

The Law of Third Sector Organizations in Europe

Antonio Fici

Editor

The Law of Third Sector Organizations in Europe

Foundations, Trends and Prospects



G. Giappichelli Editore

Editor

Antonio Fici
Department of History, Cultural Heritage,
Education and Society
University of Rome Tor Vergata
Rome, Italy

ISBN 978-3-031-41743-6 ISBN 978-3-031-41744-3 (eBook)
<https://doi.org/10.1007/978-3-031-41744-3>

© The Editor(s) (if applicable) and The Author(s), under exclusive license to Springer Nature Switzerland AG 2023

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors, and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Switzerland AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Paper in this product is recyclable.

Foreword

The subject of this volume—the law of the third sector organizations in Europe—is particularly topical and relevant today. In 2022, when the Terzjus Foundation—at the initiative of its scientific director professor Antonio Fici—first conceived the idea of this work, the relevance that an analysis of the legislation on third sector organizations could have with regard to the orientation of the policies of the European Union was not really clear.

Up until that point, the Foundation had primarily focused its efforts on the preparation of a report on the situation and evolution of the law of the third sector in Italy, taking the important legislative reform introduced in 2017 as its starting point. That met with and, indeed, continues to meet with the original mission of Terzjus: to be a centre for the study, research, monitoring and proposal of policies regarding the law in the third sector, providing a service to the typical stakeholders (associations, foundations, social enterprises and cooperatives), as well as supporting the positive evolution of the practices of the public administrations, and, finally, contributing to the positive evolution of the relevant legislation.

The original structure which led to the creation of the Terzjus Foundation—which is composed of networks of Italian third sector organizations, large philanthropic foundations, public bodies and professional associations, with the support of a highly skilled Scientific Committee—has enabled the Foundation to draw from a wealth of academic, professional and operational knowledge as it carries out its research.

The positive response given to the Terzjus report on Italian third sector law has encouraged the Foundation to set its sights on the European level, which is also a perspective that is clearly specified in its own statutes.

This gave rise to the idea of devising a study to analyse ten different cases of legislation on third sector organizations at national level and three transversal contributions dedicated to a comparison of the 10 national cases and overview of European legislation; a comparison with the experience in the United States; and, finally, a deep dive into the barriers and incentives for the development of European philanthropy, written by the secretary general of Terzjus Gabriele Sepio.

The preparation of this work coincided with the adoption, in December 2021, of an “Action plan for the social economy”, which was introduced by the EU at the initiative of Commissioner Nicolas Schmit and, more recently, with the European Commission’s proposal of a recommendation which aims to ensure that the Member States both develop and implement social economy policies designed to favour inclusion, employment and social innovation.

In this context, a comparative study of what is happening in the major EU countries can only help to develop a better and more up-to-date identification of the actors which make up the diverse world of the third sector and of the social economy, in order to promote both its reinforcement and development within a Union framework that is less fragmented and more efficient.

Furthermore, it is quite clear that the adoption of an “Action plan for the social economy”, as well as a recommendation, which presumably will be approved in November 2023 by the European Council of the EU Heads of State and of Government, constitutes important new elements in this area, as well as a turning point in Community policies which, thus far, had never fully recognized the importance and the specific nature of the social economy as a “third pillar” of our territorial, national and European communities.

Whilst hoping that this volume proves to be a useful tool in this context, it only remains for me to thank all of those who have contributed to this volume: the scientific director of Terzjus, Antonio Fici, for having conceived the idea and coordinating the work; the Banca Etica and the Fondazione Finanza Etica who have sponsored the initiative, thus enabling its realization; Fondazione AIRC for further funding; and, finally, Springer, the publisher, who, together with Giappichelli, kindly accepted our proposal to publish the volume.

The third sector is on the verge of a new era, and with this research work, the Terzjus Foundation has tried to contribute to the development of principles, orientations and policies so that it may become a key element in the lives of the citizens of Europe.

Terzjus Foundation, Rome, Italy
July 2023

Luigi Bobba

Preface

This book deals with third sector organizations from a comparative legal perspective, and as such it is the first of its kind. This is mainly due to the fact that third sector organizations are a relatively new category of organizations. It was first conceptualized in the United States in the 1970s but was almost immediately confused with the more generic category of non-profit organizations. This fact has not contributed to the development of the third sector. Non-profit organizations are characterized by a solely negative element, the non-profit purpose or profit non-distribution constraint. In contrast, third sector organizations are qualified in positive terms by the pursuit of a “social” or “worthy” purpose, which implies the performance of public benefit or general interest activities without a profit aim. This book helps the reader to gain a clear understanding of the difference between simple non-profit organizations and third sector organizations, thereby contributing to the conceptual autonomy of the latter from the former, notably from a legal point of view.

Third sector organizations are recognized by law, with this exact denomination, only in one European country, namely in Italy, where a Code of the Third Sector was enacted in 2017. However, the comparative legal analysis conducted in this book shows that organizations equivalent to Italian third sector organizations are provided for and regulated in almost all the EU countries. In particular, the category of public benefit organizations has the largest number of traits in common with that of third sector organizations. The fact that in many European countries public benefit organizations are regulated in tax law has circumscribed the knowledge thereof to small circles of practitioners and scholars. Public benefit organizations have, moreover, been largely ignored in the institutional debate, also at the European Union level, where other sector labels, such as “social economy entities” or “social enterprises”, have had more success. The situation seems now to be partially different. Just some weeks ago, the European Commission released a proposal for a recommendation on developing social economy framework conditions, accompanied by two staff working documents, one of which focuses on the public benefit status in the EU.

The above explains why this book comes at the right moment, precisely when economic, social and pandemic crises are leading national states and the European Union to provide greater visibility, better operational conditions and more sophisticated support measures in favour of organizations that may help public bodies to satisfy the needs of their citizens, communities and territories, which otherwise risk remaining unmet. Third sector organizations are allies of the State and merit even more attention than organizations oriented to making profits for distribution to their owners. This now also seems to be clearer at the European Union level, as shown by the increased consideration given by EU institutions to this topic.

Being the first of its kind, one of the main objectives of this book was to collect the diverse national experiences, make a first comparison between them, and lay the foundations for further legal research in this field. The variety of denominations, sources and features found at the national level meant that it was first of all necessary to identify and describe the relevant legal framework on third sector organizations. This may justify a tone that at times is descriptive. But the book enables readers to now know what they have to seek and compare if they have an interest in third sector law.

The editor of this book wishes to thank all of the people and organizations that have contributed to its realization. First of all, the distinguished colleagues who have accepted to participate in this collective experience, hopefully the first of a long series. Secondly, the Terzjus Foundation, an Italian third sector organization working on third sector law, of which I am honoured to serve as Scientific Director, for having promoted the research that led to this book, as well as the main sponsors of the initiative, Banca Etica and Fondazione Finanza Etica, for their financial support without which this book would probably not have seen the light of day. Thanks also to the AIRC Foundation for additional funding and to our publishers, Giappichelli and Springer, for the interest shown in this new area of law by accepting to publish this book. Our hope is that the book may somehow contribute to the further development of all third sector organizations in Europe and beyond.

Rome, Italy
July 2023

Antonio Fici

Contents

Part I National Perspectives on the Law of Third Sector Organizations

1	The Third Sector in Belgium	3
	Henri Culot and Joanne Defer	
2	The Diversity of Third Sector Organisations in Denmark	37
	Karsten Engsig Sørensen	
3	French <i>Economie Sociale et Solidaire</i> in the Middle of the Ford	57
	Véronique Magnier	
4	Law in Transition: Reforming the Legal Framework of the Third Sector in Germany	73
	Florian Möslein	
5	Third Sector Organisations in Ireland: Assembling the Regulatory Jigsaw Pieces of an Evolving, If Fragmented, Sector	95
	Oonagh B. Breen	
6	The New Italian Code of the Third Sector. Essence and Principles of a Historic Legislative Reform	115
	Antonio Fici	
7	The Legal Infrastructure of the Third Sector and the Social Economy in the Netherlands	141
	Ger J. H. van der Sangen	
8	Third Sector in the Third Republic: An Overview of the Law and Practice in Poland	163
	Arkadiusz Radwan, Marcin Mazgaj, and Przemysław Żak	
9	The Legal Regime of the Social Economy Sector in Portugal	191
	Deolinda Meira	

10 Social Economy and Third Sector in Spanish Law. Convergences and Divergences	215
Gemma Fajardo-García	
Part II European and Comparative Law of Third Sector Organizations	
11 Third Sector Organizations in a European and Comparative Legal Perspective	255
Antonio Fici	
12 The Taxation of Social Economy Entities in the Perspective of EU Law	315
Gabriele Sepio	
13 European Law of Third Sector Organizations from the US Standpoint	339
Dana Brakman Reiser	