Ambrosianeum

GOVERNANCE AND TAXATION OF PUBLIC BENEFIT NON PROFIT ORGANIZATIONS

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With the following international partners: The International Center for Not-for-Profit Law (USA) The London School of Economics (GB) The Maecenata Institut (DE) The Catholic University of America (USA)

GOVERNANCE AND TAXATION OF PUBLIC BENEFIT NON PROFIT ORGANIZATIONS

Since some years, the scholars of various disciplines observe the increase of the "non profit sector". This sector by now appears to evidence also in the statistical data and sector surveyings (not only in Italy and Western Europe, but all over the world). The growth, in many cases, has been not so regular and has followed social dynamics, certainly influenced by economic and political factors. The legislator has chased the phenomenon making laws in a not programmed way and sometimes pushed from demands and interests of various the parts involved.

So, non profit laws in many cases are not organic, are too complex and not comprehensible.

For example, in Italy, in absence of a political and legislative program of development of the "non profit sector", and in absence of adequate civil code provisions, the fiscal legislator has introduced many fiscal rules with the aim to avoid tax frauds and evasion phenomenons in a sector where the economic goals are not so prevalent, as the sector is addressed to achieve social purposes.

So, the legal system for non profit organizations is today complex, and unsatisfactory: for this reason many parts have requested simplifications, coordination and a clear discipline.

As you will see in this book, it is not a problem only of the italian case, but also of many other european countries.

The legal framework affecting public benefit non profit organizations is in evolution in Italy, in Europe and all over the world.

This framework is influenced by many social and political changes. We just remember the phenomenon of the "exit" of the State from several activities and the consequent engagement of not profit entities which are taken care of cultural activities, sanitary, charitable, scientific reasearch, sport, etc.

Many societies are testing a new paradigm, where an important role is played by foundations, associations, cooperatives and othere entities which pursue meta-economic purposes.

The public and the business sectors watch the third sector with interest and they support it with financial contributions, parterships, etc, in the conviction that its expansion can be important for the all society.

In short, as already we have written in the first Ambrosianeum Foundation report 2001 on non profit sector (of the city of Milano), more and more non profit entities work in relationship with public institutions, and more and more they have to satisfy complex and numerous social needs.

Now, in Italy we are living a new model of welfare, based on the principles of "verti cal subsidiarity" , and above all, of the "horizontal subsidiarity". The new model of social operator will be less and less the public sector and more and more the "civil society": a model, focused on the role of non profit organizations. These entities will operate close to a State "regolator" and less direct producer of social services. All these circumstances call the italian third sector to a deep change. Many, in fact, are the problems still opened, whose solution constitutes one fundamental pre-condition for the solid and durable development of non profit organizations. Among these, certainly: the insufficient present managerial culture in the organizations; the level of transparency not always sufficient; the absence of an ade-

quate civil and fiscal law coherent with the new social and economic dimensions of the sector; the absence of an adequate control system on civil society organizations, fundamental so that this world can definitively acquire an adequate level of credibility towards the reference community.

From these observations, already delineated by the Ambrosianeum Foundation Observatory, we felt the need to deepen the critical aspects of the sector, making also an international comparison in order to examine the experiences and the laws of other national contexts. We are very conscious of legal, cultural and historical diversities that characterize the several legislations and for these reasons, we start from the knowledge that every country has own peculiarities that we can't transplant directly in other social contexts. We think that the comparison can be useful, especially in a moment of important social change like this.

We in particular think a comparison and a deepening of the European context is extremely important, - and we will make also a comparison with other non european countries (USA and Canada)- in sight of one expectable future homogenization of the European countries laws affecting the non profit sector.

Here, then, explained the reason of this new Ambrosianeum Foundation's report on non profit sector, that it gathers together expert coming from several Countries to answer two questions that we think strategic for the third sector:

1.Which governance-accountability systems (and rules) we have to choose for public benefit non profit organizations?

2.Which taxation we have to adopt to strengthen such organizations?

On these topics we have canalized all contributions written by the international scholars. You can find here that contributions in an integral version. Then, we have tried to collect the operating conclusions synthetically.

We think the above questions strategic for the sector for the following reasons.

The "governance system" of a non profit entity is fundamental in order to orient and to guarantee its future action, its good activity, its regular and durable growth process; the "accountability" is an essential instrument in order to guarantee the achievement of social purposes.

While in the enterprises the presence of owners (shareholders, etc.), motivated by the "profit", constantly suggests the directions for a future evolution of the firm, this is not true with regard to non profit entities: so, which rules we have to introduce to support the civil society, and in particular to guarantee the best achievement of social purposes?

The "accountability", if it is useful for the enterprises, becomes a necessary element for non profit entities. The taxation does not have to be a substantial problem for the third sector, because its purpose is not an economic purpose (it is not the profit),on the contrary the taxation must be thought like one condition for the development of such entities, so important, but at the same time, so weak.

We have to think easy and organic fiscal provisions, thoughts in order to support and to canalize resources from the business and private world in favor of non profit entities: the taxation constitute the true source of capitalization of such organizations, organizations that by definition, do not have a sufficient capital brought by the holder of the property rights, as instead it happens for the business institutions. Such instruments, good governance-accountability and a correct taxation, seem crucial if we want to contribute to an important success of the third sector, in Italy, in Europe and all over the world, and to better guarantee the harmonic evolution of the social life of all the citizens.

If it will be, we could have a strong civil society close to the public and business sec-

tor, preconizing a real new model of Welfare; a new model able to push a positive evolution of the social life of the future. A new model of society, where, beside the development of essential public functions carried out by the State and the production of private assets by the market, the third sector works achieving social purposes using substantial contributions from the other sectors, answering to the social needs of the community, rendering " privately" public services to improve the quality of the life.

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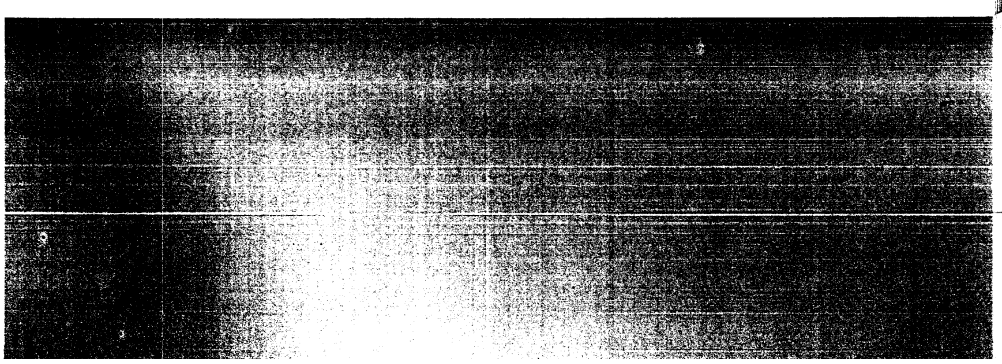


THE AMBROSIANEUM FOUNDATION INTERNATIONAL CONFERENCE AND METHODOLOGICAL NOTES

At present there are many efforts to reform/discuss the legal and fiscal environment within which civil society organizations (CSOs) (foundations, associations, not-for-profit corporations, cooperatives, faith-based organizations, charitable trusts, etc.) operate in various European countries. These efforts have been focused on a variety of issues including:

- Accountability/governance of public benefit civil society organizations; and
- Tax benefits for public benefit civil society organizations.

Similar issues are being discussed in the United States and Canada as well.

The papers you find here have been prepared for the "Conference on Laws for the Not-for-Profit Sector in European Union Countries" organized by The Ambrosianeum Foundation of Milan (Italy) with CARIPLO Foundation of Milan and in cooperation with other European and international organizations. (The Catholic University of Milano, ENI Enrico Mattei Foundation, Ordine dei Dottori Commercialisti di Milano, Il Sole 24 Ore, The International Center for Not-for-Profit Law (USA), The London School of Economics (GB), The Trust for Civil Society Law (EU), The Maecenata Institut (DE), The Catholic University of America).

This conference has been designed to be a working conference, for which papers are required in advance. European and North American experts in the laws affecting not-for-profit organization have been invited, and all have been asked to join a working group Group A affecting general regulatory matters (Accountability/Governance of Public Benefit Civil Society Organizations), while Group B affecting issues of taxation (Tax benefits for public benefits civil society organizations in their country).

The conference has taken place on June, 13 and 14, 2002 in Milan (Italy).

The aim of the conference has been to prepare final documents (including both general and specific recommendations) on the two conference themes: Accountability/Governance of Public Benefit Civil Society Organizations and Tax Benefits for Public Benefit Civil Society Organizations. All invitees have been requested to prepare a paper about "Accountability/governance of public benefit civil society organizations in their country" or "Tax benefits for public benefits civil society organizations in their country".

The scientific committee for the conference has been particularly interested in papers focused on legal and fiscal reforms that are under discussion at the moment in Western Europe and North America.

After the opening session, at which there will be keynote addresses on the themes of the conference, each invitee has joined either the working group on taxation or the working group on accountability. Papers have been presented for discussion in these working groups. Each group have been expected to prepare both general and specific recommendations for approaches to legal resolution of conference themes.

This conference is intended to be the first of a series of events, addressing similar issues, which will be organized at different venues. A discussion of the 2002 conference outcomes will be held in 2003, in either Germany or England.

A planning committee for the 2002 conference has been formed under the direction of Prof. Adriano Propersi of the Catholic University of Milan and Vice-President of the Ambrosianeum Foundation, Asst. Prof. Marco Grumo has assisted Prof. Propersi with the organization of the conference.

The Ambrosianeum Foundation International Conference seen the presence of the following italian and international directed by Prof. Adriano Propersi and Dott. Marco Grumo: Richard Fries (England - London School of Economics e past Chief Charity Commissioner), Paul Bater (England - International Bureau of Fiscal Documentation), Sylvie Tsyboula (France- consultant for non profit entities), Rupert Graf Strachwitz (Germany- Director Maecenata Institut), Rainer Walz (Germany - Bucerius Law School Hamburg), Ineke Koele (Netherland, tax consultant for non profit entities), Miguel Cabra de Luna (Spain- Fundacion Once), Enrique Gimenez-Reyna (Spain- author of the law of spanish foundations and past General Secretary of Finance Minister of Spain), Ole Gejms-Onstad (Norway - Professor at Norwegian School of Management), Leon Irish (USA – President Emeritus and Co-founder of International Center for Not-for-profit Law, Washington DC), Karla Simon (USA- Professor at Catholic University of America, Washington DC e Co-director of the Center for International Social Development), Michel de Wolf (Belgium- Catholic University of Louvain), Arthur Drache (Canada, lawyer for non profit entities), Frit Hondius (Greater Europe of Council of Europe and Europhil Trust), Dario Disegni (Chairman of European Foundation Centre), Adriano Propersi (Professor at Catholic University of Milano and Vice-President of Ambrosianeum Foundation of Milano), Giuseppe Airoldi (Professor at Bocconi University of Milano), Marco Grumo (Ass. Prof. at Catholic University of Milano), Andrea Gamba (Catholic University of Piacenza), Enrico Bellezza.

The plenary session at Cariplo Foundation has seen the presence of the following speakers: S.E. Card. Carlo Maria Martini (Archbishop of Milano), Avv. Giuseppe Guzzetti (President of Cariplo Foundation), Marco Garzonio (President of Ambrosianeum Foundation), Adriano Propersi (Professor at Catholic University of Milano and Vice-President of Ambrosianeum Foundation of Milano), Domenico Siniscalco (General Director of Italian Finance Department), Dario Disegni (Chairman of European Foundation Centre), Giorgio Vittadini (President oif Compagnia delle Opere), Lorenzo Ornaghi (President of the Italian Agency on the Third Sector and pro-rector of Catholic University of Milano).

The Structure of papers requested for the conference and here enclosed in an integral version is the following:

each paper, for comparative reasons, contains the following main points:

1)Brief description of the law existing in the author's country about the assigned topic (A or B) and reforms under discussion;

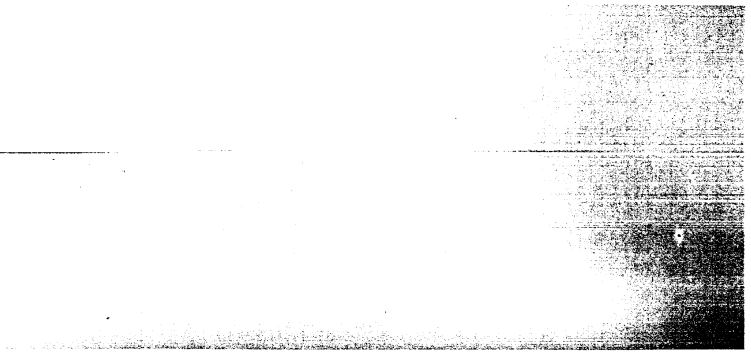
2)Description of main problems (of regulation) existing in the authors's country about the assigned topic (A or B)

3)Description of 5 main points (recommendations) the author suggests (for his national context), for a better regulation of the assigned topic (A or B);

4) How to implement in the author's country the suggested points (recommendations)?

In particular, the authors have been "driven" by the following general thought:

"The lack of owners and the lack of profit goals are the fundamental characters who distinguish civil society organizations from business corporations. Their social, ideal, humanitarian goals, and in general, goals "of service" to the community, must find through adequate mechanisms and structures of governance concrete instruments (statutes, internal rules, incentive and control mechanisms, etc.) able to guarantee a good fulfillment of such



goals, an in particular able to pursue the interests of the community.

In the case of the foundations, it is necessary to guarantee the will of the founder and of the donors. For the associations it is equally necessary to guarantee the achievement of the common non profit goal, in particular in the respect of democratic rules.

In this context, the taxation is an important instrument to canalize in non profit entities public and private resources with the aim to optimize government expense and services rendered by non profit organizations. Fiscal aspects are crucial in order to favor an increase of the non profit organization's funds, generally not always sufficient to achieve durable and complex social purposes, because of the lack of owners (traditionally a big group of shareholders) as instead it happens for business corporations".

The following papers are a technical interpretation, with regard to several Western European and extra-European Countries, of such general principles.