

## CIVIL SOCIETY IN EUROPE

The regulation of civil society provides the framework under which those organisations can most effectively provide services in education, health, social services, housing, development aid and so on. *Civil Society in Europe* identifies common principles of civil society law in two ways. First, the approaches of the Council of Europe and the European Union are explored. Next civil society regulation in twelve domestic legal systems is investigated on a broad range of substantive areas of law, including internal organisation, registration, external supervision, public benefit organisations and international activities. From these, the authors distill a set of minimum norms and optimal conditions under which civil society can deliver its aims most effectively. This book is essential reading for policymakers and legislators across Europe and beyond.

TYMEN J. VAN DER PLOEG was Professor of Law at Vrije Universiteit Amsterdam, from 1992 until 2012. His research focuses on the relations of non-governmental organisations with governments from a national and comparative perspective.

WINO J.M. VAN VEEN is Professor of Law at Vrije Universiteit Amsterdam where he teaches law on partnerships, corporate law and law on non-profit organisations. His research areas include European law, corporate law, partnership law and comparative non-profit law, with a special interest in self-regulation.

CORNELIA R.M. VERSTEEGH currently teaches at the Universiteit van Amsterdam. She has previously been a solicitor and a part-time judge at the Civil Court of Amsterdam. Her research focuses inter alia on European civil society law, European human rights law, European equality law, asylum and migration law and terrorism.

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## Minimum Norms and Optimum Conditions of Its Regulation

TYMEN J. VAN DER PLOEG

WINO J.M. VAN VEEN

CORNELIA R.M. VERSTEEGH



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## PREFACE

Some time ago, the editors of this volume and some other researchers from Vrije Universiteit Amsterdam and Universiteit van Amsterdam agreed on a common project: to take a closer look at the legal and normative aspects of civil society in Europe that pertain to civil society organisations from the perspective of both the law and practice. We decided to approach this theme by comparing national law and practices across a group of countries with the evidence that is available on the normative approach to civil society organisations (CSOs) from a range of European-level sources. These sources include the case law produced by the European Court of Human Rights in its interpretations of the European Convention on Human Rights and, in particular, concerning the fundamental freedoms enshrined in that convention such as the freedom of expression and the freedom of association, as well as case law of the European Court of Justice, (draft) regulations from the European Union<sup>1</sup> and several documents produced by or under the auspices of the Council of Europe and the European Union.

To acquire data that were representative of Europe as a whole, we selected both larger and smaller countries, older and younger democracies and representatives of the various legal systems involved that stem from the traditions of common law, civil law and Scandinavian law. All the countries selected are members of the Council of Europe and thus subject to the jurisdiction of the European Court of Human Rights.

The experts who took part in this research project and the countries they represent are as follows: Marleen Deneff (Belgium), Kateřina Ronovská (Czech Republic), Peter Luxton (England and Wales), Thomas von Hippel (Germany), Kalliroi Pantelidou and Evangelos Karamakis (Greece), Zsolt Aradszky and Nilda Bullain (Hungary), Cristina Vaccario and Gian Paolo Barbetta (Italy), Helen Overes (the Netherlands), Tomasz

<sup>1</sup> The documents on civil society organisations in the European Union are, where useful, also taken into account.

Perkowski (Poland), Irina Novichenko (Russia), José-Luis Piñar (Spain) and Magdalena Giertz and Carl Hemström (Sweden).

To obtain the required information from the countries selected, a questionnaire was developed with the aid of national experts, who also took on the task of answering the questionnaire, along with some additional questions that arose later in the process. The country reports written by these experts formed a foundation for a comparative thematic overview that the national experts reviewed and commented on before it was finalised. In addition to their invaluable input for the thematic survey, most of the country experts mentioned, and in some cases other experts, wrote essays on CSO law and how CSOs and the government relate to one another in their respective countries.

Generally speaking, law on CSOs is national law. The practical form and legal status of CSOs vary widely from one European state to another, and the regulations regarding CSOs are just as diverse. These differences are the result of differences in social and legal culture that have strong historical roots. Comparing these differences produces some interesting data. However, we did more than simply compare them. We also analysed the information from the thematic survey in the light of norms that have been developed at the European level, emanating from the Council of Europe,<sup>2</sup> the European Court on Human Rights and the European Union.<sup>3</sup>

In Chapter 2, the relevance of the European Convention on Human Rights and the decisions of the European Court on Human Rights for civil society is demonstrated. Chapter 3 looks at the way in which the European Union promotes civil society through the freedoms provided by the Treaty on the Functioning of the European Union, the (draft) Council Regulations on associations and foundations and policy documents. Although not all these documents have legislative authority, they do demonstrate the views of European experts in this field and the relevant European institutions on how CSOs should be regulated. At the European level, we can observe a shared understanding on how we should approach CSOs. These documents are designed to promote civil society and are therefore relevant

<sup>2</sup> On 22 March 2005, an agreement about the general principles governing the recognition and legal status of such organisations in Europe was adopted by the signatories of the European Convention on the Recognition of the Legal Personality of International Non-governmental organisations (Convention 124). Some of the countries included in this research have already signed and implemented this convention.

<sup>3</sup> See C.R.M. Versteegh, *Development of the legal Acknowledgment of Civil Society in the European Union* in this book.

to this study. At the core of this research project is the aim of comparing national CSO laws and practices with emerging European norms.

This study focuses on how civil society (organisations) are regulated, including a broad spectrum of aspects such as the available legal forms, (freedom of) formation, internal organisation and state supervision. It also concerns the role that government allows them to play in society through subsidies and tax provisions, for example. The approach taken by national systems towards foreign CSOs is also a part of this research.

The areas covered include the following:

- I. legal forms: the aims and activities of CSOs and restrictions on the scope of their activities; the rules and procedures for setting up CSOs;
- II. governance issues: internal supervision, transparency and liability of board members;
- III. registration;
- IV. external supervision and sanctions;
- V. public benefit CSOs (legal and tax status), governmental approach to these CSOs, contracts, grants and consultation; and
- VI. the position of foreign nationals in CSOs and of foreign and international CSOs.

From the perspective of the fundamental freedoms and the effective rule of law, we undertook to specify a set of minimum conditions or norms regarding specific aspects of CSO law and the relationship between government and CSOs. We see wide diversity in many aspects of CSO law, but the different rules mainly meet a common set of minimum standards. Sometimes, however, legislation or practice falls below what we conclude to be the minimum norm. Because both the Council of Europe and the European Union wish to encourage CSO activities and their participation in society, it also seemed appropriate to evaluate what in fact are the optimal conditions and norms for CSO law. We do not believe that the ambition should be to harmonise CSO law across Europe, but we do believe that, materially at least, a set of minimum norms – and preferably optimum conditions as well – would help to promote a healthy and vibrant civil society.

We believe that the results of this research project provide information and insights that could prove useful for policymakers and legislators in Europe, and possibly elsewhere, who wish to promote a healthy civil society, as well as for stakeholders in the third sector and academics carrying out research in this field.