

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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CONTENTS

<i>Tables</i>	page viii
<i>Preface</i>	xi

I European Law and Policy Pertaining to Civil Society

- 1 Introduction 3
TYMEN J. VAN DER PLOEG, WINO J.M. VAN VEEN AND
CORNELIA R.M. VERSTEEGH
 - 2 Civil Society in Europe and the European Convention on
Human Rights 8
WINO J.M. VAN VEEN
 - 3 Civil Society and Civil Society Organisations in the
Institutional and Legal Framework of the European
Union 35
CORNELIA R.M. VERSTEEGH
-
- II National Laws Pertaining to Civil Society: A
Comparative Overview and Evaluation**
- 4 Thematic Survey of Civil Society Law in Twelve European
Countries 75
TYMEN J. VAN DER PLOEG, WINO J.M. VAN VEEN AND
CORNELIA R.M. VERSTEEGH, IN COOPERATION WITH
COUNTRY RAPPORTEURS
 - 5 Minimum and Optimum Norms for Legislation on CSOs in
Europe 256
TYMEN J. VAN DER PLOEG, WINO J.M. VAN VEEN AND
CORNELIA R.M. VERSTEEGH

III Country Essays on Civil Society Law

- Introduction 325
- 6 The Legal Context for Civil Society Organisations in Belgium 327
MARLEEN DENEFF AND SARAH VERSCHAEVE
- 7 Legal Framework for Civil Society in the Czech Republic 344
KATEŘINA RONOVSÁ AND VLASTIMIL VITOUĽ
- 8 Civil Society Organisations in England and Wales 363
MARY SYNGE
- 9 Legal Aspects of Civil Society Organisations and Their Relation with Government: Germany 384
THOMAS VON HIPPEL
- 10 Legal Aspects of Civil Society Organisations and Their Relation with Government: Greece 400
KALLIROI PANTELIDOU AND DIMITRIOS VOGIATZIS
- 11 Legal Aspects of Civil Society Organisations and Their Relation with Government: Hungary 418
ESZTER HARTAY
- 12 Legal Aspects of Civil Society Organisations and Their Relation with Government: Italy 445
CHRISTINA VACCARIO AND GIAN PAOLO BARBETTA
- 13 Legal Aspects of Civil Society Organisations and Their Relation with Government: The Netherlands 466
HELEN OVERES
- 14 Law Regarding Civil Society Organisations in Poland 486
ANNA KRAJEWSKA AND GRZEGORZ MAKOWSKI
- 15 Legislation on Voluntary Associations in Russia 508
IRINA NOVICHENKO
- 16 Spanish Law on Civil Society: Regulation of Associations and Foundations 532
JOSÉ LUIS PIÑAR MAÑAS AND ISABEL PEÑALOSA ESTEBAN

CONTENTS

vii

17	The Law in Sweden Regarding Civil Society Organisations	551
	MAGDALENA GIERTZ	
	<i>Index</i>	572

TABLES

I.1 Legal Forms of CSOs	<i>page</i> 80
I.3 Permitted Purposes and Economic Activities	89
I.4 Incorporation Procedures	98
I.5 Material Requirements for the Establishment of CSOs	103
I.6 Destination of Surplus Assets after Dissolution and Liquidation	109
I.8 Remuneration of Directors	115
II.1 Governance Rules	120
II.2 Policy of Promoting Self-regulation	126
II.4 Rules on Representation	131
III Existence of a Publicly Accessible Register at the Local, Regional or National Level	144
IV.2 Type of Supervisory Authority	149
IV.3 Supervisory Tasks with Regard to Foundations	153
IV.5.1 Publication or Submission of Annual Accounts and Reports (Tax Law Excluded)	163
IV.5.2 Investigatory Powers	167
IV.5.3 Approval from Supervisory Authority for Certain Transactions	170
IV.5.4 Structural Changes to Foundations/Charitable Organisations	175
IV.5.6 Enforcement Instruments of Supervisory Authorities	187
V.2 Public Benefit Status	204
V.2.2.3 Appeals against Loss of Status	205
V.3 Tax Exemptions and Preferential Tax Treatment for Public Benefit and Other Organisations (with Business Operations) and Tax Deductibility for Donations	214
V.4 Granting of Subsidies	220
V.5 and V.6 CSOs Recognised as Consultants and Advisors for the Government and Pluralism	223
V.7 Public Services According to Statutory Requirement or Rule of Public Policy	230
VI.2 Establishment of CSOs by Foreigners	234
VI.3 Membership or Membership of the Board of Directors of Foreigners/Foreign CSO	239

LIST OF TABLES		ix
VI.4	Recognition of Foreign CSOs	243
VI.5	Transfer of Office and Seat	246
VI.6	Equal Treatment Regarding Subsidies, Grants and Contracts for Service Provision and Table VI.7 Tax Facilities	251
VI.8	Donations from Abroad	254

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 Union¹ 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

¹ 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,² the European Court on Human Rights and the European Union.³

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

² 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.

³ 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.