responsible for issues relating to accountability (notably in relation to communication and transparency of financial information); for example, an audit committee, investment committee, finance committee, or an executive committee? Please provide further details in the space provided at question 35 below.**

- Yes
- No

**35. Further comments:**

**36. How do you publish your audited financial statements? (Please tick all applicable answers.)**

- On your website
- By e-mail upon donors' request
- By mail upon donors' request
- By e-mail to all donors
- By mail to all donors
- By e-mail or by mail to non-donors upon request
- Other (please specify)

**37. Do you produce English versions of your annual reports and financial reports?**

- Yes
- No

**38. From the following list, please tick all procedures which are currently in operation within your organisation to guarantee accountability:**

- Conflict of interest procedures
- Document retention procedures
- Performance evaluation procedures

- Procedures relating to the communication and transparency of financial information
- Other (please specify)

---

**39. Please add below any further comments that you consider important, either in relation to the subjects addressed above or to clarify your various answers. Please provide any specific information relating to the policies and practices of your organisation regarding accountability that may be of use.**

---

## APPENDIX 1-H-1C

### **Self-completion Questionnaire – Control Group (original French)**

**Enquête sur la notion de responsabilité dans les associations/fondations françaises:**

**ZOOMERANG QUESTIONNAIRE**

**Projet de recherche de la London School of Economics: Enquête sur la notion de responsabilité dans les associations/fondations françaises.**

**1. Association/fondation:**

- A chacun son Everest
- ACAT
- Action contre la Faim
- Agronomes et Vétérinaires sans Frontières
- Aide et Action
- Amnesty International – section française
- Association des paralysés de France
- Association française des sclérosés en plaques
- Association les petits frères des Pauvres
- Association Petits princes
- Association pour la recherche sur le cancer
- Association V Haüy pour le bien des aveugles
- Care France
- CCFD
- Centre français de protection de l'enfance
- Chaîne de l'espoir (la)
- Cimade Comité français pour la solidarité internationale
- Comité Perce-neige
- Croix-rouge française
- Délégation catholique pour la coopération
- Enfant par la main (un)

- Fondation Abbe Pierre
- Fondation aide a toute détresse
- Fondation d'Auteuil
- Fondation de France
- Fondation de L'avenir
- Fondation des petits frères des Pauvres
- Fondation hôpitaux de Paris-hôpitaux de France
- Fondation pour la recherche médicale (FRM)
- Foyer de Cachan
- Frères des hommes
- GEFLUC
- Habitat et humanisme
- Handicap international
- Institut Pasteur
- Jeunesse au plein air (JPA)
- Ligue nationale contre le cancer (LNCC)
- Maisons d'accueil L'îlot (MAI)
- Médecins de Monde (MDM)
- Oeuvre des pupilles orphelins de sapeurs-pompiers
- Ordre de Malte
- Organisation pour la prévention de la cécité (OPC)
- Orpheopolis – (OMPNI)
- Partage
- Restaurants du cœur – relais du cœur (les)
- Secours catholique
- Secours populaire française (SPF)
- Société nationale de sauvetage en mer

- SOL en SI
- SOS Sahel international France
- SOS villages d'enfants
- Terre des hommes France (TDHF)
- Unicef France
- Vaincre la mucoviscidose (VLM)

---

**2. Veuillez saisir vos noms et adresses ci-dessous:**

Votre Nom:

Adresse du siège social de l'association /fondation :

Ville :

Département :

Code postal :

Pays :

Courriel :

---

**3. Quel poste occupez-vous au sein de l'association/fondation?**

- Président du Directoire ou directeur général
- Président du Conseil d'administration
- Administrateur (membre du Bureau)
- Directeur financier
- Directeur général adjoint
- Vice-président
- Directeur de la collecte de fonds
- Directeur des programmes
- Autre (veuillez préciser)

---

**4. Veuillez indiquer le type d'association/fondation dont il s'agit:**

- Association loi 1901 déclarée
- Association loi 1901 Reconnue d'Utilité Publique
- Fondation Reconnue d'Utilité Publique
- Fondation arbitrée

- Autre (veuillez préciser)

---

**5. Quel est le principal secteur d'activité de l'association/fondation?**

- Secours médical (ex : services d'urgence)
- Santé et recherche médicale (ex : lutte contre le cancer)
- Soins médicaux
- Maladies mentales
- Droits de l'homme
- Jeunesse et loisirs
- Culture (ex : arts et littérature)
- Sport
- Education et enseignement
- Services sociaux
- Enfance
- Défense de l'environnement
- Soutien aux handicapés
- Aide au tiers-monde / aide au développement
- Autre (veuillez préciser)

---

**6. Quel est le secteur d'activité secondaire de l'association/fondation?**

- Secours médical (ex : services d'urgence)
- Santé et recherche médicale (ex : lutte contre le cancer)
- Soins médicaux
- Maladies mentales
- Droits de l'homme
- Jeunesse et loisirs
- Culture (ex : arts et littérature)
- Sport

- Education et enseignement
- Services sociaux
- Enfance
- Défense de l'environnement
- Soutien aux handicapés
- Aide au tiers-monde / aide au développement
- Autre (veuillez préciser).

---

**7. Dans quelles zones géographiques intervenez-vous? (Cochez toutes les réponses applicables.)**

- En France uniquement
- En France **ET** en Grande-Bretagne
- En France **ET** aux Etats-Unis
- Dans l'Union européenne
- En Afrique
- En Asie
- Au Canada **OU** au Mexique
- En Amérique du Sud
- Moyen-Orient
- Europe de l'Est
- Autre (veuillez préciser)

---

**8. Dans quelles zones géographiques disposez-vous de bureaux ou autres points de représentation? (Cochez toutes les réponses applicables.)**

- En France uniquement
- En France **ET** en Grande-Bretagne
- En France **ET** aux Etats-Unis
- Dans l'Union européenne
- En Afrique

- En Asie
- Au Canada **OU** au Mexique
- En Amérique du Sud
- Moyen-Orient
- Europe de l'Est
- Autre (veuillez préciser)

---

**9. A combien s'est élevé le total de vos ressources pour l'exercice 2006?**

- De 500 000 à 1 million d'euros
- De 1 million à 2 millions d'euros
- De 2 à 3 millions d'euros
- De 3 à 4 millions d'euros
- De 4 à 5 millions d'euros
- De 5 à 10 millions d'euros
- De 11 à 30 millions d'euros
- De 31 à 50 millions d'euros
- 51 millions d'euros ou plus

---

**10. Au cours des cinq derniers exercices, le total de vos ressources annuel a-t-il varié de manière importante? Si oui, veuillez expliquer pourquoi (ex : catastrophe naturelle de type tsunami ou tout autre événement ayant engendré des dons exceptionnels ou difficultés rencontrées dans l'organisation interne ou au contraire amélioration de celle-ci) dans l'espace réservé à la question 11.**

- Oui
- Non

---

**11. Autres commentaires:**

---

**12. Quel pourcentage représentent des fonds publics (Etat, collectivités locales, sécurité sociale, etc.) dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**13. Quel pourcentage représente le revenu des activités commerciales dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**14. Quel pourcentage représentent les dons individuels dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %

- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**15. Quel pourcentage représentent les organisations internationales humanitaires (« international aid agencies » et « multilateral organisations ») dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**16. Quel pourcentage représentent l'Union Européenne ou des Etats étrangers dans le total de vos ressources annuel 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**17. Quel pourcentage représentent les dons émanant d'entreprises ou de fondations privées françaises dans le total de vos ressources 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**18. Quel est le pourcentage approximatif de donateurs individuels sur le nombre total de donateurs contribuant à hauteur d'un maximum de 100 euros?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**19. Combien de donateurs avez-vous approximativement comptabilisé en moyenne au cours des trois derniers exercices?**

- 0-500
- 501-1000
- 1001-2500

- 2501-5000
- 5001-10 000
- 10 001-100,000
- 100,001-250,000
- 251,000-500,000
- 500,000 ou plus

---

**20. Assurez-vous un suivi des donateurs d'une année sur l'autre?**

- Oui
- Non

---

**21. Si oui, quel est le pourcentage approximatif de donateurs ayant renouvelé leurs dons en 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**22. Considérez-vous que la concurrence des autres associations/fondations soit un facteur important dans votre capacité à attirer des donateurs?**

- Oui
- Non

---

**23. Au cours de l'exercice 2006, quel pourcentage de vos ressources privées totales émanait de sources françaises?**

- 0

- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**24. Au cours de l'exercice 2006, quel pourcentage de dons émanait de la Grande-Bretagne ou des Etats-Unis?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**25. Combien de salariés en équivalent temps plein avez-vous en France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

---

**26. Combien de salariés en équivalent temps plein avez-vous à l'étranger (y compris volontaires rémunérés)?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

---

**27. Combien de bénévoles à plein temps ou à temps partiel avez-vous en France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

---

**28. Combien de bénévoles à plein temps ou à temps partiel avez-vous à l'étranger?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- Plus de 5000

**29. Votre association/fondation dispose-t-elle d'un comité spécifique au sein du conseil d'administration en charge des questions de responsabilité (notamment de la communication et de la transparence de l'information financière); par exemple, un comité d'audit ou un comité exécutif? Veuillez précisez dans l'espace réservé à la question 30.**

- Oui
- Non

**30. Autres commentaires:**

**31. Par quels moyens diffusez-vous vos informations financières auditées? (Cochez toutes les réponses applicables.)**

- Via votre site Internet
- Par courrier électronique sur demande des donateurs
- Par courrier sur demande des donateurs
- Par courrier électronique à tous les donateurs
- Par courrier à tous les donateurs
- Par courrier électronique ou par courrier sur demande des non-donateurs
- Autre (veuillez préciser)

**32. Diffusez-vous des versions en anglais de vos rapports annuels et de vos rapports financiers?**

- Oui
- Non

**33. Votre association a-t-elle déjà envisagé de devenir membre du Comité de la Charte ? Si oui, veuillez expliquer dans l'espace réservé à d'autres commentaires.**

- Oui
- Non

Autres commentaires:

**34. Votre association/fondation aurait-elle besoin de procéder à des ajustements importants en termes de transparence et de responsabilité pour devenir membre du Comité de la Charte ? Veuillez préciser dans l'espace réservé à d'autres commentaires.**

- Oui
- Non

Autres commentaires:

**35. Dans la liste suivante, veuillez cocher les procédures actuellement mises en place au sein de votre association/fondation pour garantir sa responsabilité:**

- Procédures sur les conflits d'intérêt
- Procédures sur la conservation des documents
- Procédures sur l'évaluation des performances
- Procédures sur la communication des informations/ Procédures sur la transparence
- Autre (veuillez préciser)

**36. Veuillez ajouter ci-dessous tout commentaire que vous considérez important par rapport aux sujets abordés ci-dessus ou afin de clarifier vos différentes réponses ; veuillez apporter toute précision utile relative aux politiques et pratiques de votre association/fondation en matière de responsabilité.**

## APPENDIX 1-H-1D

### **Self-completion Questionnaire – Control Group** **(English translation by author)**

**Control Group Questionnaire: ZOOMERANG QUESTIONNAIRE**  
**Control Group Questionnaire: Research project for the London School of**  
**Economics on accountability in French associations/foundations.**

**1. Nonprofit Organisation:**

- A chacun son Everest
- ACAT
- Action contre la Faim
- Agronomes et Vétérinaires sans Frontières
- Aide et Action
- Amnesty International – section française
- Association des paralysés de France
- Association française des sclérosés en plaques
- Association les petits frères des Pauvres
- Association Petits princes
- Association pour la recherche sur le cancer
- Association V Haüy pour le bien des aveugles
- Care France
- CCFD
- Centre français de protection de l'enfance
- Chaîne de l'espoir (la)
- Cimade Comité français pour la solidarité internationale
- Comité Perce-neige
- Croix-rouge française
- Délégation catholique pour la coopération
- Enfant par la main (un)

- Fondation Abbe Pierre
- Fondation aide a toute détresse
- Fondation d'Auteuil
- Fondation de France
- Fondation de L'avenir
- Fondation des petits frères des Pauvres
- Fondation hôpitaux de Paris-hôpitaux de France
- Fondation pour la recherche médicale (FRM)
- Foyer de Cachan
- Frères des hommes
- GEFLUC
- Habitat et humanisme
- Handicap international
- Institut Pasteur
- Jeunesse au plein air (JPA)
- Ligue nationale contre le cancer (LNCC)
- Maisons d'accueil L'îlot (MAI)
- Médecins de Monde (MDM)
- Oeuvre des pupilles orphelins de sapeurs-pompiers
- Ordre de Malte
- Organisation pour la prévention de la cécité (OPC)
- Orpheopolis – (OMPNI)
- Partage
- Restaurants du coeur – relais du coeur (les)
- Secours catholique
- Secours populaire française (SPF)
- Société nationale de sauvetage en mer

- SOL en SI
- SOS Sahel international France
- SOS villages d'enfants
- Terre des hommes France (TDHF)
- Unicef France
- Vaincre la mucoviscidose (VLM)

---

**2. Please fill out your name and contact details below:**

Your name:

Registered office of the organisation :

Town :

Region :

Postcode :

Country :

E-mail :

---

**3. Which position do you hold within the organisation?**

- President or Director General
- President of the *conseil d'administration*
- Administrateur* (or members of the *bureau*)
- Financial Director
- Deputy Director General
- Vice President
- Head of Fundraising
- Head of Programmes
- Other (please specify)

---

**4. Please indicate which category your organisation belongs to:**

- 1901 law association
- Public utility association (A.R.U.P.)
- Public utility foundation (F.R.U.P.)
- Private foundation

- Other (please specify)

---

**5. What is the organisation's principal sector of activity?**

- Medical assistance (e.g. emergency services)
- Health and medical research (e.g. cancer)
- Medical care
- Mental illness
- Human rights
- Youth and leisure
- Culture (e.g. arts and literature)
- Sport
- Education and teaching
- Social services
- Children
- Protection of the environment
- Support to the disabled
- Aid and development assistance to developing countries
- Other (please specify)

---

**6. What is the organisation's secondary sector of activity?**

- Medical assistance (e.g. emergency services)
- Health and medical research (e.g. cancer)
- Medical care
- Mental illness
- Human rights
- Youth and leisure
- Culture (e.g. arts and literature)
- Sport

- Education and teaching
- Social services
- Children
- Protection of the environment
- Support to the disabled
- Aid and development assistance to developing countries
- Other (please specify)

---

**7. Which geographical areas do you work in? (Please tick all applicable answers.)**

- France only
- France **AND** Great Britain
- France **AND** the US
- EU
- Africa
- Asia
- Canada **OR** Mexico
- South America
- Middle East
- Eastern Europe
- Other (please specify)

---

**8. In which geographical areas do you have offices or other representative agencies? (Please tick all applicable answers.)**

- France only
- France **AND** Great Britain
- France **AND** the US
- EU
- Africa
- Asia

- Canada OR Mexico
- South America
- Middle East
- Eastern Europe
- Other (please specify)

---

**9. What was the total sum of your revenue for fiscal year 2006?**

- 500 000 to 1 million euros
- 1 to 2 million euros
- 2 to 3 million euros
- 3 to 4 million euros
- 4 to 5 million euros
- 5 to 10 million euros
- 11 to 30 million euros
- 31 to 50 million euros
- 51 million euros or more

---

**10. Has the total sum of your revenue varied significantly over the past five years?**

If yes, please explain why under question 11 below (e.g. natural disasters such as the tsunami or any other event instigating exceptionally high levels of gifts, changes resulting from internal difficulties within the organisation, or, on the contrary, internal improvements).

- Yes
- No

---

**11. Further comments:**

---

**12. What percentage of your total annual revenue for fiscal year 2006 came from public funds (the State, *collectivités locales*, social security, etc.)?**

- 0

- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**13. What percentage of your total annual revenue for fiscal year 2006 came from revenue raised from commercial activities?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**14. What percentage of your total annual revenue for fiscal year 2006 came from individual donors?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %

- 61-80 %
- 81-95 %
- 96-100 %

---

**15. What percentage of your total annual revenue for fiscal year 2006 came from international humanitarian agencies (e.g. aid agencies or multilateral organisations)?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**16. What percentage of your total annual revenue for fiscal year 2006 came from the European Union or foreign governmental donors?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**17. What percentage of your total annual revenue for fiscal year 2006 came from corporations, corporate foundations, or private foundations?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**18. What percentage of all individual donors donated sums up to a maximum of 100 euros?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**19. Approximately how many donors have you had on average over the past three years?**

- 0-500
- 501-1000
- 1001-2500
- 2501-5000

- 5001-10 000
- 10 001-100,000
- 100,001-250,000
- 251,000-500,000
- 500,000 or more

---

**20. Do you ensure regular follow-up/contact with donors from year to year?**

- Yes
- No

---

**21. If yes, approximately what percentage of donors renewed their donations in fiscal year 2006?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**22. Do you feel that the competition from other organisations has a significant influence on your ability to attract donors?**

- Yes
- No

---

**23. In fiscal year 2006, what percentage of your total private revenue came from French sources?**

- 0
- 1-10 %

- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**24. In fiscal year 2006, what percentage of donations came from Great Britain or the United States?**

- 0
- 1-10 %
- 11-20 %
- 21-30 %
- 31-40 %
- 41-60 %
- 61-80 %
- 81-95 %
- 96-100 %

---

**25. How many full-time employees do you have in France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**26. How many full-time employees do you have overseas (including paid volontaires)?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**27. How many unpaid full- or part-time volunteers do you have in France?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**28. How many unpaid full- or part-time volunteers do you have overseas?**

- 0
- 1-100
- 101-250
- 251-500
- 501-1000
- 1001-5000
- More than 5000

---

**29. Does your organisation have a specific committee within the *conseil d'administration* responsible for issues relating to accountability (notably in relation to communication and transparency of financial information); for example, an audit committee, investment committee, finance committee, or an executive committee? Please provide further details in the space provided at question 30 below.**

- Yes
- No

**30. Further comments:**

**31. How do you publish your audited financial statements? (Please tick all applicable answers.)**

- On your website
- By e-mail upon donors' request
- By mail upon donors' request
- By e-mail to all donors
- By mail to all donors
- By e-mail or by mail to non-donors upon request
- Other (please specify)

**32. Do you produce English versions of your annual reports and financial reports?**

- Yes
- No

**33. Has your organisation already considered becoming a member of the Comité de la Charte? If yes, please comment on the reasons you have not become a member to date and any other relevant issues.**

- Yes
- No

Further comments:

**34. Would your organisation need to make any significant adjustments in terms of transparency and accountability in order to become a member of the Comité de la Charte? Please clarify your response in the space provided below.**

- Yes
- No

Further comments:

**35. From the following list, please tick all procedures which are currently in operation within your organisation to guarantee accountability:**

- Conflict of interest procedures
- Document retention procedures
- Performance evaluation procedures
- Procedures relating to the communication and transparency of financial information
- Other (please specify)

**36. Please add below any further comments that you consider important, either in relation to the subjects addressed above or to clarify your various answers. Please provide any specific information relating to the policies and practices of your organisation regarding accountability that may be of use.**

## APPENDIX 1-H-2A

Interview Questionnaire – Comité Group (original French)Fiche d'entretien – Participants Groupe COMITE DE LA CHARTEINFORMATIONS DE BASE

ORGANISME : \_\_\_\_\_

FONDATION / ASSOCIATION / AUTRE \_\_\_\_\_

NOM DU REPONDANT : \_\_\_\_\_

POSTE AU SEIN DE L'ORGANISME : \_\_\_\_\_

TELEPHONE : \_\_\_\_\_ PORTABLE : \_\_\_\_\_

COURRIEL : \_\_\_\_\_

ASSISTANT : \_\_\_\_\_

TELEPHONE DE L'ASSISTANT : \_\_\_\_\_

COURRIEL DE L'ASSISTANT : \_\_\_\_\_

DATE : \_\_\_\_\_

HEURE : \_\_\_\_\_

ADRESSE DE L'ENTRETIEN : \_\_\_\_\_

CASSETTE N° : \_\_\_\_\_

AUTRES PERSONNES PRESENTES LORS DE L'ENTRETIEN :

- 1.
- 2.
- 3.

LE REPONDANT A-T-IL COMPLETE LE QUESTIONNAIRE ZOOMERANG ?  
OUI / NONSI NON, QUI AU SEIN DE L'ORGANISME A COMPLETE LE  
QUESTIONNAIRE ?

NOM :

## FONCTION :

LE REPONDANT A-T-IL VU LES RESULTATS DU QUESTIONNAIRE AVANT  
L'ENTRETIEN ?

OUI / NON

---

PRESENTATION DU PROCESSUS :

**MERCI**

*CONFIDENTIEL*

**OBJECTIF**

DUREE : *environ une heure*

APPROCHE DES QUESTIONS

- Approfondie
- Ajouter tout commentaire qui semble approprié, même si je ne le demande pas
- Ajouter tout contexte nécessaire afin de comprendre et évaluer les réponses
- Importance des nuances

RESULTATS ET PUBLICATION

---

## COMMENTAIRES SUR LE COMPORTEMENT :

## AUTRES REMARQUES/ QUESTIONS PRELIMINAIRES :

## RAPPEL DE LA DEFINITION DE RESPONSABILITE :

**CONFIANCE** : Confiance qu'une institution ou un individu se comportera comme prévu [Describe Hansmann theory that nonprofits function on trust because unlike for-profit corporations they do not have the resources to provide the level of accountability. The point of this study is to investigate increasing accountability in the French nonprofit sector, including whether nonprofit organisations in France are in fact using accountability as a means to engender donor trust/mitigate mistrust and other possible explanations.]

**RESPONSABILITE** : « Répondre de son comportement »

[Raisonnement : éviter de limiter les parties prenantes et les types de responsabilité, notamment en dehors du territoire national et dans des contextes culturels et juridiques différents.][Explain Comité working definition of accountability and offer US examples.]

**QUESTIONS : BASIC STRUCTURE [ELABORATED AND EXPLAINED  
“LIVE” DURING THE INTERVIEW USING SEMI-STRUCTURED METHOD –  
ALLOWING MANY NEW QUESTIONS, SOLICITING FURTHER DETAIL ON  
VARIOUS TOPICS DEPENDING ON RESPONDENT RESPONSES, NEED FOR  
CLARITY, ETC.]**

*INTRODUCTION : Les questions se répartissent en 5 catégories majeures :*

- *responsabilité et confiance du donateur de manière générale (de loin, la plus grande section),*
- *défis pour dynamiser le secteur à but non lucratif français,*
- *le Comité de la Charte,*
- *donateurs gouvernementaux/ institutionnels*
- *politique sociale.*

*Pour certaines questions, vous devrez répondre au nom de votre organisme, et pour d’autres, vous devrez donner votre avis sur le secteur des [associations/ fondations]/à but non lucratif] dans son ensemble. Merci de préciser si votre avis personnel diffère de l’optique que vous prenez au nom de votre organisme.*

**I. Responsabilité**

*INTRODUCTION : Les questions suivantes portent sur la responsabilité et la confiance des donateurs de manière générale.*

**Définitions et confiance des donateurs**

1. Augmentation d’intérêt en matière de responsabilité. Dans quelle mesure l’intérêt/ les efforts de votre organisme en matière de responsabilité se sont développés/augmentés ces 3 dernières années ? ces 5 à 10 dernières années ? La responsabilité est-elle importante pour votre organisme ? [Comment ? Pourquoi ?]
2. Confiance des Donateurs. Quelle importance accordez-vous à la responsabilité dans le cadre de l’entretien de la confiance des donateurs (pour remédier à la méfiance des donateurs) au sein de votre organisme ? **OR** Dans quelle mesure le renforcement de la confiance des donateurs (remédier à la méfiance des donateurs) est la raison pour l’augmentation des efforts en matière de responsabilité ?
  - a. Le développement des efforts de responsabilité a-t-il favorisé l’amélioration de la confiance des donateurs ? Comment l’évaluez-vous ?
  - b. Quels sont les avantages escomptés de la confiance des donateurs ?
  - c. Quels sont, selon-vous, les autres facteurs les plus importants concernant l’entretien et le maintien de la confiance des donateurs ?
  - d. Votre organisme les applique-t-il tous ?
  - e. Considérez-vous que les donateurs s’intéressent aux efforts de responsabilité ? Comment ? Pourquoi ?
  - f. Quels sont, selon-vous, les autres liens entre la responsabilité et la confiance des donateurs ?

3. Explications. Outre la confiance, quelles autres explications s'appliquent à votre organisme pour l'augmentation de la responsabilité : [or would these reasons push you to increase if you haven't already]
  - i. Développement et retombées des normes internationales ?
  - ii. Pression des médias ?
  - iii. Pression des donateurs ?
  - iv. Privatisation du secteur ?
  - v. Répercussions des exigences de l'Etat français en matière de responsabilité ?
  - vi. Autre ?
4. Définitions. Changeriez-vous la définition de la responsabilité des associations/fondations que je propose ? Votre organisme possède-t-il une définition standard avec laquelle vous travaillez ?)
  - a. La définition change-t-elle en fonction des bénéficiaires de la responsabilité (ex : donateurs, bénévoles, salariés, bénéficiaires de services, le public), ou existe-t-il une définition qui s'applique à tous ?
  - b. Devrait-il exister des définitions différentes pour les associations et fondations ?
5. Standards Internationaux. [Conclusion concernant le statut international du questionnaire] Considérez-vous les standards de responsabilité internationaux (notamment aux Etats-Unis et au Royaume-Uni) comme des modèles importants pour votre organisme ? Pour le secteur à but non lucratif français en général ? Intéressants en général ?
  - a. Pourquoi ?
  - b. Particularités ?
6. Address mistrust vs. Increase trust. Pensez-vous que la confiance des donateurs est davantage considérée comme un effort pour remédier à la méfiance des donateurs (ex : après un scandale) ou comme un effort pour renforcer la confiance de manière générale ? Est-ce une question d'importance/de pertinence ?

## **Votre organisme**

7. Bénévoles. Comment recourez-vous aux bénévoles (ex : au niveau de la direction ? dans des postes à faible responsabilité ? sur le terrain ? avec une implication régulière ou sur une base ponctuelle ?)
  - a. Pensez-vous que la responsabilité/ la transparence est importante pour attirer les bénévoles ?
  - b. Votre recours aux bénévoles reflète-t-il votre politique en matière de responsabilité ?
  - c. Quelles sont les autres questions clefs concernant la relation entre vos avis sur la responsabilité et ceux des donateurs ?
8. Public, etc. Dans quelle mesure êtes-vous porté sur la responsabilité envers le public ? envers les bénéficiaires des services ? Comment vos pratiques en matière de responsabilité le reflètent-elles ? [Further question on relationship between cited rationale for increasing accountability and views on accountability to the public.]

## **Mécanismes de responsabilité volontaire**

9. Je vais vous demander de bien vouloir commenter un certain nombre de mécanismes de responsabilité volontaire qui sont considérés comme les meilleures pratiques aux Etats-Unis. Merci d'indiquer si vous avez ou non mis en place chacun d'entre eux. [DEFINE EACH] [REFER TO SELF-COMPLETION QUESTIONNAIRE] Si non, pourquoi ? [EXPLORE RANGE OF REASONS WHY OR WHY NOT IMPLEMENTED, CURRENT VIEWS, ETC.]
  - a. Comité d'audit
  - b. Politique de conservation des documents
  - c. Politique en matière de conflit d'intérêt
  - d. Code de déontologie
  - e. Procédures d'audit/ relation avec les auditeurs
  - f. Supervision du Conseil en matière de rémunération de l'équipe dirigeante (procédures)
  - g. Politique d'information (rémunération de la direction ?)
  - h. *Whistleblower* (dénonciateur) (pratique illégale en France à proprement parler)
  - i. Efficacité de la performance
10. Quels sont, selon vous, les deux à trois plus importants mécanismes de responsabilité volontaire que vous avez mis en place ?
  - a. Pourquoi ces mécanismes-là ?
  - b. Quels résultats en avez-vous observé (en interne et en externe) ?
  - c. Comment, le cas échéant, ces résultats sont-ils liés à la manière de remédier à la méfiance des donateurs ?
  - d. Comment, le cas échéant, ces résultats sont-ils liés aux autres explications pour l'augmentation des efforts en « accountability » en réponse aux questions précédentes?

11. Quels sont les deux à trois plus importants mécanismes de responsabilité volontaire que vous souhaiteriez mettre en place ?

- Pourquoi ne les avez-vous pas déjà mis en place ?
- Quels résultats espérez-vous en retirer (en interne et en externe) ?

## **II. Défis pour dynamiser le secteur à but non lucratif français**

*INTRODUCTION : Les questions suivantes traitent du lien entre la responsabilité et la réussite ou les défis du secteur à but non lucratif français.*

1. Le secteur à but non lucratif français, malgré le talent et les efforts exceptionnels de ses participants, est en retard sur celui des Etats-Unis et du Royaume-Uni en termes de dons, de participation bénévole, de niveau de professionnalisme en gouvernance. Comment classeriez-vous/ expliqueriez-vous les raisons les plus fréquemment citées pour le retard du secteur :
  - Système fiscal (dons et contribution au titre de la sécurité sociale)
  - Etat providence [INCLUDE FINANCIAL AND SOCIAL SERVICE DELIVERY ISSUES, RELEVANCE TO OPERATIONS AND ACCOUNTABILITY] [RESPONSES TO KEY ELEMENTS IN THE LITERATURE] [TEST CONNECTION TO ACCOUNTABILITY]
  - Culture
  - Standards moins rigoureux en termes de responsabilité/ transparence
2. Dans quelle mesure pensez-vous que l'importance de la responsabilité dans le secteur a augmenté dans les 3 dernières années ? les 5 à 10 dernières années ? [Comment ? Pourquoi ?]
3. Dans quelle mesure l'augmentation de la confiance des donateurs (remédier à la méfiance des donateurs) en est la raison ? A-t-elle été bénéfique ? Dans quelle mesure l'augmentation de la responsabilité/ transparence permet-elle de remédier à la méfiance des donateurs ? (A votre avis est-ce que de la confiance des donateurs (remédier à la méfiance) est importante pour la réussite générale du secteur ?)
4. Outre la confiance, quelles autres explications s'appliquent au secteur pour l'augmentation de la responsabilité :
  - Développement et retombées des normes internationales ?
  - Pression des médias ?
  - Pression des donateurs ?
  - Privatisation du secteur ?
  - Répercussions des exigences de l'Etat français en matière de responsabilité ?
  - Autre ?
5. Dans quelle mesure considérez-vous la confiance du public, des bénévoles, des salariés, des bénéficiaires (en plus de celle des donateurs) importante pour la réussite du secteur ?

6. Aurez-vous des commentaires concernant les différences eventuels entre vos réponses concernant la responsabilité / la confiance des donateurs (remédier à la méfiance) dans le cadre de votre organisme par rapport a vos réponses concernant le secteur ?

### **III. Adhésion au Comité de la Charte - Raisons pour devenir membre, avantages/ inquiétudes**

*INTRODUCTION : Ce groupe de questions s'oriente sur le Comité de la Charte.*

1. Depuis combien de temps êtes-vous membre du Comité de la Charte ?
2. Quelle importance l'augmentation de la confiance des donateurs (remédier à la méfiance des donateurs) a-t-elle revêtue dans votre décision de rejoindre le Comité de la Charte ?
  - a. Quelles démarches avez-vous entreprises pour déterminer les résultats (demander un feedback des donateurs, etc.) ?
  - b. Avez-vous observé des résultats ?
    - i. Si oui, lesquels ?
    - ii. Si non, pourquoi, selon vous ?
  - c. Quelles sont les exigences du Comité de la Charte les plus utiles en termes de confiance des donateurs ?
3. D'autres types de confiance (interne, bénévoles, réputation générale dans la société) ont-ils été importants dans votre décision de rejoindre le Comité de la Charte ?
4. Quelles sont les autres principales raisons qui vous ont décidés à rejoindre le Comité de la Charte ?
5. Quels changements/ ajouts significatifs, le cas échéant, de vos pratiques en matière de responsabilité vous ont été demandés pour rejoindre le Comité ?
6. Votre adhésion au Comité a-t-elle eu des conséquences négatives ?
7. Comment vos salariés réagissent-ils par rapport au travail demandé pour vous conformer à la Charte ?
8. Existe-t-il des aspects de la conformité avec la Charte que vous trouvez difficiles et/ ou inutiles ?
9. Existe-t-il des améliorations aux processus et procédures du Comité de la Charte (processus de vérification, marketing, texte de la charte, etc.) qui, selon vous, apporteraient des avantages plus importants aux associations/ fondations membres ?

#### IV. **Donateurs gouvernementaux et institutionnels**

*INTRODUCTION : Les questions suivantes traitent de la relation entre le financement de l'Etat et les donateurs institutionnels, les exigences des gouvernements et donateurs institutionnels en matière de responsabilité et vos efforts en termes de responsabilité.*

1. Quelle importance revêt le financement de l'Etat dans votre organisme ? [A récupérer du questionnaire] A-t-elle toujours été constante ou a-t-elle récemment évolué ?
2. Avez-vous des exigences de responsabilité/ transparence dans le cadre du financement de l'Etat qui diffèrent sensiblement des exigences du Comité ? Vos pratiques en matière de responsabilité diffèrent-elles de celles des donateurs individuels en général ?
3. Quelle est la relation entre les répercussions des exigences de l'Etat en matière de responsabilité et vos propres mesures visant à augmenter la responsabilité (ex : dans quelle mesure vos efforts en termes de responsabilité sont-ils liés aux exigences de l'Etat en matière de financement et de responsabilité) ?
4. Quelle importance revêt le financement de donateurs institutionnels (français et internationaux) (ex : fondations, gouvernements, organes de soutien multilatéraux français et internationaux) dans votre organisme ? [A récupérer Du self-completion questionnaire] A-t-elle toujours été constante ou a-t-elle récemment évolué ?
5. Avez-vous des exigences de responsabilité/ transparence dans le cadre des donateurs institutionnels qui diffèrent sensiblement des exigences du Comité ? Vos pratiques diffèrent-elles de celles des donateurs individuels en général ?
6. Quelle est votre opinion sur la divergence entre les pratiques en termes de responsabilité des donateurs gouvernementaux/ institutionnels et des donateurs individuels ?
7. L'importance relative des sources de soutien non gouvernementales/ non institutionnelles impacte-t-elle vos décisions en matière de responsabilité ?

## V. Politique sociale

*INTRODUCTION : Ce dernier groupe de questions traite des recommandations pour la politique gouvernementale en termes de responsabilité dans le secteur des associations/fondations et des recommandations pour les efforts d'auto-réglementation (y compris, notamment, le Comité de la Charte).*

1. L'Etat doit-il être plus strict en matière de réglementation de la responsabilité des organismes à but non lucratif ?
  - a. Comment ? [EXPLORE VARIOUS TYPES OF LAW POSSIBLE]
  - b. Qui devrait être réglementé ? Par exemple, l'Etat doit-il différencier les organismes de différentes tailles (ex : *California Nonprofit Integrity Act*) ?
  - c. Pourquoi ?
  - d. Doit-il y avoir un formulaire d'information mandaté par l'Etat (ex : Formulaire 990) ? [EXPLAIN IN DETAIL]
2. Existe-t-il des domaines où l'Etat impose trop de réglementations en termes de responsabilité/ transparence ?
3. Quels avantages, le cas échéant, avez-vous identifiés de l'augmentation des avantages fiscaux pour les donateurs ? S'ils sont peu nombreux, quelle en est la raison selon vous ? [Note : charges sociales / dons déductibles des impôts]
  - a. Quelles suggestions proposeriez-vous pour que l'Etat améliore le système fiscal ?
  - b. A quel point les réglementations fiscales sont-elles pertinentes par rapport à vos avis sur la responsabilité ? [GIVE US EXAMPLES]
4. Pour quels aspects de la responsabilité/ transparence pensez-vous qu'un secteur auto-réglementé serait préférable ?
5. Quelles recommandations en matière de politique feriez-vous dans le cadre d'un organisme auto-réglementé comme le Comité ?
6. Existe-t-il un besoin pour un type différent d'organisme auto-réglementé ? Si oui, quel type ? Pourquoi ?

## VI. Autre

- a. Merci de faire tout autre commentaire ou de poser toute autre question relatif(ve) à ce sujet que vous auriez aimé avoir entendu(e) dans cette enquête. Existe-t-il d'autres questions importantes à la compréhension de la responsabilité au sein du secteur que je n'ai pas posées ?

---

**FORMULE DE FIN :**

MERCI

***CARTE DE VISITE*** POUR TOUT AUTRE COMMENTAIRE OU  
QUESTION

REPETER LE CARACTERE *CONFIDENTIEL*

REPETER QUE VOUS ESPEREZ QU'IL A ETE UTILE A \_\_\_\_\_, AU  
COMITE DE LA CHARTE ET AU RAPPORT POUR LES PARTICIPANTS  
DE L'ETUDE.

## APPENDIX 1-H-2B

### Interview Questionnaire – Comité Group (English translation by author)

#### Interview Questionnaire - COMITE DE LA CHARTE GROUP

##### **BASIC INFORMATION**

DID THE RESPONDENTS SEE THE RESULTS OF THE SELF-COMPLETION QUESTIONNAIRE BEFORE THE INTERVIEW?

YES/NO

---

PRESENTATION OF THE PROCESS:

CONFIDENTIAL

OBJECTIVES

DURATION: 60-90 minutes

APPROACH OF QUESTIONS:

- In-depth responses sought
- Add any commentary that seems appropriate, even if I do not specifically ask about the issue
- Add any necessary context that might be necessary to understand and evaluate the responses
- The importance of nuances

RESULTS AND PUBLICATION

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COMMENTARY ON RESPONDENT'S BEHAVIOUR:

OTHER REMARKS/PRELIMINARY QUESTIONS:

REMINDER OF THE DEFINITION OF ACCOUNTABILITY:

**TRUST:** “Trust that an institution or an individual will behave as expected.”  
 [Describe Hansmann theory that nonprofits function on trust because unlike for-profit corporations they do not have the resources to provide the level of accountability. The point of this study is to investigate increasing accountability in the French nonprofit sector, including whether nonprofit organisations in France are in fact using accountability as a means to engender donor trust/mitigate donor mistrust and other possible explanations.]

**ACCOUNTABILITY:** “Responsibility for one’s behaviour” The reasoning behind this concept is to attempt to limit stakeholders and types of accountability, notably outside of the domestic territory and in different cultural and legal contexts.  
 [Explain Comité working definition of accountability and offer US examples.][Explain different types of accountability.]

**QUESTIONS: BASIC STRUCTURE [ELABORATED AND EXPLAINED  
“LIVE” DURING THE INTERVIEW USING SEMI-STRUCTURED METHOD –  
ALLOWING MANY NEW QUESTIONS, SOLICITING FURTHER DETAIL ON  
VARIOUS TOPICS DEPENDING ON RESPONDENT RESPONSES, NEED FOR  
CLARITY, ETC.]**

*INTRODUCTION: The questions fall within five major categories:*

- *Accountability and donor trust in general (by far the biggest section).*
- *Challenges for dynamising the nonprofit sector in France*
- *The Comité de la Charte*
- *Governmental, institutional (and corporate) donors*
- *Social policy.*

*For certain questions, you should respond with respect to your organisation, and for others, you can give your opinion on how the question relates to the nonprofit sector more generally, including both foundations and associations. Thank you in advance for specifying differences between your personal opinion and the position that you take on behalf of and in your role as leader of your organisation.*

**I. Accountability**

*INTRODUCTION: The following questions relate to accountability and donor trust in general.*

**Definitions and Donor Trust**

1. Increase in interest in accountability. To what extent has your organisation shown increased interest in accountability and/or efforts to increase accountability during the last three years? During the last five to ten years? How and why is this accountability important for your organisation? What would be examples of evidence of this increasing accountability?
2. Donor Trust. How important do you consider donor trust to be in relation to the increasing interest in and efforts with respect to accountability in your organisation? That is, to what extent is increasing accountability in order to engender donor trust? Or to what extent is the reinforcement of donor trust (or remedying donor mistrust) the reason for increase in efforts relating to accountability?
  - a. Has the development of accountability efforts improved donor trust? How do you evaluate this?
  - b. What are the advantages seen with respect to donor trust?

- c. In your opinion, what are the other most important factors regarding the maintenance of donor trust?
- d. Does your organisation apply all of these?
- e. Do you consider donors interested in accountability efforts? If so, how and why?
- f. How else is accountability related to donor trust?

3. Explanations. Other than donor trust, what other explanations do you suggest there are for the increase in efforts with respect for accountability? [Or would these reasons push you to increase accountability if you had not done so already?][push back on explanations to understand how, to what extent, interrelationships among explanations]

- i. Development and spread of international standards of accountability?
- ii. Media pressure?
- iii. Donor pressure?
- iv. Professionalisation and privatisation of the nonprofit sector?
- v. Repercussions of demands of the French state with regards to accountability? (Either the French state in its capacity as donor, or regulation.)
- vi. Other

4. Definitions. Would you change the definition of accountability of associations and foundations that I propose? Does your organisation have a standard definition of accountability that you work with?

- a. Does the definition of accountability change according to the beneficiaries of accountability (e.g. donors, volunteers, employees, beneficiaries of services, the public), or is there a standard definition applicable to all by your organisation?
- b. Should there be different definitions of accountability for associations and foundations?

5. International Standards. Do you consider that international standards of accountability (in particular US and UK standards) are important models for your organisation? For the French nonprofit sector in general? Interesting as a matter of general interest?
  - a. Why?
  - b. Specifically, which examples would be compelling models?
6. Remedying mistrust vs. increasing trust. Do you think that donor trust is thought of in relation to an effort to remedy mistrust (for example, after a scandal), or increase trust? Can you please explain how this relates to your own views of accountability and the increasing interest and efforts with respect to accountability that your organisation has demonstrated? Is this a relevant/important question?

### **Your Organisation**

7. Volunteers. How do you use volunteers? (For example, at headquarters? In positions of low-level responsibility? In the field? On an occasional commitment or on a regular basis?) [Refer to Self-Completion Questionnaire Results]
  - a. Do you think that accountability/transparency is important to attract volunteers?
  - b. Does your method of using volunteers reflect your policy on accountability?
  - c. What are the key issues relating to the relationship between your views on accountability and volunteers?
  - d. Have volunteers expressed any views relating to accountability generally or accountability mechanisms specifically?
8. Public, etc. To what extent are you concerned with accountability towards the general public? To beneficiaries of services? How do your policies and practices with respect to accountability reflect this? [Further question relationship between cited rationale for increasing accountability and views on accountability to the public.][Suggest initial basis for the question is tax basis – and probe tax relevance.]

### **Voluntary Accountability Mechanisms**

9. I am going to ask you to comment on a number of voluntary accountability mechanisms which are best practice in the US. Could you please indicate whether or not you have implemented each, and if not, why not? (e.g. resource limitations, policy of the Board of Directors, cultural sensitivity, time, inappropriate for your organisation, etc.) [DEFINE EACH]  
 [EXPLORE RANGE OF REASONS WHY OR WHY NOT IMPLEMENTED (RESOURCE LIMITATIONS, LACK OF INTEREST, LACK OF UTILITY/RELEVANCE, NO TIME, CULTURAL BARRIERS, RESISTANCE FROM EMPLOYEES, ETC.), CURRENT VIEWS, ETC.]

- a. Audit Committee
- b. Document retention policy
- c. Conflict of interests policy
- d. Code of Ethics
- e. Audit Procedures/overseeing relationship with external auditors
- f. Conseil d'Administration oversight of senior management compensation and evaluation
- g. A policy on information distribution and transparency
- h. Whistleblower mechanism ( a practice which is technically illegal in France, but is integrated into the corporate world with certain modifications)
- i. Performance effectiveness.

10. In your opinion, what are the two most important voluntary accountability mechanisms that you have implemented?

- a. Why did you choose these particular voluntary accountability mechanisms?
- b. What results have you observed (internally and externally) from the implementation of these voluntary accountability mechanisms?
- c. How have these results been linked to donor trust, if at all?
- d. How have these results been linked to other rationales for increasing accountability you cited?

11. What are the two or three most important voluntary accountability mechanisms that you wish to put into place that you have not yet had the time, resources, or opportunity to do?
  - a. Why have you not already implemented these voluntary accountability mechanisms?
  - b. What results do you expect to obtain (internally and externally) once these voluntary accountability mechanisms are implemented?
  - c. How do you expect to measure these results?

## II. Challenges for dynamising the French nonprofit sector

*INTRODUCTION: The following questions relate to the link between accountability and the success or failure of the French nonprofit sector.*

1. Despite the exceptional talents and effort of many of its participants, the French nonprofit sector is lagging behind that of the US and the UK in terms of giving, volunteering, level of professionalism, and governance. [GIVE STATS] How do you classify/explain the reasons for this lag in the sector?
  - a. The tax system (deduction of gifts and social security contribution levels)
  - b. Welfare state [INCLUDE FINANCIAL AND SOCIAL SERVICE DELIVERY ISSUES, RELEVANCE TO OPERATIONS AND ACCOUNTABILITY] [RESPONSES TO KEY ELEMENTS IN THE LITERATURE] [TEST CONNECTION TO ACCOUNTABILITY]
  - c. Culture
  - d. Lower standards in terms of accountability/transparency
2. To what extent do you think that accountability has increased in importance generally in the sector in the past three years? Five to ten years? (How? Why?)
3. To what extent is donor trust (or remedying mistrust of donors) the reason? Has it been effective? To what extent has an increase in accountability/transparency contributed to remedying donor mistrust? (In your opinion, is donor trust (remedying mistrust) important for the general success of the French nonprofit sector?)

4. Other than trust, what other explanations apply to the sector for increasing responsibility?
  - i. Development and absorption of international standards of accountability?
  - ii. Media pressure?
  - iii. Volunteer pressure?
  - iv. Professionalisation and privatisation of the nonprofit sector?
  - v. Repercussions of demands of the French state with regards to accountability? (Either the French state in its capacity as donor, or regulation.)
  - vi. Other
5. To what extent do you consider public trust, trust of volunteers, trust of employees, trust of beneficiaries of services important for the success of the French nonprofit sector?
6. Do you have any comments relating to possible differences between your answers with respect to accountability/donor trust (remedying donor mistrust) in the context of your organisation relative to your responses concerning the sector more generally?

### **III. Membership in the Comité de la Charte – Reasons for becoming a member, advantages, disadvantages, and criticisms**

*INTRODUCTION: This group of questions is oriented around the Comité de la Charte.*

1. How long has your organisation been a member of the Comité de la Charte?
2. How important was increasing donor trust (remedying donor mistrust) to your decision to join the Comité de la Charte?
  - a. Which steps have you taken in order to determine the results (asking for feedback from donors, etc)?
  - b. Have you observed any results with respect to donor trust?
    - i. If yes, which?
    - ii. If no, why do you think that membership in the Comité de la Charte has not been effective in increasing donor trust?

- c. What are the requirements of the Comité de la Charte that are the most useful in terms of donor trust?
- 3. Were any other types of trust (internal, volunteers, general reputation in the sector, etc) important in your decision to join the Comité de la Charte?
- 4. What other primary reasons contributed to your decision to join the Comité de la Charte?
- 5. What significant changes/additions, as the case may be, in your accountability practices were required for you to join the Comité de la Charte?
- 6. Has your membership in the Comité de la Charte had negative consequences of any sort?
- 7. How did your employees react relative to the work required in order to comply with the on-going obligations of the Comité de la Charte?
- 8. Are there aspects of compliance with Comité de la Charte requirements that you find difficult and/or useless?
- 9. Do you have any recommendations for improvement in the policies, processes and procedures of the Comité de la Charte (verification processes, marketing, texts of the Charte de Déontologie, etc) that according to you would help bring greater advantages to the member associations and foundations?

#### **IV. Governmental, Institutional, and Corporate Donors**

*INTRODUCTION: The following questions relate to the relationship between accountability and state funding or funding from other institutional or corporate donors, in particular with demands for accountability and your own efforts in terms of accountability relating to this type of funding.*

- 1. How important is French state funding to your organisation? (Also to cross-check against self-completion questionnaire.) Has this been consistent or has this recently evolved?
- 2. Do you have requirements with respect to accountability/transparency in the context of French state financing which differ considerably from the requirements of the Comité de la Charte? Are these policies and practices different than those for individual donors in general?

3. What is the relationship between the repercussions of French state requirements with respect to accountability and your own efforts targeting increased accountability (e.g. to what extent are your efforts in terms of accountability directly linked to French state requirements for funding or independently obtaining funding)?
4. What is the importance of institutional donors (French or international) (e.g. foundations, government entities, multilateral organisations)? (Also to cross-check against Self-Completion Questionnaire). Has this been consistent or has this recently evolved?
5. Do you have requirements with respect to accountability/transparency in the context of institutional donor funding which differ considerably from the requirements of the Comité de la Charte? Are these policies and practices different from those relating to individual donors more generally?
6. What is your opinion on the divergence between practices in terms of governmental/institutional/corporate donors and those relating to individual donors?
7. What is the relevant importance of sources of funding other than governmental/institutional/corporate in terms of the impact on your decisions relating to accountability?

## V. Social Policy

*INTRODUCTION: This last group of questions relates to recommendations for social policy in terms of accountability for the nonprofit sector relating to associations and foundations, and recommendations for self-regulatory efforts (including the Comité de la Charte) and voluntary accountability efforts.*

1. Should the French state be more strict with respect to regulations on accountability in nonprofit organisations?
  - a. How? [EXPLORE VARIOUS TYPES OF LAWS POSSIBLE]
  - b. What should be regulated? For example, should the French state distinguish between different sized organisations (e.g. the California Nonprofit Integrity Act)? Between fundraising and non-fundraising organisations?
  - c. Why?
  - d. Should there be a mandatory information disclosure form required by the French state? (e.g. Form 990) [EXPLAIN IN DETAIL]
2. Are there areas in which the French state imposes excessive regulation in terms of accountability/transparency? Please explain.

3. What are the advantages with respect to recent changes in the tax law for donors? Do you consider the tax law adequate with respect to competition between other countries? (Note: the answer should include issues such as social charges, tax deductibility of gifts.)
  - a. What suggestions do you have for the French state to improve the tax system?
  - b. How relevant is tax regulation to your views on accountability?  
[GIVE US EXAMPLES]
4. What aspects of accountability/transparency do you think would be better addressed by a self-regulatory organisation? Why? What sort of self-regulatory organisation do you think would be most appropriate? (Also to cross-check against self-completion questionnaire.)
5. What other recommendations in terms of social policy would you make in the context of a self-regulatory organisation such as the Comité de la Charte? How should the Comité de la Charte intervene in matters of Government policy?
6. Is there a need for a different type of self-regulatory organisation than the Comité de la Charte? What sort? Why?

## VI. Other

1. Please make any other comments or ask any other questions relating to the subject that you would have liked to have heard in this interview. Are there questions that are important to the understanding of accountability in the French nonprofit sector that I did not ask? Are there any other areas that you feel require additional context or information?
2. Do you have any questions regarding international practices or your specific organisation that would contribute to the understanding of your perspective on accountability?
3. Do you feel that all relevant aspects of the subject were covered?

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## **CLOSING OF THE INTERVIEW**

THANK YOU.

BUSINESS CARD FOR ALL FURTHER QUESTIONS OR COMMENTS.

REPEAT THE CONFIDENTIAL NATURE OF THE INTERVIEW.

REPEAT THAT THERE WILL BE A FRENCH LANGUAGE REPORT WITH DETAILED FINDINGS AND A SUMMARY OF RECOMMENDATIONS FOR THE COMITÉ DE LA CHARTE AS AN ORGANISATION, AND ALSO FOR INDIVIDUAL ORGANISATIONS.

## APPENDIX 1-H-2C

### **Interview Questionnaire – Control Group (original French)**

#### **Fiche d'entretien – Participants Groupe CONTROL**

*[The following excerpt from the Control Group interview questionnaire is the only section of the interview questionnaire that is different from the Comité Group interview questionnaire (Appendix 1-H-2A). This Section replaces Section III of the Comité Group Interview Questionnaire.]*

#### **III. Adhésion au Comité de la Charte – Raisons pour devenir membre, avantages/ inquiétudes**

*INTRODUCTION : Ce groupe de questions s'oriente sur le Comité de la Charte et votre opinion sur les raisons pour lesquelles il pourrait être avantageux ou non pour vous d'adhérer au Comité et l'impact sur la responsabilité.*

1. Avez-vous envisagé de devenir membre du Comité de la Charte ?
  - a. Si oui, pourquoi n'avez-vous pas adhéré ?
  - b. Si non, pourquoi ?
2. Répondriez-vous aux critères pour adhérer au Comité ? [Les critères sont : \_\_\_\_\_.]
3. Quelle importance l'augmentation de la confiance des donateurs (remédier à la méfiance des donateurs) a-t-elle revêtue dans votre enquête sur le Comité [et votre décision de ne pas adhérer] ?
4. D'autres types de confiance (interne, bénévoles, réputation générale, public, bénéficiaires) ont-ils été impliqués dans cette considération du Comité ?
5. Y aurait-il eu des changements importants dans vos pratiques de responsabilité afin que vous puissiez rejoindre le Comité ?
6. Votre adhésion au Comité aurait-elle eu des conséquences négatives ?
7. Existe-t-il des améliorations aux processus et procédures du Comité (éligibilité, processus de vérification, texte de la charte, etc.) qui vous auraient fait changer d'avis ?

## APPENDIX 1-H-2D

### Interview Questionnaire – Control Group (English translation by author of sections different from Comité Group version)

*[The following excerpt is a translation by the author of the questions from the formal interview questionnaire that relate to the Control Group only. These questions replace Section III (questions on being a member of the Comité de la Charte for the Comité Group) of the Comité Group interview questionnaire. The sections other than this Section III were identical to the Comité Group questionnaire (translation in Appendix 1-H-2B).]*

#### **III. Membership in the Comité de la Charte – Reasons for becoming a member, advantages, disadvantages, and criticisms**

*INTRODUCTION: This group of questions is oriented around the Comité de la Charte and your opinion as to the reasons why it would be advantageous or not for you to become a member of the Comité de la Charte, and the implications of membership on your accountability policies and practices.*

1. Have you ever considered becoming a member of the Comité de la Charte?
  - a. If yes, why have you not become a member yet?
  - b. If not, why not?
2. Do you currently comply with the criteria for Comité de la Charte membership? [The criteria are: (list the main criteria).]
3. To what extent is increasing donor trust (or remedying donor mistrust) relevant to your investigation of the Comité de la Charte and possible decision to become a member or not?
4. Are other types of trust (internal, volunteer trust, general reputation, public trust, trust of beneficiaries of services) relevant to your consideration of membership in the Comité de la Charte?
5. Would there be significant changes in your accountability policies and practices necessary for you to become a member and/or remain a member on an on-going basis?
6. Would you expect your membership in the Comité de la Charte have negative consequences of any sort? If so, what would those be and could they be addressed?
7. Do you have any suggestions to improve the policies, requirements, processes, and/or procedures of the Comité de la Charte (e.g. eligibility procedures, verification processes, text of the Charte de Deontologie, etc.) which would make you change your mind one way or the other about membership in the Comité de la Charte?

8. Do you have any other comments about the efficacy of the Comité de la Charte and/or any aspects of why you would or would not become a member, in particular in relation to accountability and/or donor trust?

## APPENDIX 1-I

### Method of Data Analysis

I used a three-step iterative process involving “data reduction, data display, and conclusion drawing/verification” (Robson 2002, 475-6). Summaries, abstracts, tables, and comparative charts were prepared for sorting, analysing, and considering the qualitative data from several perspectives. This process included cross-comparing relationships among responses to different groupings of questions. This exercise was repeated multiple times for accuracy.

I built into the approach opportunities for clarification and testing the validity/reliability/plausibility of responses. In addition, I used respondent verification by feeding back at various stages my findings for reconfirmation to Soublin and Cyrille Cohas-Bogey, Executive Director of the Comité, and certain respondents on specific issues, as well as a version of “triangulation” by confirming my understanding of interviews and background data with Soublin and French nonprofit sector experts (Bryman 2004, 275; e.g. Berthet call 2008, Charhon meeting 2005, Binder meeting 2007, Frotiée, Chartier, and Berthet teleconference 2008, and Frotiée and Chartier teleconference 2008)<sup>1</sup>. Multiple drafts of the Report to Respondents were reviewed with Soublin. Soublin and all respondents were invited to comment further on the Report to Respondents. There were separate meetings on implementation at the Comité level of various recommendations from the Report to Respondents (Soublin meeting February 2008). Comité senior management follow-up verification through calls and e-mails continued throughout the thesis drafting process. In addition, the dual-phase of data collection with verification of certain data from publicly available sources adds reliability. Finally, sporadic feedback from respondents was used, for example comments from interviewees met at conferences subsequent to the interviews (Comité de la Charte Conference 2008; Léo Jégard & Associés Conference 2008).

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<sup>1</sup>See References Section IV for references to these experts.

## APPENDIX 2

Theoretical Framework

Why  
accountability  
is increasing

**DONOR TRUST**  
(HANSMANN)

**ETHICAL, EFFECTIVE  
MANAGEMENT(EEM)**  
(irrespective of external  
reaction – donor trust or  
otherwise)

How  
accountability  
decisions are  
made

**STRATEGIC ASSESSMENT**  
of accountability matters  
(to “signal” trust  
ROSE-ACKERMAN)

**STRATEGIC ASSESSMENT**  
of accountability matters  
(based on ROSE-ACKERMAN  
analysis but irrespective  
of external reaction)

**Internal variables:** size, level of international engagement, and initiative and profile  
of leader

**External variables:** regulatory (accountability regulation and tax system) and non-  
regulatory (welfare state environment and scandal)

**Media** is a corollary to donor trust

**Media** not an issue (no attention to  
external reaction)

Most trust-related VAMs independent of  
internal and external variables

Most corporate and international VAMs  
more closely tied to internal variables  
but not linked to external variables

**Donor pressure, Comité membership,**  
and the **media** are potential driving  
factors to accountability efforts in  
furtherance of donor trust.

**Corporatisation, integration of  
international standards, and  
compliance with funder accountability  
requirements** are driving factors to  
EEM.

Accountability decisions for all are inside out, organisation by organisation-driven.

Donor trust matters for all – irrespective of rationale for increasing accountability.

Policy implications: accountability choices should be *function* driven (i.e.,  
mechanisms that achieve functional results) not necessarily copies of specific US  
and/or corporate models.

Accountability (particularly  
performance evaluation) supplements  
the nondistribution constraint as the  
basis for trust in the increasingly  
competitive, accountability-focused  
environment (SALAMON).

EEM respondents separate accountability  
and donor trust, but donor trust continues  
to matter.

## APPENDIX 4

### **Independently Adopted Voluntary Accountability Mechanisms**

**(Above and Beyond the Law, Comité Requirements,  
and VAMs –by Category)**

**Comité Group and Control Group Combined**

#### **I. General Conseil d'Administration Oversight and Financial Transparency**

1. **Formal evaluation of the General Director or Executive Director and the President by the conseil d'administration** (Organisation 17)
2. **Publication of the salaries and non-salary compensation and benefits of the three to five most highly paid members of the management team publicly and individually** (Organisation 18 and C)
3. **Assurance of written policies for all best accountability practices** – to ensure that these practices survive a change in leader and/or *conseil d'administration* and are clearly communicated to all involved with the organisation (Organisation 17)
4. **Adoption of a formal conflict of interest policy** regarding beneficiaries of services (e.g. not accepting legacy gifts to the organisation from elderly patients cared for by the association) (Organisation 3 and 7)
5. **Formal expert risk analysis** (including financial, competition, political, sustainability of the organisation, and personnel security, as applicable) (Organisations 7 and C)
6. **Income Statement published publicly** along with Statement of Use of Funds (Organisation 26)
7. **Rigorous re-evaluation of the respect of the statutory mission** on a regular basis and at the time of any unusual influx of gifts (e.g. the 2004 Asian tsunami) to insure programs and use of funds stay strictly within mission boundaries (Organisations 25 and C)
8. **Manual of internal procedures** (outlining financial controls and other employee and operations procedures)

#### **II. Donor Matters**

1. **Donor committee or donor representatives** – small group of donors representing the donor group with access to the management team on a regular basis (Organisations 4 and 3)
2. **Response to every donor complaint** – whether written, telephonic, or internet-based (Organisations 4 and B)

3. **Buttress fund-raising practices** (such as strict procedures to participate in national fund-raising events, reconsideration of stewardship expenses, scrutiny of media-driven fund-raising (Organisations 14, 4, B, respectively)

### **III. Audit Committee**

1. **Implementation of a formal letter signed by the President and Conseil d'Administration treasurer to the commissaires aux comptes and any other independent auditors** and stating that the management team is available for any audit related questions (Organisation 18)
2. **Whistleblower mechanism** or functional alternative allowing confidential reporting of fraud, sexual harassment, and other such matters (Organisation C)
3. **Formal approval by the Conseil d'Administration of all expenditures by the President** (Organisation 17)
4. **Internal audits** (on general control systems and financial controls) – by independent auditors
5. **Policy of aggressive reaction in case of any problem** (fraud, a difficult management issue, a legitimate financial downturn, closure of programs, etc.) (Organisation 7)

### **IV. Volunteers Matters**

1. **Volunteer Code of Conduct** – specifying expected ethical and organisational conduct standards required of volunteers and expectations volunteers should have regarding the functioning of the organisation and treatment of volunteers (including such issues as policies on evaluations and dismissal)
2. **Efforts to professionalise volunteers** through training, clear job descriptions, and annual evaluations

### **V. Beyond US Sector Best Practice Standards**

1. **“Dashboard”** – Succinct table prepared monthly for the *conseil d'administration* with key financial and other performance indicators most relevant to the organisation (Organisation 15)
2. **Environmental audit (“footprint”)** and list of 20 best practical tips or requirements for the organisation to apply in daily operations to improve environmental performance
3. **Voluntary request for external audit from Ministry of the Interior** (Organisation B)

## APPENDIX 6-A

**Average Number of Donors per Year**  
**In Three Fiscal Years Preceding Survey<sup>1</sup>**

	Comité Group		Control Group <sup>2</sup>		Total Combined Group	
	# Orgs	%	# Orgs	%	# Orgs	%
0-500	1	3%	5	50%	6	15%
501-1,000	2	7%	1	10%	3	8%
1,001-2,500	0	0%	0	0%	0	0%
2,501-5,000	2	7%	0	0%	2	5%
5,001-10,000	2	7%	0	0%	2	5%
10,001-100,000	5	19%	2	20%	7	18%
100,001-250,000	6	21%	0	0%	6	15%
251,001-500,000	6	21%	2	20%	8	21%
500,001 or more	5	17%	0	0%	5	13%
<b>TOTAL</b>	<b>29</b>	<b>100%</b>	<b>10</b>	<b>100%</b>	<b>39</b>	<b>100%</b>

**Approximate Percentage of Individual Donors**  
**Contributing a Maximum of €100 Annually (2006)**

	Comité Group		Control Group		Total Combined Groups	
	# Orgs	%	# Orgs	%	# Orgs	%
0	2	7%	3	30%	5	13%
1-10%	4	14%	0	0%	4	10%
11-20%	0	0%	0	0%	0	0%
21-30%	1	3%	0	0%	1	3%
31-40%	0	0%	1	10%	1	3%
41-60%	3	10%	0	0%	3	8%
61-80%	1	3%	2	20%	3	8%
81-95%	15	52%	1	10%	16	41%
96-100%	3	10%	3	30%	6	15%
<b>TOTAL</b>	<b>29</b>	<b>100%</b>	<b>10</b>	<b>100%</b>	<b>39</b>	<b>100%</b>

<sup>1</sup> Tables include the total number of respondents responding to the self-completion questionnaire.

<sup>2</sup> Includes both Control Group A and Control Group B organisations. Therefore, because six organisations are Control Group B organisations, the lower number of donors is not surprising as that reflects the profile of the Control Group B respondents.

## APPENDIX 6-B

Number of Full-Time Equivalent Employees  
in and outside of France (2006)<sup>1</sup>

	Number of Full-Time Equivalent Employees in France						Number of Full-Time Equivalent Employees Outside of France (Including Paid Volontaires) <sup>2</sup>					
	Comité Group		Control Group		Total Combined Groups		Comité Group		Control Group		Total Combined Groups	
	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%
0	0	0	1	10	1	3	17	59	6	60	23	59
1-100	15	52	7	70	22	56	6	21	3	30	9	23
101-250	5	17	0	0	5	13	2	7	0	0	2	5
251-500	2	7	2	20	4	110	1	3	0	0	1	3
501-1,000	4	14	0	0	4	10	2	7	0	0	2	5
1,001-5,000	1	3	0	0	1	3	1	3	0	0	1	3
More than 5,000	2	7	0	0	2	5	0	0	1	10	1	3
<b>TOTAL</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>39</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>39</b>	<b>100</b>

Number of Full- and Part-Time Volunteers  
in and outside of France (2006)

	Full- or Part-Time Volunteers in France						Full- or Part-Time Volunteers Outside of France (Excluding Paid Volontaires) <sup>3</sup>					
	Comité Group		Control Group		Total Combined Groups		Comité Group		Control Group		Total Combined Groups	
	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%	# Orgs	%
0	1	3	2	20	3	8	22	76	8	80	30	77
1-100	6	21	3	30	9	23	5	17	2	20	7	18
101-250	5	17	1	10	6	15	2	7	0	0	2	5
251-500	2	7	1	10	3	8	0	0	0	0	0	0
501-1,000	4	14	1	10	5	13	0	0	0	0	0	0
1,001-5,000	5	17	1	10	6	15	0	0	0	0	0	0
More than 5,000	6	21	1	10	7	18	0	0	0	0	0	0
<b>TOTAL</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>10</b>	<b>39</b>	<b>100</b>	<b>29</b>	<b>100</b>	<b>10</b>	<b>100</b>	<b>39</b>	<b>100</b>

<sup>1</sup> Figures are based on respondents participating in the written self-completion questionnaire.<sup>2</sup> Volontaires are a modestly paid hybrid between paid employees and unpaid volunteers, most often sent overseas for a fixed period (e.g. a two-year term as medical aid workers).<sup>3</sup> Figures exclude paid volontaires.

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