

**NEW EMPLOYMENT OPPORTUNITIES IN THE THIRD SECTOR**

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Work Package 2

**THE THIRD SECTOR IN EUROPE:  
REVIEW OF PRESENT POLICIES**

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## **THE THIRD SECTOR IN ITALY: REVIEW OF PRESENT POLICIES**

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### **Introduction**

In Italy there is not a homogeneous legislation about the third sector. The difficulties in finding a standard definition for the so called social economy and in focusing on the organisations and the range of activities characterising it are strictly connected. Furthermore there is a great heterogeneity among non-profit organisations and the activities they carry on and this does not help the definition of a general regulation of the sector. Actually the system of rules rarely reflects a co-ordinated and complete approach to the issues of financial, economic and legal equilibrium of third sector organisations (TSO). The existing legislation is oriented towards the *agents* rather than towards the *activities* and try to address the main problems of TSO focusing on issues regarding accounting, conditions of employment, fund-raising and taxation. Yet the lack of a specific legal framework risks leading to the paradox by which norms on the third sector are taken from the regulation on the traditional economic sectors and are based on a *profit approach*. In this context TSO have to make great efforts in order to be up-to-date on the Italian *mare magnum* of national, regional and local laws, often swaying financial and human resources from development opportunities.

The analysis of the present policies for the third sector depends upon the examination of the three fundamental Italian laws on TSO:

- law 266/1991 on voluntary organisations;
- law 381/1991 on social co-operatives;
- decree 460/1997 on ONLUS.

The legislation on voluntary organisations and social co-operatives covers the main features of these institutions and introduces a range of facilities to promote their development and to simplify the management of their activities.

ONLUS have been introduced to spur the development of the Italian non-profit sector. The law aims at defining a complex framework of rules, facilities and opportunities for all the agents involved in the third sector. Actually a non-profit organisations for social utility is not a specific organisation of its own, but it defines the *fiscal status* of third sector agents and the voluntary organisations and social co-operatives regulated

respectively by law 266/1991 and law 381/1991 as well as other institutions such as associations and foundations could be considered ONLUS.

Laws regarding the fields (environment, health, social care, etc.) where non-profit activities can be carried on must be analysed trying to highlight the most important aspects and the main effects they can have on the development of TSO. Sometimes the laws underline a specific role for non-profit actors and give to local authorities the faculty to contract out with them the supply of social services. Other times the laws do not consider the action of TSO at all, but in some way affect their field of action and future development.

# 1. The Third Sector In Italy: Policies Towards The Agents

## 1.1 Associations And Foundations.

Associations and foundations are still regulated by the Civil Code (C.C.) dated back to 1942 and, differently from what happens for voluntary organisations and social co-operatives, no specific law has been introduced about them.

The legal framework is represented by only 30 rules contained in the section of the Civil Code about 'people and family'.

The C.C. identifies two kinds of associations, namely associations with or without legal personality; it considers also the *committee*, i.e. a sub-category of not recognised associations which provides for an extension of the responsibilities of its members.

Although the C.C. clearly shows a preference for associations which own legal personality, the great majority of organisations established to carry out non-profit activities take the form of not recognised associations.

Some common elements can be identified in the regulation of associations and foundations.

Firstly, both of them must be constituted by public charter and must draw up a statute which should contain the name of the organisation, the purpose, a list of the property assets and the registered office as well as rules about their behaviour and management.

The statute of associations must state the rights and the duties of members and the conditions for their entry, while the statute of foundations must indicate criteria and procedures for the distribution of rents. The statute can indicate rules about the dissolution and the devolution of properties and rules concerning the transformation of foundations.

Another common feature is the duty of enrolment in the Register of Companies established at provincial level, as only after this operation organisations can obtain separate legal personality.

Lastly, when their objective is totally satisfied, cannot be achieved anymore or it does not contribute to social utility, the government can opt for their closing down or for their transformation in this case avoiding a solution too far from the will of the founder. After having declared the extinction of legal status it must proceed with the liquidation of property assets according to the C.C. and in conformity to the objectives of the statute. In case the statute does not provide for this matter, governmental authorities will devolve the assets to an organisation having similar aims.

Apart from these common rules on the internal structure and the managing procedures, two significant factors distinguish associations from foundations, that is:

1. the institutional aims and the role of property assets. The achievement of the objectives of foundations depends essentially on the propulsive role of a small group of founders who decide to invest their capital, which plays a dominant role, in activities of public interest, while the achievement of the objectives of associations depends on human

activity carried out by a plurality of adherents and in this case the capital is only an element of guarantee towards third parties;

2. the level of control. Within an associative structure, there are more possibilities of control due to the presence of the assembly of members (beside managers) which, in addition to defining guidelines, can exercise the power of control, of supervision and of removal of managers; a similar organisation does not exist in foundations.

The assembly of an association must be convened by managers once a year in order to pass the budget. It can also be convened when at least a tenth of the members asks for it or when the association decides to modify its statute, to close down and to devolve its property assets.

Assembly resolutions are taken by majority vote and with the presence of at least half members.

The duty of convening all the members for the annual assembly has often generated several problems, especially for those associations that are characterised by a broad territorial ramification and by a widespread presence of members at national level and this rule is hardly ever observed.

With regard to rights of members, they can take part in the life of the association by developing institutional activities. The condition of member cannot be transmitted, except when transferability is permitted by the statute and members can always withdraw from the association unless upon condition of participating in it for a fixed period of time.

Concerning not recognised associations two characteristics can be identified:

- the absence of legal personality which allows for the definition of a statute with broader freedom;
- the members are responsible for the association liabilities towards third parties.

The large presence of such associations in Italy depends on the broader operative freedom allowed for by this kind of structure and the lack of a severe control - necessary in presence of legal personality - permits more freedom in defining the statute and the internal rules. This implies a great heterogeneity in the characteristics of not recognised associations.

Another factor that prevents from creating a clear framework is the lack of a detailed and exhaustive legislation, given that the Civil Code contains only 3 sections on not recognised associations, namely sections 36, 37 and 39. The first one reserves to members the right to set rules about the management the organisation, while sections number 37 and 38 establish both the ban of dividing the establishment fund among its members during the life of the association and the joint responsibility of members who have operated on its behalf.

## **1.2 Voluntary Organisations (Law 266/91)**

Thanks to the law 266/91, voluntary organisations received a legal state and a specific regulation, as well as the opportunity to benefit from a regime of tax benefits.

Section 1 specifies that purpose of the Italian State is to promote the development of this organisations, to pace their autonomy and to stimulate their original contribution in the achievement of social, civil and cultural aims.

Besides, it fixes ìground rulesî which regions must stick to in order to regulate the relationships between public institutions and voluntary organisations, as well as the criteria that regions and local councils must comply with regarding the same relationships.

A voluntary activity must meet the following requirement, as defined in the second section:

- the absence of profit-making purposes;
- the commitments of voluntary workers personal, spontaneous and unpaid ;
- the implementation of activities must be directed towards the pursuit of social solidarity.

Under these essential conditions, we can classify as voluntary organisations those organisations set up for carrying out activities centred on the personal, voluntary and unpaid engagement of its adherents.

Although the law gives voluntary organisations the freedom of choosing the most suitable legal status, with the sole limit of it being compatible with the solidarity purpose, it explicitly requires that the statute include some crucial elements:

- the presence of non-profit and solidarity aims;
- the condition of member as well as the services provided by them must be gratuitous (for voluntary workers the law takes into account only the reimbursement of expenses);
- the will of organising itself as a democratic structure;
- the criteria for admission and exclusion of members, as well as their duties and rights;
- the duty of drawing up the balance sheet, in which all the assets, the subscriptions and the donations received must be included.

All these conditions make an organisation eligible for its enrolment in specific registers managed by the Regions.

The registration is a necessary pre-requisite in order to have access to public contributions, to stipulate agreements with regional and local corporations, to accept voluntary subscriptions and charitable donations and to benefit from tax relieves.

If the registration is denied by the Regions, voluntary organisations have the right to apply to the regional administrative court.

Indeed, a significant part of the law is dedicated to the agreements between voluntary organisations and regional and local authorities. These agreements must ensure the existence of essential conditions for the systematic implementation of voluntary activities, as well as for the respect of users rights. They must also provide for the check-up of the activities, the quality of services as well as of the procedures for the reimbursement of expenses.

Lastly, the Regions are responsible for making the principles contained in the law 261 executive and appropriate to the specific circumstances .

Regarding the personnel engaged in these organisations, the law allows for the recruitment of wage-earning employees only if their role is instrumental to the regular performance of the organisation or it is required to qualify and specialise voluntary activity. Besides, the condition of voluntary worker is not compatible with any paid job done in the same organisation.

Voluntary organisations must insure their adherents against injury at work, as well as against third party liabilities. Strong attention is paid to those volunteers who have "regular" job outside the organisations: they can benefit from special working time flexibility in order to carry out voluntary activities.

With regard to economic resources, voluntary organisations can accept adherents subscriptions, private contributions, national grants, international institutions aids, donations, testamentary legacies and reimbursements from agreements provided that those are used for the implementation of voluntary activities. Revenues from industrial and commercial activities can also be addressed to the regular performance of voluntary organisation only if they come from activities considered marginal by the organisation. If the organisation decides to dissolve or to close down, all the assets remaining after the winding-up, must be hand over to similar organisations.

At the twelfth and fourteenth sections, the law provides for the building of a national observatory of voluntary world and for the institution of a fund.

The national observatory of voluntary world should have the following tasks:

- to realise a census of the registered voluntary organisations and the widespread of news and information about them;
- to encourage researches and studies on this argument in Italy and abroad;
- to provide helpful elements for the promotion and the development of voluntary work;
- to approve projects defined by the organisations with the help of regional and local corporations in order to deal with social emergencies;
- to offer support and assistance to the projects which refer to the realisation of database;
- to publish an annual report about the performance of the voluntary sector and state of execution of national and regional rules;
- to favour training and updating initiatives together with the Regions;
- to publish a periodical newsletter;
- to promote a national conference on the voluntarism.

The Fund for the voluntary world should be used for the funding of projects promoted by the organisation.

Finally, the law considers the possibility of setting up at regional level special funds whose resources are addressed to the creation of service centres for supporting

voluntary organisations in their activities. Service centres - managed by a duly registered voluntary organisation, an incorporated foundation or an independent body whose statute provides for the development of such activities - should deal with:

- the definition and the implementation of initiatives aimed at the cultural growth of solidarity;
- the supply of qualified support and fiscal/legal advice for the seed phase and the start-up of specific activities;
- the promotion of learning and training actions for volunteers;
- the collection of information, news, papers and data about local and national voluntary activity.

### 1.2.1 Facilities And Perspectives For Voluntary Organisations

Voluntary organisations are regulated by law 266/1991.

The facilities introduced by this law are:

- towards *volunteers*: - the possibility for the organisations to draw up collective *insurance* (accident, health, third party liabilities) adopting simplified mechanisms;
- towards *tax relieves*: - the right for volunteers to obtain flexible forms of *working* facilitate their voluntary activity.
- towards *tax relieves*: - the exemption from the taxes put on the *constitution* of the organisation;
- towards *tax relieves*: - the exemption from Value Added Tax (VAT);
- towards *tax relieves*: - the exemption from the taxes on *donations* or *inheritances*;
- towards *tax relieves*: - the exemption from the *income* tax.
- towards *fund-raising*: - donations to voluntary organisations are partially considered *deductible contributions*;
- towards *fund-raising*: - voluntary organisations will also be supported by a *public funding system* at national and local level.

All these facilities can be extended by the ONLUS regulation.

A most worrying questions about future of voluntarism is the neglected towards the political dimension, which should ensure the removal of those obstacles that could lead to social exclusion, marginalization and existential awkwardness (L.Tavazza, 197). This political dimension distinguishes voluntary organisations from philanthropic, charitable and assistance organisations. Without political dimension the voluntarism risks playing the residual role of 'social cushion' and forgetting its function of mean of transition from a patronising defence of rights towards a real culture of rights guaranteed by personal commitment.

This issue is closely linked with another delicate question, i.e. the tendency to apply to the third sector instead of public sector for the supply of goods and services of

social utility; in this way social co-operatives would have a substitutive rather than an integrative function in supplying social services. Therefore, voluntary organisations fear an exploitation by the government, which would shift them from a residual to an institutional role only with a view to reduce public spending, would use them as support and strengthening of its welfare sector and would consider them as an executive body of the public administration and not as a social organisation endowed with autonomy and equal dignity.

A matter of great relevance is the attitude towards voluntarism as a first step for achieving a job; in this regard it is important to point out that, firstly the law provides for a strict limitation of employment in the voluntary sector and that there are very few organisations (among those which formally exist) with so many resources and so great dimension to offer several opportunities for paid jobs. A further trap comes from the invitation by false non-profit organisations to work at low wages; this behaviour could lead to the over exploitation of employees and to the worsening of job-protection measures; in other words, to a secondary labour market in which a real deregulation of labour relations come off disguised under the cover of solidarity (M.Revelli, 197).

### **1.3 Social Co-Operatives (Law 381/91)**

Close to traditional organisations like associations, foundations, voluntary organisations, a new social institution characterised by both a public (about its aims) and private nature (as regards organisational structure) comes to light during the 80s, i.e. the social co-operatives.

The law 381/91 is the fundamental benchmark in the regulation of social co-operatives, as it defines their goals, the way of achieving them and precious guidelines about their nature. One of the main innovations introduced by this law consists in the opportunity for members to operate in order to pursue solidarity aims. This fact clearly emerges from the purpose of social co-operatives which is the pursuit of social interest; in this regard, the law 381 states that the object of such social interest is human promotion and social integration of citizens; that is the defence of everybody needs to realise himself/herself as an individual and integrate himself/herself in the society.

These purposes can be achieved supplying social-sanitary and educational services (A-type co-operatives) or carrying out agricultural, industrial and commercial activities aimed at recruiting disadvantaged people in the working activity (B-type co-operatives). These different activities are strictly linked with other two tasks performed by social co-operatives: the first one is directed to ensure assistance to the disabled people and the second is finalised to set up co-operatives of production activity in order to help disadvantaged people to enter the labour market.

The importance of law 381/91 is in the attempt to spur the creation of mixed experiences of voluntarism and co-operation, of paid employment and unpaid voluntarism.

Besides, it can be considered as a new instrument of labour policy as it provides for the compulsory placement of disadvantaged people in the productive system. The social co-operatives differ from the traditional co-operatives because of the different aims underlining their action: the first ones by promoting social integration of every citizen in the community (section 1) conform to the solidarity purpose (external benefit) while traditional co-operatives are exclusively centred on the principle of mutuality (internal benefit).

A key feature of social co-operatives consists in the different kinds of people engaged in their activities; there are members who are regularly paid for provided services, voluntary members who work for free (but the law provides for a reimbursement of expenses), are registered in a special section of members register and cannot exceed half of the total amount of members, and 'beneficiary-members', i.e. disadvantaged people who are recruited by the co-operative, are engaged in its activities, represent at least 30% of the total and must be members of the organisation. As regards volunteers members it is noteworthy that they not only give unpaid work, but also participate in the risk of enterprise without receiving any return on underwritten capital.

However insurance against accidents at work is guaranteed to everyone who is engaged in activities of the co-operatives.

The fourth section lists the beneficiaries of the law. They are physical and mental invalids, ex-patients of psychiatric institutes, people subject to psychological treatments, drug-addicts, alcoholics, young people under 18 who live in great domestic difficulties, people condemned who have been admitted to measures alternative to the custody.

The provisions of the law are not restricted to the above mentioned categories and other kinds of disadvantaged people - by proposal of the Labour Secretary - can benefit from the advantages offered by the law 381.

A rule, similar to that provided for by the law 266, is established for the registration of social co-operatives: they must be enrolled at regional level in observance of national ground principles; besides, the Regions issue executive regulations aimed at promoting, supporting and developing social co-operation.

Another relevant issue refers to the opportunity of stipulating agreements with public corporations in order to favour initiatives directed at employing disadvantaged people. A basic condition is the registration in the above-mentioned register of co-operatives, as only after this operation, social co-operatives acquire the legitimacy needed for establishing relationships with public authorities and the title required to benefit from economic advantages, like exemption of social contributions. Analogously at what happens for voluntary organisation, the Regions are responsible for drawing up executive rules for the principles dictated by the law 381.

Finally, the eighth section introduces a rule whose aims is the encouragement tends to encourage economic consolidation of social co-operatives both individually and jointly. This section extends the validity of this regulation to consortia and networks of co-operatives; besides, public and private corporations who include in their statute the financing and the development of activities aimed at social purposes can become members of social co-operatives.

### 1.3.1 Facilities And Perspectives For Social Co-Operatives

The facilities introduced by the law 381/1991 are:

- towards *disadvantaged workers*: - the exemption from the payment of contributions for *social insurance*;
  - towards *tax relieves*: - reduction of the *VAT rate* (fixed to 4% in the 1998) for the A type co-operatives;
  - exemption from the taxes on *donations* or *inheritances*;
  - several forms of exemption from the *income* taxes facilities, as for instance, lower rates, easier costs, etc.).
- (or other deductibility of
- As for voluntary organisations, these facilities can be extended by the ONLUS regulation.

In 1992 a new law (n.59) was promulgated in order to strengthen the law 381. It provides for the definition and the implementation of financial measures aimed at channelling private investments in favour of co-operatives and for promotion of establishment funds inside co-operatives.

This represents a turning point for co-operative movement: the opportunity to participate directly in the capital of co-operatives turns mutuality into solidarity. Thus, thanks to the law 59, the solidarity ties that have always bound co-operative members could be extended and applied to the relations among co-operatives so that their economic contribution can stimulate the promotion and propagation of co-operative movement (IREF, 195).

### 1.4 The ONLUS (Non-Profit Organisations For Social Utility)

The law about ONLUS represents a clear attempt to tailor an even fiscal regime to the Italian non-profit sector. It could be an effective instrument to define boundaries and to tackle different kinds of non-profit experiences in a homogenous way. This is the first time that the Italian Parliament promulgates a law aimed at disciplining tax regime of the third sector.

The law 460/1997, becoming effective from January 1998, it is the result of an exacting work carried out by a Commission chaired by Stefano Zamagni.

The new social institution, defined on the basis of criteria of social utility, falls into the category of non-commercial corporations, and it does not comprehend public corporations, commercial partnerships and business companies, except for co-operatives, banking foundations, political parties, trade unions, employers association and professional unions.

Voluntary organisations, social co-operatives and non-governmental organisations (NGO, regulated by the law 49/1987 on international co-operation) are automatically classified as ONLUS and enjoy the same tax regime. Other organisations that can be classified as ONLUS are: associations, committees, foundations, private corporations, whose activities are carried out in one of the following sectors (*institutional activities*):

1. social and sanitary assistance;
2. sanitary assistance;
3. charity;
4. education;
5. training;
6. amateur sport;
7. safeguard, promotion and valorisation of artistic and historical places;
8. safeguard and valorisation of environment;
9. promotion of culture and art;
10. defence of civil rights;
11. scientific research having a relevant social interest.

Religious associations which have stipulated agreements with the Italian State can be considered ONLUS only if they carry out charities.

There are seven fundamental conditions to be respected by the ONLUS organisations:

- **the exclusive purpose of social solidarity:** it means either activities dedicated to disadvantaged people not members of the organisation or the following six activities among the institutional ones: social and sanitary assistance; charity; safeguard, promotion and valorisation of artistic and historical places; safeguard and valorisation of environment; scientific research having a relevant social interest; promotion of culture and art.
- **the prohibition to work in sectors not included among the institutional activities:** the only exception is for the so-called *directly connected activities*. These are activities necessary to integrate the institutional ones. The income emerging from these activities cannot exceed 66% of the global expenses of the organisation.
- **the prohibition to distribute the income to the members of the organisation.**
- **the duty to invest the income just for the institutional and connected activities.**
- **the duty to draw up the balance sheet and the financial report each year.**
- **an homogeneous regulation of the organisation, assuring participation and democracy:** this condition is not required for foundations and religious associations which have stipulated agreements with the Italian State.
- **the duty to use always the denomination 'ONLUS' with the name of the organisation:** this condition is not required for religious associations which have stipulated agreements with the Italian State.

There is no authorisation required to be considered ONLUS. The organisation should only communicate its will to be enrolled in the Register held by the Ministry of Finance. Forms of control on ONLUS will be decided by the same Ministry within the end of June 1998.

#### **1.4.1 Facilities And Perspectives For The ONLUS**

The facilities introduced address many kind of TSO. Indeed the core of the law is the definition of a fiscal status for TSO and a series of facilities for all the organisations that will meet the criteria fixed to be considered ONLUS.

The facilities (in form of tax relieves) can be summarised as follows:

- income taxes: - total exemption also for those activities not strictly related to social utility;
- value added tax: - exemption only for those institutional activities that are not in contrast with the European rules on V.A.T.;
- further tax relieves: - exemption from the taxes on *donations* or *inheritances*;  
- several exemptions from other less relevant taxes.

Further facilities aim at supporting the general activity of ONLUS.

They are the following:

- the donations to ONLUS can be considered deductible costs for private citizens and for firms (up to 2% of the total income or up to 4 millions of lire);
- the possibility for firms to let part of their personnel work for ONLUS and to deduct their costs (up to 0,5% of the total personnel costs);
- facilities are also introduced for the collection of food and medicines to be used for the institutional activities;
- the authorisation to organise lotteries.

The last (but not the least) facility introduced is strictly related to the fund-raising action of TSO. In fact the organisations recognised as ONLUS could finance their activity with a new kind of bonds, called 'solidarity bonds'. The main characteristic of this financial instrument is the complete deductibility for the banks or the financial institutions responsible for the placement of the spread between the rate fixed for the issue and the rate established by the Ministry of Finance.

### **1.5 Two Non-Profit Organisations Between Market And Third Sector**

Two other kinds of organisation, whose role and activity could be crucial in the next years for the development of the third sector, can be identified in the Italian non-profit world: the **bank foundations** and the **IPAB** (institutions for public assistance and charity).

The bank foundations are the outcome of a restructuring process of bank industry spurred by the promulgation of the law 218/90 (also known as Law 'Amato'), which contains rules about the transformation of banks into stock companies. In observance to the law 266 (section 15) their main purpose should be the nourishment of regional funds directed at financing service centres which support voluntary organisations. In this way the law 218 fixes a complete separation between banking (in the strict sense of the word) and social/solidarity activity. According to ministerial decrees issued in order to implement the law 218, foundations should have stop carrying out banking activity directly through the break-up of banking enterprises and the simultaneous hand-overs of the core assets to stock companies or through a direct transformation into stock companies.

As a result of such regulation, foundations should have been oriented to support scientific research, education, art, health and assistance in favour of weaker social categories, even though they still hold control over bank companies. This situation has been pointed out by a ministerial directive which dictates to foundations to divest a substantial equity stake in 5 years and to invest 40% of the revenues from the divestment in infrastructure for the non-profit sector. Consequently, the aims of foundations have become the following ones: to contribute to spread a culture of voluntarism and to promote a broader circulation of information about them. In conclusion, bank foundations tend more and more to conform to American models of 'philanthropic foundations' by operating in order to collect necessary resources for the development of the non-profit sector, by forsaking gradually the role of 'share parcel' managers in bank companies and by diversifying in this way their own financial portfolio.

IPAB are public organisations created to carry out assistance and charity. They are active in several sectors and are present all over the Italian territory. Both private and public organisation are included in IPAB, but in 1988 the Constitutional Court declared the illegitimacy of an ancient law (dated back to 1890 and applied until then), which had ruled out their private nature, and offered to the organisations already qualified as IPAB to continue operating by opting for legal personality. This decision led to a real privatisation of IPAB. In order to receive legal recognition, they must satisfy some essential conditions:

- fundamental associative nature, that is, a relevant part of their activities must be centred on voluntary actions of members;
- promotion and management of such organisations by private individuals;
- religious driving force.

At the moment two fundamental kinds of IPAB are identified: organisations which are engaged in the management of their estate in order to invest their responsibilities in activities carried out by other organisations; and organisations which supply services directly and receive financial resources from external organisations. Within this last category we can distinguish between organisations involved in social/assistance sector and organisations committed to the supply of services in the sanitary sector.

Although IPAB are characterised by the absence of economic return and the supply of gratuitous services, they are not considered ONLUS.

## **2. The Third Sector In Italy: Policies Towards The Activities**

In Italy the great development of the third sector over the last two decades has created new conditions and new situations in social and economic life. Obviously these new activities had to be regulated by the institutions, and step by step this process has taken place. The activities of the third sector are various: different kind of assistance (to homeless people, battered children, drug addicts, disabled people, usurees, AIDS-affected people, immigrants etc.), environment protection, international co-operation, sensitising campaign about social matters etc. There is a specific law only for a few of these activities and the third sector is not always taken into consideration directly.

### **2.1 Assistance**

In the wide field of assistance three sectors are especially considered: handicapped, child care, drug addicts and usury.

#### **a) HANDICAPPED PEOPLE.**

The law n.104 of 5 February 1992 regulates assistance to the handicapped people. It is called 'General Policy for assistance, social integration and rights of the handicapped people'.

As a national law it provides for general statements and indications which can be further developed by local administrations. It defines the necessary requirements in order to be considered as handicapped people and outlines rights and services they can enjoy, especially as regard their education and their needs (transports, leisure time, vocational training, job, sport etc.).

This national law states that some of these activities can be performed by associations belonging to the third sector. Article 38 affirms that local administrations, more exactly the communes, can stipulate agreements with recognised and not recognised associations, private non-profit organisations and co-operative societies. These organisations can use public money to finance their activities depending on the agreements they have stipulated with the communes. Local administrations could cover different share of charges or offer fiscal relieves or supply some work instruments (seats, payment for telephone charges, etc.). Moreover, in accordance with article 39, regional administrations should also finance training programmes for employees and volunteers, organised by the organisations of the third sector. This law also provides for the creation of a National Committee for the policy on the assistance to handicapped people composed by 20-25 members, five of whom must be experts belonging to private associations of the third sector.

#### **B) CHILD CARE**

On 28th August 1997 the Italian Parliament passed a law on children rights, called 'Direction for the promotions of children rights and opportunities' (n.285).

This direction provides for the creation of a National Fund in order to promote projects and interventions to improve children conditions. These activities can be supplied by public and private organisations, but the latter have to be ONLUS (non-profit organisation for social utility). Therefore, it is impossible for the for-profit organisations to receive money from public funds.

Since the agreements are stipulated between an ONLUS and a local administration, the Region, they vary across the country.

### C) DRUG ADDICTS CARE

There are many regulations concerning drug-addiction related. The most important is the no. 162 of 26th June 1990. It is a consolidation act for problems linked to drugs and it provides for rules concerning the rehabilitation in specialised and qualified centres. The Law states that these kind of services can be supplied by both public structures and private organisations. In order to do that the latter must enrol in a regional register respecting the following minimum requirements (see article no. 116):

- a) acquisition of legal status by public or private law or, otherwise, they must own the status of recognised or not recognised associations;
- b) availability of premises and suitable equipment;
- c) expert and specialised personnel.

The registration is a necessary condition in order to stipulate agreements with public administrations and to use public contributions. Article no. 131 states that, waiting for a specific regulation, contributions allocated by the Ministry of Interior are temporarily distributed to the associations by local administrations. To get information on how the associations can receive public money it is possible to consider some laws by decree and clarifying ministerial memorandum, such as the memorandum of 11th February 1993 about financial public support.

Moreover, article no. 130 states that the regions and other local administrations can give some of their real estate to recognised associations in order to facilitate their activities about drug-related problems.

#### D) USURY

On 7 march 1996 the parliament approved a law (n.108) to repress usury by the establishment created a fund for the prevention of usury cases. It states that the 30% of the fund has to be used to promote the activities of recognised voluntary associations and foundations.

## 2.2 International Co-Operation

On 26the February 1987 the Italian Parliament adopted a law (n.49) regulating international co-operation. It is called 'New rules for the Italian co-operation with developing countries' and it deals with problems such as the protection of human life, the use of human resources, the environment, and the social, economic and cultural growth in developing countries. This law provide for the creation of different public agencies in order to stimulate, finance and control international co-operation.

Moreover, this law points out the importance of Non-Governmental Organisations (NGO) in the co-operation processes. This is why this law intends to finance these organisations. In order to receive the public money, an NGO has to be recognised for its activities by the NGO commission<sup>1</sup>.

To obtain this recognition an NGO has to respect the following conditions:

- a) The institutional aim must be international co-operation with developing countries;
- b) It has to be a non-profit organisation and any profit coming from linked commercial activities or from self-financing operations must be devolved to the institutional aim;
- c) It must not depend on for-profit organisations and it cannot be linked to the interest of any public or private organisations with for-profit aims;
- d) It must provide guarantees for the realisation of the projects, including suitable structures and qualified personnel;
- e) It must supply documents proving operational experience and organisational capacity for a period of at least three years in the fields in which it wants to obtain recognition;
- f) It must accept periodic controls in order to maintain the recognition;
- g) It must present a detailed analytic budget and the accounting relating to the last three years;
- h) It has to present an annual report showing the situations of the work in progress.

After having obtained recognition by the NGO commission, an NGO can present its projects to the directional committee (see Article 9). If this public body approves them, they can be financed. There are different ways to finance a project:

- a) The directional committee can decide to cover part of the cost of the project (in any case no more than 70% of the costs);
- b) Since the activities of international co-operation of an NGO are not considered as commercial activities, they are not subject to taxation. In the same way donations and

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<sup>1</sup>This body is established by the law in article 8, paragraph 10.

obligations made by natural person or legal persons for financing the activities of an NGO are not subject to taxation.

- c) Another way to finance the activities of an NGO is represented by volunteers in civil service. Volunteers in civil service are Italian citizens who have stipulated a contract of at least two years with an NGO in order to work in a developing country for a project recognised by the directional committee. In this case the public contribution consists in the payment of the social security which was to be paid by the NGO<sup>2</sup>.
- d) There are further facilities concerning workers:
- if a volunteer in civil service already works in the public administration, he can ask to be given leave of absence for the period established by the contract with the NGO;
  - people who decide to work in a developing country have the right to maintain their former public or private jobs;
  - private companies whose workers decide to work for a co-operation projects can hire new employees for that limited period of time;
  - if a person signs a contract for more than two years he will be dispensed from the military service, if he has to do it.

## 2.3 Environment

In Italy there are many laws and regulations concerning environment and there are many different issues linked to the environment such as civil defence, waste disposal, water and air pollution, protected areas, hunt regulation, etc.

1. First of all it is important to underline that the environmental associations have to be recognised from the Environment Minister by departmental order. In order to obtain recognition they must work countrywide or at least in five Regions, must be democratic, must have both continuing action and suitable programmes (see the law of 8 July 1986, no. 349, article no. 13).
2. Civil Defence. The law concerning Civil Defence was approved by the parliament on 24th February 1992 (n.225). It deals with problems linked to natural calamities and catastrophes. This law states that local administrations can stipulate agreements with private organisations, especially with voluntary associations specialised on civil defence. The law submit to another regulation the detailed formalities to fill in the agreements. The national law proposes just general indications as the following:
  - the regulations will develop procedures to improve the technical and professional equipment of the associations;
  - the regulations will develop procedures to increase and improve the links between the public administrations and the voluntary associations.

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<sup>2</sup> If the contract is for a period that is shorter than two years, it is called "contract for co-operator of the NGO. A co-operator receives substantially the same treatment as a volunteer in civil service".

3. Waste material law, approved on 5th February 1997 (no. 22), provide for a direct link between third sector and public authorities. Article no. 21 states that for the activities connected to waste disposal problems the local administrations (the communes) can stipulate agreements with both recognised and not recognised environmental associations.
4. Regarding problems connected to the depletion of the ozone layer, the law of 28th December 1993 no. 549 underline the following issues:
  - the Minister of Environment together with recognised and not recognised environmental associations can organise information campaigns to awaken public opinion to these kinds of problems (see article no. 11);
  - when the directions of the law are not respected, environmental and consumer associations can ask and obtain the sequestration or the destruction of the dangerous goods (article no. 14).
5. Many laws about hunting have been approved . One of these, law no. 157 of 11th February 1992, states that controls on enforcement of the law can be carried out by either qualified public employees and voluntary guards belonging to both hunting associations and recognised environmental associations. It means that the role of voluntary guards are is considered as important as that of public employees in these important control activities. In order to become eligible for the tasks defined by the law voluntary guards must pass an exam organised by the Regions.

## **2.4 Civil Service**

Another issue characterising the third sector is the civil service. Many conscientious objectors (if someone wants to do the civil service, he has to declare himself as conscientious objector) work in TSO. The Civil Service phenomenon has been growing over the last two decades. In the seventies there were just a few hundreds of objectors but now about 50.000 males per year choose to do the civil service. A major problem in this field is represented by the fact that the legislation on civil service dates from 1972 (law no. 772 of 15th December 1972), even though the cultural and political conditions have been changed during the last twenty years. It means that the legislation is still very restrictive. About ten years ago a debate concerning reforms in this fields began, but new regulations have not been approved yet. A new more open-minded regulation would be very important for the third sector, as the civil service could become a great opportunity to educate people to values such as solidarity, environmental protection, peace, fair trade, etc., so that some of that people could even decide to continue to work in the third sector.

## **3. Labour Policies In Italy**

### 3.1 The Law 196/1997

The most important act for the promotion of employment that has been approved by the Italian government during the last years is undoubtedly the law no. 196 of the 24th June 1997 (*Norms regarding the promotion of employment*), considered important not only for the global approach to labour-market issues but also for its innovative contents.

The main feature of the law is the introduction of a new kind of operator, and therefore of a new form of employment, in the Italian labour market: the so-called intermediary agencies for temporary work, which act as intermediaries between unemployed workers and firms.

As they manage labour supply according to the needs of the demand, these agencies are considered as possible solution to the increasing flexibility in labour organisation requested by the market itself. Italy was one of the two countries in the European Union (the other one is Greece) still waiting for the possibility to adopt this form of employment ("hired jobs", according to the Italian mass-media's definition), involving 1.9 millions of workers in all Europe (see the table above). The agencies must be enrolled in a register held by the Minister of Labour and can adopt the legal status of either companies or co-operatives and can operate in every productive sector, although in building and agriculture sectors their activity is considered being only in an experimental phase. In order to assure an unbiased working mechanism of the labour market, the relation between the agency and the firm demanding workers - *Contract for providing temporary workers* - can be justified only under the following circumstances:

- the cases defined by the national collective contracts;
- temporary needs for extraordinary functions in the organisation of work;
- substitution of absent workers except for the cases of strike or premature dismissals.

Furthermore, in order to reduce the risk of misprotection for the workers and of abuses of flexibility, the content of the contract must respect two fundamental principles:

- the protection of temporary workers: the contract should define the role of the requested workers, their working-place, their working-time, their wage (forms of joint responsibility of the agency and the firm are introduced to assure the payment of wages and the contributions for social insurance);
- the protection of ordinary workers: the number of temporary workers cannot exceed the percentage, calculated on the total workers of the firm, established by the national collective contracts signed by the trade unions for each sectors.

#### The temporary work in Europe - 1995 (absolute figures in thousands)

State	Temporary workers per day (A)	Employed (B)	A/B %
Austria	13	3,759	0.35
Belgium	42	3,793	1.11
Benelux	180	6,713	2.68
Denmark	2	2,639	0.08
France	370	22,326	1.66
Germany	176	34,864	0.50
Ireland	2	1,262	0.16

Italy (estimate)	200	19,939	1.00
Portugal	4	4,407	0.09
Spain	3	12,042	0.02
Sweden	30	3,985	0.75
United Kingdom	850	26,172	3.25
Total	1,872	141,901	1.32

Source: Censis

The relation between the agency and the worker - *Contract for temporary work* - can be temporary or open-ended. In the last case (open-ended contract) the worker remain at disposal of the agency in the periods of lack of demand. It seems important to notice that the agency has the duty to inform the workers about the risks connected with the activity they are going to do and has also the duty to train the workers, even though this function can be assigned to the firm.

Three other fundamental aspects are regulated by the law:

- the wage for the temporary workers must not be lower than that of ordinary workers with the same functions;
- the contract can never require the worker to not accept a proposal of employment by the firm;
- the workers have the right to participate in the activities of the trade unions inside the firm.

The law establishes that the Ministry of Labour will call the trade unions and the representatives of the agencies in order to draw up the National collective contract for agency jobs, if the same parts do not find an agreement by June 1998.

An important part of the law is dedicated to training activities, although a particular attention to this subject seems to be present in each point regulated by the law, according to the new trends of the labour market (also the agency-jobs training of temporary workers has been especially treated, see above). The objective of these norms is to create new opportunities for young unemployed people to match the professional world, by a mixed context of practical and theoretical experiences (stages).

Thus the following principles has been listed:

- the promotion of these training activities can be proposed by public or private non-profit institutions;
- the length of this training activity cannot exceed 12 months (24 months for handicapped people);
- the institution promoting the stage has the duty to insure trained people against civil liability and accidents at work;
- there must be a tutor responsible for teaching and organising the activities;
- the introduction of the training credits, certifying the stage experience and giving facilities to find an employment;
- the possibility to partially or totally refund the expenses for training young people coming from the South of Italy.

The law 196/1997 also establishes the principles underlining two new forms of employment and training, aiming at inserting at least 100.000 unemployed young people living in the most disadvantaged regions of Italy in the labour market:

1) working grants: by this expression the law means special training opportunities giving the possibility to have a working experience in the typical economic sectors receiving a public subsidy;

2) jobs for public benefit (JPB): among the 'jobs for social utility' (see below) they are a particular kind of job related to people-care services, safeguard of environment, protection and care of urban spaces and cultural goods, projected and realised with the specific aim of creating new employment.

Both these forms of work involve people between 21 and 32 and can have a maximum length of 12 months and require no more than 20 working hours a week.

### 3.2 The Jobs For Social Utility

The jobs for social utility (JSU) are regulated by the decree 468/1997<sup>3</sup> of 1st of December 1997, and they are defined as 'activities aiming at producing goods and services for social utility, using determined types of workers<sup>4</sup> in a compatible way with the equilibrium of the local labour market'. Among these activities the jobs for public benefit (see above) are included.

The projects for JSU can be presented to the Regional Commissions for Employment by public institutions or by social co-operatives (or consortia constituted by them). For the latter the following conditions should be respected:

- at least two years of activity;
- the number of workers involved in the project cannot exceed 30% or 50% of the total number of workers or members, for the A-type or B-type co-operatives respectively;
- there must not have been dismissals in the previous 12 months;
- if the co-operative (or the consortium) has already been working on a project of JSU, at least 50% of the workers involved in the previous project must have been employed or must have become working-members.

The workers dedicated to JSU receive a subsidy (800,000 lit) by the State and the institutions managing the project has the duty to insure them against accidents at work.

Because of the time limits set for the projects (12 months, with some exceptions) aiming at promoting entrepreneurial initiatives, the workers with an experience in JSU can establish co-operatives in order to participate to *mixed companies* whose capital is held by public and private organisation. This possibility is allowed for by the law in order to

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<sup>3</sup> Actually this form of employment is present in the Italian legislative framework since many years (see also the law 608/1996).

<sup>4</sup> The following typologies of workers are defined by the decree:

- people looking for the first job;
- people unemployed;
- workers with specific characteristics defined by agreements for the solution of a crisis involving a firm, a sector or an economic area;
- jailed people with specific characteristics.

give them the opportunity to continue the same activities and to draw up agreements (conventions) with the public organisations which managed the previous projects.

It seems interesting to notice that for the JPB the decree 468/1997 introduces an important link with the law 266/1991 on voluntary organisations. The law establishes that a worker doing people care services in the context of the JPB can be helped and supported by a more expert volunteer who is member of a voluntary organisation established under the law 266/1991 and can receive a reimbursement for the expenses incurred during his/her work.

The experience of JSU is an important attempt to introduce new ways of supporting unemployed people avoiding paternalistic mechanisms which often lead to marginalization and can rarely help the birth of new economic initiatives. JSU are justified by the adoption of new principles underlining the policies against unemployment:

- providing an economic subsidy to the unemployed;
- promoting the insertion of the unemployed in the social context, making these people feel useful for their society and community;
- stimulating training and educational activities for people at the margins of the labour market;
- giving to the local institutions the possibility to better manage social services.

According to the data of the Minister of Labour for the 1996, 53.271 workers have been participating to JSU in all the regions of Italy, 80% of whom in the South.

Actually it is common think that the regulation on JSU needs a clearer legislation, as to provide new instruments for the integration of this experience with third sector activities. In fact, this integration could be the way a JSU experience becomes a definitive new job.

### **3.3 Local Actions For The Promotion Of Employment**

Regarding the labour policy - but it can also be said this is a general tendency - in Italy it is possible to observe that the last legislative acts tend to strengthen the role of local institutions in terms of ordinary and targeted activities.

The decree 469/1997 of 23rd of December 1997 seems to be crucial in this sense, giving to the Regions and other local institutions the following tasks:

- 1) managing the activity of inter-mediation within the labour market;
- 2) promoting initiatives aimed at creating employment (also referring to women's employment);
- 3) collaborating in the drawing up of projects for the employment of drug addicts and ex jailed people;
- 4) addressing, programming and testing the educational, training and working-grants activities;
- 5) addressing, programming and testing the jobs for social utility.

The activity of inter-mediation within the labour market can be carried out by firms, network of firms, co-operatives or non commercial institutions<sup>5</sup> with a total amount of assets no lower than Lit. 200m.

The last point regulated by the decree is the institution of the Labour Information System (LIS), an integrated computer network which should develop and spur communication among the different national and local institutions active on the labour market.

At the beginning of the 1995 the law 95/95 has instituted the 'Società per l'imprenditorialità giovanile - IG' (Company for the youth entrepreneurship), a state-owned company with the objective to promote entrepreneurial initiatives for unemployed young people (no more than 36 years old). The activity of IG is specifically oriented to the funding of innovative projects able to create new employment opportunities especially in the South of the country. Therefore in the last years IG has paid much attention to the social economy, intended as a fertile ground for the creation of new enterprises and for the economic valorisation of the aims, skills and values grown up in an extra-economic environment (IG, 1996).

IG is given a new local role for the promotion of labour policy according to the paragraph number 25 of the law 196/1997. The possibility for the 'Company for the youth entrepreneurship' to constitute companies active at local level and aimed at promoting the birth of employment opportunities for young people is established

## **4. Proposals For New Policies On The Third Sector**

### **4.1 Social Associations**

After the law about ONLUS, the enactment of a law on social associations is pressing and cannot be postponed without running a high risk of inapplicability of a relevant part of that innovative regulation.

Firstly, it is necessary to explain what social associations mean: they include those associations (also not legally recognised), movements, groups, their co-ordination and federations created to carry out activities of social utility without any lucrative aim and in favour of both their members and third parties. Political parties, trade unions, employers associations, professional associations, trade associations and also those which have the purpose of the exclusive defence of the economic interests of their members are not considered social associations.

Several bills regarding social associations have been introduced before Parliament in these years; one of them has been drawn up by the present government.

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<sup>5</sup> In the Italian fiscal and legislative definition a non-profit organisation is not necessarily an organisation belonging to the third sector. This happens, for instance, when an organisation has not a profit purpose, but it not perform any activity having social utility. This kind of organisation is called 'non commercial institution'.

The principal purpose of this draft of law is to recognise social value of the associations and of their various activities, to defend them as expression of participation, solidarity and pluralism, to promote their development across the national territory safeguarding their autonomy, and to foster their original contribution towards the pursuit of social, civil and cultural aims. The associations should be established by public charter and their statute should specify the following elements:

- the absence of any lucrative aim and the guarantee of no gains division among members, not even directly;
- the duty of re-investing potential surplus in the institutional activities listed by the statute;
- an internal regulation centred on the principles of democracy and the equity of the rights members;
- the duty of drawing up budgets and final accounts as well as exhibition of balance sheet;
- procedures of closing down;
- the duty of devolving residual property assets to activities of social utility in case of the closing down.

About economic resources, several sources of funding are identified: subscriptions of adherents and private contributions, national grants and European aids, donations and testamentary legacies, gains from the supply of services.

Analogously to what happens for social co-operation and voluntary organisations, they should have the duty of enrolment in a national register instituted at the Council of Ministers. This would give them the right of stipulating agreements and benefiting from grants fixed by regional laws.

An interesting measure suggested by the governmental proposal is the establishment of a National Observatory on Associations chaired by the Social Solidarity Minister and composed of experts and members chosen from the most representative associations.

It should have the following tasks:

- assistance given to the Council of Ministers in managing and updating the national register;
- support of training initiatives needed for a better development of institutional activities;
- promotion of researches about associations in Italy and abroad;
- realisation of an annual report about associations trends and the state of execution of the European national and regional legislation;
- publication of a newsletter;
- approval of pilot projects defined together with local authorities in order to deal with social emergencies and to favour the implementation of advanced methods of action;
- promotion of exchange of knowledge and collaboration between Italian associations and foreign ones;
- support above-mentioned initiatives and projects;
- assistance and advice to the Italian National Statistical Institute in order to realise analysis on both national and regional levels.

Regarding the supply of services, social associations can rely upon the voluntary work of members and, differently from what happens in voluntary organisations, the condition of member could be compatible with a subordinate job in the same organisation.

Resuming an important rule contained in the law about voluntary organisations, this proposal provides that people engaged in voluntary work can benefit from special conditions of working time flexibility in order to carry out such activities. The proposal recognises to social associations the same economic benefits as those granted to ONLUS. Moreover they could use resources from the European Social Fund in order to implement projects directed at achieving institutional objectives.

Lastly, regional laws should contribute to the promotion and the development of social associations, safeguarding their autonomy in organising and planning.

In this regard four Italian regions - Emilia Romagna, Umbria, Toscana and Sicilia, have already drawn up laws for social associations. It is interesting to point out peculiar elements of one of the most representative regulation among them, i.e. the law number 10 promulgated by Emilia Romagna in 1995.

In compliance with the objectives fixed at national level, Emilia Romagna intends to valorise activities directed at:

- promoting any initiative necessary to defend rights of citizenship, principles of internal and international solidarity and equal opportunities between women and men;
- valorising principles of peace, multiethnic culture, co-operation among different populations;
- safeguarding and developing environmental, territorial and natural resources;
- realising an integrated global system of social security and health defence;
- overcoming every kind of social awkwardness;
- supporting every cultural, educational and formative initiative;
- developing sportive practice and social tourism.

The main tasks of the Region are:

- to stipulate agreements with registered associations;
- to provide necessary infrastructures;
- to supply information services, databases and technical assistance;
- to support specific projects, including the process of training and updating of the employees of the associations .

The Region must also contribute to the financial support of actions, such as the implementation of specific projects, the purchase of equipment and the building of necessary infrastructure, taken by associations; the law provides that regional contributions cannot exceed 50% of the allowed spending. The enrolment in a regional register is an essential prerequisite to benefit from regional support. The associations that have non-profit aims, have been operating for at least two years and have a registered office in Emilia Romagna, cannot be excluded from the registration.

Lastly, the law provides for the realisation of a regional conference on associations every three years, aimed at collecting evaluations and proposals about the national and regional

European policies concerning the associations and the relationships between public organisations and associations in Emilia Romagna.

## **4.2 A New Law On Social Assistance**

The problems emerging from the new forms of poverty - linked to more and more spread phenomena of social marginalization, to difficulties in social integration, to the subsistence of weaker categories, to the heterogeneity of social actions in several cases considered as purely corrective measures, changes in the society, to the transformation of the family (increase of singles and one-parent families) and to population ageing - impose an overall review of social organisation.

About this matter several proposals of reform of social assistance have been advanced by associations and political parties in the last months; in particular, a proposal tabled by the Minister of Social Solidarity, L.Turco, and another one arranged by the deputy Signorino, which integrates the first one defining the law that will be probably voted.

The reform of social assistance revolves around three fundamental points:

- 1) the defence and the promotion of both individual and social citizenship; in this way, beneficiaries of measures are all the citizens (individuals and families) who - suffering from several difficulties linked to the age, the health, and to particular situations of marginalization and exclusion - must have both the guarantee of subsistence means ( the minimum essential to live) and aids for getting over hardship;
- 2) the getting over of the logic according to which sanitary sector is separated from the social sector; in this way, the task of the different institutions would consist in the management of all social services, including those linked with the defence of the basic rights of individuals, and not only sanitary (prevention, care and rehabilitation) social-assistance and social-security ones;
- 3) the setting up of a network for social protection to be realised by the co-ordination of policies and actions carried out in the various sectors of social life, the integration of services granted to individuals and households (including specific economic measures) and the definition of active paths directed at optimising the efficiency, avoiding the overlapping of expertise and sectorial divisions in the proposed solutions.

Thus the main goal of the above-mentioned proposals is to build up an integrated system of social protection in order to ensure equal opportunities and to prevent, remove or reduce hardship and social embarrassment linked to the inadequacy of income, to human and social difficulties and to the lack of autonomy.

By social actions and services are meant all the activities related to the arrangement and the supply of both gratuitous and paid for services aimed at removing or overcoming hardship, with the exclusion of those ensured by social security and sanitary systems.

In order to ensure homogeneous conditions of supply all over the country, some basic services are defined:

- activities of information and consultancy to individuals and families;

- services of 'speedy-intervention';
- measures of support to children, adolescents and familiar responsibilities;
- services provided for preventing drug-addiction;
- measures for ensuring equal opportunities;
- actions carried out to promote the full citizenship of the young and the woman;
- the supply of a minimum income as a measure for fighting against poverty and for social integration;
- measures to facilitate social integration of disabled people.

Beneficiaries of these services are the children, the young, the elderly, the immigrants, the handicapped and mentally ill people. The undertaken measures could vary from the direct supply of services to economic benefits, from the provision of 'service-tickets' to tax relieves, within assistance paths in favour of the single citizen and families and arranged on the basis of personalised actions of needs.

The institutions which take part in the realisation of such social service network are the State, the Regions and the municipalities, with the tasks of defining guidelines, planning and managing social interventions and services respectively.

A crucial role is assigned to municipalities, as they are in direct contact with people, represent the reality of local communities from the political-administrative viewpoint, and know people needs and their social, economic and custom characteristics better than others. For these reasons it is necessary that the solutions to such problems are found whereas the demand comes to light.

Municipalities are the only authorities which can implement co-ordination and integration of services in favour of citizens, with a greater flexibility of assistance paths, a good organisation of the service network, and a synergetic link of the whole amount of available resources.

More specifically, municipalities should have the task of:

- supplying economic and social services and 'service-tickets' according to what is mentioned in the law;
- taking measures for the authorisation, vigilance and control of both structures belonging to the local network and to people involved to the supply of social services;
- defining, in concert with the Regions, the domain within which the network of actions and the supply of services should be developed. Such definition would ensure the homogeneity and non-duplication of areas already identified and/or operating for sanitary services and for others actions of integrated network;
- setting up methodologies necessary for the control of the management, directed at evaluating efficiency and effectiveness of services and results;
- stimulating consultancy modalities for organisations and people operating in this field in order to test the conditions of their own territory and to formulate proposals for updating the plans and the regional programmes.

Concerning the definition of the boundaries for the management of the network for social protection, associated municipalities, in collaboration with local sanitary units, provide for the definition of 'areas-plans', which identifies:

- strategic aims and priorities of action as well as tools and means for their implementation;
- organising models and quali-quantitative standards for the services offered;
- the way for ensuring the integration of all the services;
- the way of promoting the collaboration with those who operates in the field of social solidarity at local level.

The Regions have also to contribute to the planning of actions regarding social integration by collecting information about the needs and the resources acquired by municipalities and institutional organisations existing at provincial level, and to co-ordinate social actions as well as to verify and check their implementation at local level. In particular, they have to discharge the following duties:

- the collaboration with municipalities in the defining the boundaries actions and services network should be managed within;
- the identification of requisites for the quality of the service management ;
- the definition of integrated policies about social actions, health, school organisations, vocational training, job recruitment, services for leisure time, transports and communications;
- the promotion of methodologies and tools for the control of the management in order to evaluate efficiency and effectiveness of the supplied services and the results of proposed actions;
- the setting up of a regional fund aimed at financing complementary actions, and the definition of the required resources and the criteria for their allocation, in concert with municipalities;
- interventions for the training and the updating of the personnel engaged in this matter;
- the definition of requisites necessary for the authorisation and control over the organisations engaged in the supply of social services;
- the definition of criteria for the issue of service-tickets by municipalities according guidelines decided at national level;
- the identification of users' contribution to services' costs, in conformity to the guidelines fixed at national levels;
- the determination of rates paid by municipalities to the accredited organisations.

At central level the State should cope with the removal of the tasks indentation in the social/assistance field, at the moment scattered in several Departments, identifying in the Department for Social Solidarity the link-place involved in the formulation of the social policy guidelines and in co-ordination of the available financial resources.

The State should discharge the main duties of defining guidelines and co-ordinating all over the country the realisation of essential and homogeneous standards for social services concerning children and adolescent rights, equal opportunities, integration and autonomy of the handicapped people; the conditions of the elderly, the support to the families, the prevention and treatment of drug addicts, the integration of foreign people.

The government should also arrange the National Social Plan, which indicates:

- essential levels of services that local authorities, Regions and State must ensure to individuals and families;
- procedures of social actions and service implementation and interventions to be coordinated with sanitary, school, employment and training policies;
- priorities of action, with a particular attention to measures which realise active paths in favour of the poor and the disabled;
- actions addressed at the spreading of information services to citizens and families;
- guidelines about the training and the updating of the personnel;
- measures and indicators for the verification of the level of social integration ensured at present compared with those suggested;
- criteria for the regulation of users contribution to the costs of the services.

Other tasks which fall within the competences of the State are the following:

- to define the minimum income which meet the requirements of the law;
- to divide national social fund among regions;
- to face relations with foreign and international organisation operating in the field of the social integration and satisfying the conditions defined by international agreements and Community regulations;
- to undertake extraordinary actions for basic needs in case of exceptional and emergency events;
- to give to compatriots refugees and repatriated first aid in case of extraordinary and exceptional events as well as to foreign refugees and to grant assistance to foreign people until giving them a permit of stay.

In the planning and implementation of such services government should also involve public and private organisations, ONLUS, co-operation and voluntary organisations, social co-operatives and foundations.

Regarding the institutions which take part in the setting up of such integrated network, the draft of reform also suggested by Mr. Signorino provides for the transfer of the tasks related to social protection, until now under the responsibility of several Departments, to the Social Solidarity Department. In the same proposal it is mentioned the opportunity of instituting a National Commission for Social Policies composed of the above mentioned Department, of the delegates of 9 regions and 9 local authorities by a criterion of geographical distribution.

The Commission should fulfil functions of inspection on the realisation of a social protection system, of consultancy and proposal towards government about the definition of guidelines for a national social policy. In addition, it would be desirable to set up a permanent Observatory for the monitoring of social phenomena, paying particular attention to the defence of citizenship principle, the question of poverty, the difficulties of families and children, the social integration of the handicapped people and the elderly, the social marginalization.

The realisation of an integrated network of social actions should taken into account agreements between local authorities, Regions and State.

In the opinion of the proposers, it would be necessary to set up an information system of social service in connection with the Regions and the Department, in order to

ensure a right knowledge of the social needs to satisfy, of the services activated, of the actions carried out and in order to have the data and the information necessary for the planning, the management and the evaluation of social policies.

Regarding financial matters, the public resources directed at financing such actions should converge in a unique fund, the Fund for Social Policies, shared in by the Regions. This should manage a regional social fund, aimed at financing projects of assistance and social integration presented by municipalities in collaboration with organisations of social utility. Regions fixed the criteria of direct financing about economic emoluments and subsidiary financing about the other activities of social protection. The Fund for Social Policies must be considered as complementary to the financial resources receivable by municipalities, which must allowed for them in their annual budgets.

Other suggested initiatives worthy to be mentioned are: personalised actions in favour of not self-sufficient elderly, projects for the removal of the problems of the young and pilot programmes for those foreign people waiting for a permit of stay. Then, the above-cited proposals both indicate principles and criteria for a reform of IPAB.

Those principles and criteria consist in:

- the full devolution of assets belonging to IPAB in favour of the network of social protection;
- the transformation of all the existing IPAB into associations or foundations;
- the inclusion of IPAB in the network.

Lastly, two really important instruments that sign a step forward the review of the welfare system are regulated in the proposed laws:

- the minimum income in favour of those who do not earn any income and are not capable to provide for their maintenance because of psychological, physical and social reasons (Signorinoís proposal suggests an amount equal to 60% of the average national income per capita);
- the *service ticket*, which is a special form of purchase power transfer granted to citizens as an alternative way to money, in order to make them able to buy some essential goods, such as food, house, clothes, domestic aid or daily maintenance services for home for the satisfaction of their own needs or the ones of their family.

According to the view of the proponent, the *service-ticket* should be part of a more articulated assistance path consisting in the social integration of people who have problems linked to the income production and who live in really deep hardship.

The main aim of this tool is to stimulate active reactions of participation in the social life in people with a sufficient psychological and physical autonomy through the choice of goods and services helpful to their survival and through the improvement of their standard of living. The Regions should establishment criteria for the granting of tickets and procedures of access to such measures on the basis of the guidelines suggested by the Social Solidarity Department. The possibility of introducing a system of tax relieves on the expenses related to the defence, the home care of not self-sufficient members of a family it is also considered.

### 4.3 The Renewal Of Italian Foreign Policy

After various attempts, finally a legislative path for a new foreign policy is starting and this fact represents an occasion to give a twist to the Italian foreign policy; that is, it allows to stop an unacceptable and unsustainable situation which ratchet the Italian commitment in international co-operation and solidarity down.

The principal purposes of the bill on Public Aid to the Development (PAD) introduced by the government consists of:

- the fight against poverty and social exclusion in developing countries;
- the support to their social, institutional and economic reforms;
- their integration in international economy;
- the promotion of peace, of the full realisation of human rights (particularly of childhood rights), of the removal of gender inequality, of the valorisation of the active role of women in development activities, and the contribution towards a better government of migrations;
- the uplift of education levels and the safeguard of the environment.

In order to satisfy those aims this bill provides that Italy takes part in the action carried out by developed countries in favour of the sustainable development and the defence of human rights of the less developed countries (LDCs), in compliance with UNO and EU guidelines, contributes to the definition of aid policy to the development defined by EU, participates in humanitarian interventions promoted by the international community to tackle natural (or provoked by men) emergencies, contributes to the rehabilitation and reconstruction in countries destroyed by the war.

This bill introduces a significant innovation regarding the management of international aid to LDCs by decentralising co-operation, i.e. co-operation, always in line with EU and OECD directives and UNO guidelines, should be devolved to the Regions. Moreover, the Regions should contribute to PAD and could use instruments suitable to implementing the initiatives of PAD, also in concert with NGO and public or private organisations. Beneficiaries of PAD intervention are those populations and LDCs registered in the list drawn up by OECD.

In order to evaluate the state of implementation of PAD, the Foreign Office and the Treasury Department would jointly produce a report once a year. It should indicate how financial resources are spent and what they are addressed to; some priorities can be identified:

- participation in capital and recapitalisation of banks and funds created for development aims;
- the funding of EU actions carried out to implement agreements with African and Caribbean countries;
- initiatives of multilateral and bilateral co-operation in terms of aid and food aids;
- a national conference would be convened with the task of formulating recommendations, evaluations and directions for defining planning guidelines.

The initiatives above mentioned could be admitted to public national co-financing procedures, given the amount of resources addressed to co-operation by the Financial Law.

The State should also encourage and support activities in favour of LDCs carried out by NGO and ONLUS. Such activities could benefit from state contributions. The principal task of the Treasury Department should be to ensure Italy's financial participation of resources of Banks and Funds for Development. The Treasury Department and the *Ministero del Bilancio* would jointly establish conditions of use for funds and define financial procedures for lending.

Regarding the tasks of the Foreign Affairs Department, the following duties have been considered:

identify PAD guidelines; define annual programmes in conformity to funds addressed for this purpose by the Financial Law; establish voluntary contributions to international organisations as well as shares directed at emergency operations; define - together with beneficiaries - platforms for countries and geographical areas; arrange partnership conditions and co-operation initiatives to co-finance with International Organisations of development; supervision the implementation of projects funded by PAD.

It is also suggested the institution of an Agency for Development, a public institution depending directly by the Foreign Affairs Department, which would define specific initiatives concerning annual programme of co-operation and countries platforms and would be engaged in implementing development projects. The Agency could also devolve part of its tasks to NGO, voluntary organisations and public or private institutions. Moreover, it could assist the Foreign Affairs Department, providing technical advice during negotiations on PAD activities, ensure the execution of feasibility reports as well as investigations about initiatives of financial aid and lending, pay out financial resources in order to foster of micro-credit actions, grant soft financing for the formation of mixed enterprises and carry out technical and economic evaluation of projects concerning such initiatives, finance, initiatives and projects promoted by NGO and ONLUS, promote the training of the Italian personnel for the civil service given in LDCs or International Organisations for Development.

In case of natural (or provoked by man) disasters, the Agency for Development should be ready to realise humanitarian emergency operations in order to deal with crisis and their impact on the society.

The Agency for Development fixes the amount of specific contributions in support of NGO, voluntary organisations and activities of the associations; in this regard a national list of NGO and a special register of ONLUS should be instituted by the Agency.

NGO and ONLUS would employ volunteers and co-operants in order to carry out their activities. Volunteers are adult people of Italian or foreign nationality who have suitable technical knowledge and necessary qualifications as well as appropriate training and psychological and physical capability and accept a contractual engagement for co-operation in LDCs for at least two years in order to carry out activities for implementing

programmes of co-operation with NGO and ONLUS. At the end of a continuing period of service in LDCs, Italian volunteers who are liable to call-up have the right to obtain a permanent leave.

‘Co-operants’ are adult people of Italian or foreign nationality who have suitable technical knowledge, proved professional experience and appropriate qualification and accept an engagement for co-operating with LDCs in order to fulfil tasks of relevant technical, executive and organising responsibility within programmes of co-operation promoted by NGO and ONLUS. Activities of co-operation to the development of LDCs, being non-profit activities, should be exempt from indirect taxation.

The bill introduced by the government raises several worries and objections among Third Sector organisations. ARCI, one of the most relevant Italian association engaged in activities of public interest, has expressed concerns about this draft. Firstly, the bill states that Italy participates and contributes to the co-operation policy carried out by international organisation and EU, instead of pursuing its own policy; secondly, it does not mention any criteria to select beneficiary Countries and any concrete possibility for populations to benefit from measures taken directly without inter-governmental agreements, while it would be desirable to define real ‘country-plans’. Furthermore, the Treasury Department would have a dominant role in co-operation policy, broadly exceeding its tasks of formal control of spending and judging the planning and the management of co-operation policies in their merits, while Parliament would lose its central role in defining guidelines, and in planning and assessing Italian co-operation policies.

Lastly, great doubts are expressed about the effectiveness and autonomy of the Agency for Development, which could risk becoming only an executive body of the Foreign Office.

The ‘Permanent Forum on the Third Sector’ also underlines some weak points of the above-mentioned law, putting forward some hypothesis about the future Italian co-operation policy. In the first place, the Forum stands up for assigning a central role to bilateral co-operation in order to avoid that Italy, taking part in the policy of international organisations, is forced to a subordinate role. The Forum argues that Italy must express its own autonomous subjectivity integrate its own policies with international ones only in a second time. In this sense, the Forum hopes that a purpose of high profile - inspired to the conception of international co-operation as a tool necessary to favour the development and the peaceful cohabitation of populations - is assigned to the international co-operation. Then, it backs up the idea of an integrated system of co-operation, which should attribute to the non-governmental and civil society co-operation the same relevance as that recognised to governmental co-operation, and which should be characterised by actions integrating economic and social features.

According to the Forum, a mainstay of the above-discussed law should be the development of a decentralised co-operation, carried out by avoiding the creation of a dichotomic view and the proliferation of autonomous executive organisations at local

level. In that way enhancing the value of decentralised co-operation would mean recognising the relevance of the relations within the community.

Lastly, the Forum wishes the Italian government to decide to commit a greater amount of resources to the co-operation, until reaching 0,7% of GDP, and to promote campaigns in favour of fair and sympathetic trade.

#### **4.4 Conscientious Objection And National Civil Service**

In 1998 the Italian Parliament will probably enact a reform of the law about conscientious objection dated back to 1972. In 25 years almost 300.000 citizens have chosen civil service (in 1996 50.000 of them asked for it ) while about 1.000 non-profit organisations and 2.000 public institutions have been engaged in it. The lack of an organic and coherent policy and the presence of fragmentary resolutions taken by single organisations have lead to several inefficiencies and wastes, disappointments and frustrations. In addition, the law imposes to the young who choose civil service to declare themselves as objectors, minimising in this way the value of non-violence.

The proposal of the above-mentioned reform has already been approved by the Senate and has also been welcomed by associations and voluntary organisations for several reasons:

- it points at the valorisation of objection considered as a subjective right to refuse violence and the recruitment in the Armed Forces with the consequent duty of giving civil service;
- it provides for a demilitarisation of civil service with the transfer of all the responsibilities to a civil organisation;
- it recognises the relevance of an adequate training before starting civil service and the chance for citizens of giving civil service abroad.

Beside the new law about conscientious objection, a draft of law concerning the national civil service has been drawn up. According to it the principal role of the national civil service is to achieve general objectives such as the removal of the economic and social obstacles that limit freedom and equality of citizens, and specific goals such as health defence, education, social integration of disadvantaged people, safeguard of national environment, historical and artistic heritage and promotion of international co-operation and solidarity.

Those citizens who declare their preference for civil service will be admitted to it and those who do this following their conscience, refusing the use of weapons and the recruitment in the Armed Forces, are qualified as conscientious objectors. In addition, citizens who are not suitable for military service and are not 26 years old yet and those suitable for military service who exceed the national contingent on organic needs of Armed Forces can opt for civil service. Finally, in order to favour the full realisation of equal opportunities, Italian women who ask for it and are between 18 and 26 years old can also take part in the national civil service.

The bill introduces a new organisations which should manage civil service, namely the National Agency for Civil Service, whose office should be at the Council of Ministers.

It should substitute for the Defence Department in all the tasks concerning the management of civil service and, therefore, it should be engaged in:

- assigning young people to public structures, local organisations and associations which manage activities directed at the achievement of the above mentioned objectives;
- drawing up a list of citizens suitable for national civil service on the basis of data transmitted by Defence Department monthly;
- arranging programmes for learning courses and approve programmes proposed by public institutions and associations;
- informing the Defence Department of the civil service carried out by interested young;
- defining agreements with public institutions;
- establishing criteria and objectives about evaluation of results, audits and controls of activities;
- identifying and managing a permanent information service and yearly information campaign;
- studying the way for recruiting foreign citizens in international civil service.

Citizens who opt for civil service should make a statement indicating their preference about the employment sector and proposing up to 10 organisations where they would serve.

National civil service should last as much as military service but should be preceded by a three months training period. The citizens who choose civil service would enjoy the same rights both at social security and wage level and sanitary assistance would be ensured by National Health Service.

The bill also considers the chance of carrying out civil service abroad. Young people who ask for it could be sent abroad for a determined period of time by the organisation they are working for, in order to participate in humanitarian missions directly managed by the same organisation.

Civil service can also be carried out in organisations operating abroad and created to promote and spread Italian culture and language, and to encourage the development of the economy.

Both the National Agency and the Regions institute a register of the organisations where young people can serve. Moreover, the National Agency have the duty to constitute a Consulta with the task of advisor.

In order to be admitted to the registration, the organisations and public institutions that intend to contribute to the implementation of national civil service must satisfy the following requirements:

- non-profit aims;
- conformity of their institutional aims to the purpose of this law;
- a continuing activity for at least 3 years;

The organisations belonging to the voluntary sector, international co-operation, and those engaged in civil defence as well as in environmental safeguard are automatically accepted to the registration. The Regions should yearly define regional plans for the recruitment of the young in civil service, indicating priorities and sectors of action and informing the Agency about it. Lastly, the Agency verifies and check (in collaboration with the Regions) the consistency and the observance of procedures, the needed requirements and the employment projects, and the conformity to the agreements taken with organisations on the basis of an annual programme.

## **5. The European Union And The Third Sector**

The European Institutions have a long history of contacts and informal consultation with the voluntary sector (o Third Sector). This is the case, for instance, of the contacts between the DBIB, DGVIII and development agencies, between ECHO and NGOs, between DGV and the platform of European social NGOs of the social forum, between DGXI and environmental organisations, and between DGXXIII and the Consultive Committee for Co-operatives, mutual organisations, Associations and Foundations.

The first regulation about the third sector was approved in 1989 by the European Council (89/490/EEC) in order to promote the entrepreneurial development within the Community, especially regarding to co-operatives, associations and mutual companies.

However, for many years the contacts between the European Institutions and the voluntary sector took place on a *ad hoc* basis and only in 1992 the importance of the links with this sector was formally expressed in Declaration 23 of the Treaty on European Union. This Declaration states: "The Conference stresses the importance, in pursuing the objectives of Article 117 of the Treaty establishing the European Community, of co-operation between the latter and charitable associations and foundations as institutions responsible for welfare establishments and service". Moreover, in the resolution of 17th June 1992 the European Council confirmed his intention to promote the activities of some typical agents of the third sector (co-operatives, associations and mutual companies).

In 1993 a famous document was published by the European Commission: *Growth, competitiveness, employment ñ The challenges and ways forward into the 21st century ñ White paper*. It stresses the importance of local development in order to try to solve some of the problems linked to unemployment. At local level the third sector has a growing relevance. Modern economies are not ready yet to fulfil important unsatisfied needs, as the high level of unemployment and poverty (about 50 poor million people in Europe) shows. For these reasons the *White paper* stresses the importance of social services such as the recovery of the disadvantaged city districts, the creation of social housing, the improvement of the education system (especially for disadvantaged children), new policies for unemployment problems. It considers social services as tools of social and

economic cohesion. Obviously, the Third Sector plays a very important role in providing social services as it has been pointed out by some of the following documents issued by European Community.

Since 1994 a large number of NGOs have been involved in significant research projects funded within the 4<sup>th</sup> Framework Programme (1994-1998). The targeted socio-economic research programme widely covers the issue of the role of the third sector in the economy and its importance for social cohesion. It is intended to put even more emphasis on this topic within the 5<sup>th</sup> Framework Programme (1999-2002).

In 1995 there were two important documents about the third sector by the European Commission. The first of these documents is called "Local development and Employment initiative - survey in the European Union" (working document of the European Commission - Sec(95)564, March 1995). On the basis of the different experiences acquired in some Member States, it identifies 17 economic activities capable to offer a considerable number of new job opportunities. Most of these activities are characterised by the strong presence of the third sector, such as home-services, child care, help for young people with particular problems, improvement in housing conditions, regeneration of public urban areas, waste disposal and water management, cultural heritage, local cultural development, protection of the environment. This document states that it would be easier to create new jobs in these sectors because those are able to take into account differences between cultures and between socio-economic systems.

The second document is published in 1995 by the DGV and is called "Employment in Europe - 1995". It pointed out that, although an economic recession characterised the period 1990-94, the employment rate in social services increased. This resulted from an higher level of awareness of social and environmental problems. The document identified four main areas: health, education, leisure and environmental protection. Moreover it stressed the importance of the third sector in these kind of activities. According to a macroeconomic simulation, the documents states that it could be possible to create from 140.000 to 400.000 new jobs (especially in that activities emphasised in "Local development and Employment initiative - survey in the European Union"). Moreover this documents strongly emphasised the importance of the environment in increasing the employment rate in some activities. In 17 pages it deeply analysed the various interactions among environment, employment, competitiveness and economic growth.

In 1995 a platform of European social NGOs was created. It wanted to represent a large number of organisations in order to help the preparation of the European Social Policy Forum and to facilitate the development of civil dialogue. In the same year a Comité des Sages was set up. Its aim was to prepare a report on fundamental rights to be discussed at the Social Policy Forum with a view to providing an input to the IGC discussions on the revision of the EU Treaty. This report, which advocated a Europe of civil and social right, has also sparked off a Europe-wide debate through a series of national seminars involving, in particular, the voluntary sector and the social partners.

The European Social Policy Forum was held in march 1996. It brought together over 1000 participants mainly from NGOs on the eve of the beginning of the Intergovernmental Conference. The Forum saw the launch of a new policy objective: the building over time of a strong civil dialogue at European level which should take its place along-side the political dialogue with the national authorities and the social dialogue with the Social Partners. The Forum is intended to be held every two years. The emerging civil dialogue had two main aims:

- to ensure that the view and grassroots experience of the voluntary sector can be systematically taken into account by policy makers at European level so as to tailor policies to real needs;
- to disseminate information from the European level down to the local one so that citizens are aware of the developments, can feel part of the construction of Europe and can see its relevance to their own situation, thus increasing transparency and promoting citizenship.

In 1997 a new budget line (B3-4101) was created to promote co-operation with NGOs and other voluntary sector organisations and to strengthen their capacity to engage in civil dialogue at European level. In the context of the preparations of the IGC an ongoing dialogue was developed between the sector, the Commission and the European Parliament. Important issues relating to the sector have been discussed in the framework of the IGC. These include:

- a legal base for regulations concerning associations at European level;
- a legal base for incentive measures both in employment and social field;
- the integration of Declaration 23 into the Treaty and specific provision for the consultation of, and the dialogue with charitable associations and foundations on all policy matters that concern them.

In the same year (1997) the European Commission published an important document called 'Promoting the role of voluntary organizations and foundations in Europe'. It analyzed the contributions of the third sector to almost every field of social activities as regards employment creation, active citizenship, democracy, the supply of a wide range of services, the promotion of sporting activities, the representation of the interests of the citizens before various public authorities and the safeguard of human rights as well as the development of policies.

Moreover, it stressed the importance of the third sector as a tool of vital importance in social life. It stated: 'There are no accurate figures of knowing how many persons in the Union are members of voluntary organisations but, on the basis of some Member States' estimates it is commonly reckoned to be somewhere between a third and a half of the population, approximately a hundred million. Historically the influence and achievements of voluntary organisations, and their sister organisations foundations, would be difficult to overestimate. It is to voluntary organisations and foundations to which we owe the origins of many of the services such as education, health and social services which we take for granted today. Their contribution to the development of social

and political ideas, and to the intellectual climate in which we now live, has been similarly immense. Voluntary organisations and foundations have played a vital role in the dissemination of scientific ideas and of technological developments and have provided forums for the exchange of thinking across the whole range of human concerns. They have led the fight for the recognition of human rights and the dignity of the human person, and for the preservation of our cultural heritage and of the natural environment. Many promote a spirit of solidarity on behalf of the less favoured, the sick or people with disabilities, the poor and the excluded, the aged and the young, and between those who have jobs and those who do not, between men and women, between generations, between the more prosperous regions and the poor or struggling regions. Voluntary organisations make important contributions to the fight against social exclusion, sexual exploitation of women and children, as well as racism and xenophobia. They have played a major role in the mobilisation of public opinion in favour of development, promoted democracy, and have established privileged links with the representatives of civil society in the developing countries, as well as providing much needed emergency help and food aid in times of crisis, often showing heroism working in troubled regions. In this way voluntary organisations<sup>6</sup> and foundations continue, as they have always done, not just to provide the seed bed or "gene pool" from which future social and other policies may eventually grow but also the political, social and intellectual climate in which change comes to be seen as desirable on a wider scale.<sup>1</sup>

In 1997 the budgetary Authority<sup>7</sup> of the European Community decided to create a new pilot action called "Third system and employment"<sup>8</sup> in order to exploring and promoting the employment potential of the third system. This decision was based on different findings.

Firstly, the existence of a range of unsatisfied needs that neither the State nor the market seem to be able to respond to and that are related to ordinary life, to services for improving the quality of life and to cultural and leisure services. Secondly, the conditions of the European labour market determines the need to look for new lines of approach to the plague of unemployment which undermines most European societies.

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<sup>6</sup> It is important to underline another issue linked to the third sector: the European voluntary service. It concerns European young people (but also Norwegians e Icelanders) aged from 18 to 25 yeras and lasts from 6 to 12 months. In this period of time those people involved have to participate to a social project in a foreign organisation. For now, it cannot replace the military service. Maybe in the future it will be possible to have a European social service very similar to the social service (conscientious objectors) existing in many member states. The European Commission covers 50% of the total cost of each single project. Through the voluntary social service the European Commission encourages directly the activities and the growth of the third sector.

<sup>7</sup>There is an other aspect to underline. It is estimated that overall some ECUm800m (of which ECU 196m are in the form of co-financing) coming from EU development assistance are yearly channelled through NGOs. Besides the Commission looks to the sector in many policy issues towards developing countries.

<sup>8</sup> Budgetary procedure for the 1997 reference year ñ working document no.1 on a budgetary initiative "employment and social solidarity"ñsocial affair and employment committee of the European Parliament ñ EP 218.971 ñ 29th July 1996.

In the work programme of this pilot action the European Commission tries to identify the features which have to characterise the different organisations belonging to the third sector. They can be summarised as follows:

- these organisations aim at finding solutions to problems rather than to place themselves in a new market sector;
- they often refer to factors such as social solidarity, democratic organisations, or the primacy of the individual over the capital. These societal or ideological references create a conceptual framework for the implementation of productive initiatives with a sense of belonging to a broader movement;
- these organisations are often the result of partnerships between public and private organisations or between individuals associating together to meet a common need. These partnerships imply that the organisations involved generally have a close relationship with the local territory whose development they are contributing to;
- the market is not the sole source of income and a number of organisations call, through a variety of arrangements, on public subsidies, donations or non-commercial loans.
- particular attention is given to the problems of disadvantaged persons or groups either to integrate them in the labour market (insertion enterprise) or to provide them with services;
- with some exceptions, these structures are on a small scale (measured by number of employees and turnover) but they often have a large number of non-active associates or volunteers.

The European Commission have often drawn attention to another relevant point, namely the importance of Territorial Employment Pacts which are closely linked to the non-profit organizations. During the recent European Councils, the heads of state and government stressed the need for stronger communitarian action in favour of employment. The European Commission responded to these calls by presenting a series of specific proposals designed to make better use of the Union Structural Funds for this purpose. In particular, the Commission encouraged the promotion of Territorial Employment Pacts, the aim of which is to establish enlarged regional or local partnerships to enable a more effective coordination of actions. In particular, they recognised the advantages of broadening and deepening the partnership principle when implementing such measures, as advocated by the Commission in its proposed confidence pact for employment.

At their meeting in Florence in June 1996, the heads of states and the governments of the European Union approved the Commission guidelines for increasing the impact of the communitarian structural measures on employment. The European Council in Dublin in December 1996 reaffirmed these guidelines and called for the rapid implementation of about 60 pilot projects to be turned into Territorial Employment Pacts. The national authorities in each Member State would select the candidate regions or cities. By invitation of the Commission, the project coordinators attended a seminar in Rome on

4th-6th May 1997. This seminar gave the participants the chance to learn from approaches to local development and partnership which had already been selected by the Commission as examples of 'best practice', and to engage in an initial discussion of the process.

In order to be recognised by the European Commission, Territorial Employment Pacts must satisfy three criteria:

- i a 'bottom-up' approach, should initiatives should from local organisations;
- ii the involvement of an enlarged partnership bringing together all the local agents involved: administrations of the public sector, social partners, private non-profit organisations and associations which play a significant role in creating employment;
- iii an integrated approach based on a detailed analysis of the local situation, to be used to develop an integrated strategy and innovative measures.

The large number of projects submitted reflects the dynamism of local initiatives and has already exceeded the initial expectations of the European Council in Dublin. The regions concerned are highly diverse and cover a total population of 32m people, amounting to more than 9% of the European population. In these regions unemployment rates range from 4% to 55% and are high on average (14.5%). It is therefore important that the measures proposed are instrumental in the fight against unemployment. However, the level of development of the projects submitted varies widely, and that means that the different action plans will require preparation periods of different lengths.

In the southern regions of the Union, and in general in those areas whose development is lagging behind, the strategic goals of the projects are principally focused on developing productive capacity. In other regions, the main aim is to combat long-term unemployment and to integrate groups who are particularly affected by under-employment. Finally, all the projects reflect a desire to broaden and deepen the application of the partnership principle, in particular to include more of the private non-profit sector. In evaluating the projects, the Commission will primarily assess whether the partnerships are being effectively translated into operational or financial undertakings by the various participants. It will also check the level of co-operation and the degree of innovation, where possible, of the detailed employment action plans drafted for each region.

The working programme for the projects consists of a preparatory phase of no more than four months after the submission of applications. To assist this preparation, an initial technical assistance from the Structural Funds up to a maximum of ECU 200,000 will be offered to each project coordinator. This grant will be used mainly to finance studies and outside consultants to assist the final elaboration of the employment action plan.

At the end of this preparatory phase, the Commission will evaluate each project and decide which ones are to be recognised at Union level. These projects will continue to receive technical assistance from the Structural Funds up to the end of 1999 for the

benefit of dissemination and networking activities. Suitable financial resources for those plans that receive support from the European Union be funded within the scope of the present programming flexibility under the Structural Funds. The implementation of each action plan will thus be carried out in close coordination with the monitoring committees for the measures concerned.

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## **THE THIRD SECTOR IN GERMANY: REVIEW OF PRESENT POLICIES**

*Rudolph Bauer, Sigrid Betzelt*

### **1. Policies And Legal Framework Of The 3<sup>rd</sup> Sector**

#### **1.1 Third Sector Organizations**

In Germany the Third sector is not understood as a single institutional sector or one entity neither in everyday language, nor in legal, economic or political discourse. The term „Third sector“ is in Germany, perhaps even more than in other countries, a rather vague expression without clear boundaries.

According to the NETS-classification by legal status we can identify five different types of organizations in the Third sector in Germany:

1. „ideal“ organisation / association (*Verein*):
  - a) registered
  - b) not registered
2. foundation (*Stiftung*)
  - a) private law foundation (*privatrechtlich*)
  - b) public law foundation (*öffentlich-rechtlich*)
3. cooperatives (*Genossenschaft*)
4. limited liability company (*GmbH*)
5. stock corporation (*Aktiengesellschaft*)

In the following the legal frameworks of these organizations will be characterised, distinguishing between the legal forms and the tax law.

##### 1.1.1 Legal forms

With regard to the legal forms of organizations of the Third sector it is important to distinguish between the organizations themselves (e.g. associations of the so-called „Free Welfare Associational System“) and the individual specific facilities, operated by the organizations.

### 1.1.2 Voluntary Associations (Vereine)

#### *Historical background*

Historically, associational law was in the 19<sup>th</sup> century a means of the authoritarian, monarchic state to regulate and sanction the great variety of lately founded associations. Those associations which had a political character and were meant to be against the state, were strictly forbidden. As an instrument of controlling the associations, the Registry of associations was founded. Generally, non-political associations were promoted by the authoritarian German states (Länder) and had an officially legalized status through being registered.

This governmental policy of legalizing the „harmless“, non-political associations while sanctioning and prosecuting the political ones which had liberal, democratic or socialist ambitions has shaped the Associational law. Although the discrimination of political associations was abandoned with the German Civil Code in 1900, the authoritarian relation between the state and associations is still noticeable in the various laws and regulations which regulate the associational life to a high extent.

#### *Basic Law (Grundgesetz, 1949)*

- right to found associations and societies (§ 9 GG) for German citizens
- prohibition of associations offending the penal law, directed against the constitution and the idea of international understanding

#### *German Civil Code (Bürgerliches Gesetzbuch, 1900)*

- defines the legal requirements for founding an association, but they have only formal character. There is no characterisation what an association has to be beyond the formal characteristics (e.g. social utility).
- regulates the external and internal organisation of an association;
- distinguishes between commercial, for-profit associations and ideal, non-profit associations;
- furthermore distinction between registered and non-registered associations;
- formal requirements for registration at the local county courts:
  - a) ideational objectives,
  - b) seven members,
  - c) an executive board of three members (*Vorstand*),
  - d) a formally correct charter of the association, containing information about:
    - the name and domicile of the association,
    - its aims and purposes,
    - the organisational structure and rules of internal governance,
    - rights and obligations of the membership, of the general meeting and of the

- executive board,  
 e) a written record of the founding meeting of the association, signed by all foundation members and including the full addresses of the executive board's members, which has to be attested by a notary.
- with registration: legal personality, no personal liability of the members; acronym „e.V.“, but not automatically beneficial fiscal status.
  - associations have to report changes in their charter and the composition of the executive boards to the local county court and to pay administrative charges for registering these changes.
  - associations as such do not have to publish their balances and budgets, only once a year the executive board has to report on the balance of the association in the general assembly of the members. Only when the association receives public subsidies, it has to prove the correct expenditure of this money.

*Law for Controlling the Public Right of Coalition (Vereinsgesetz, 1964)*

- has the only purpose to regulate the prohibition of associations and the confiscation of their property and resources, according to the requirements of the Basic Law.
- for associations with mostly non-German members there is a special regulation: such an association can be forbidden, when it „threatens the internal or external security or other important affairs of the Federal Republic of Germany“ through its political activities.
- it contains no positive characterisation of an association.

*Law for Improvement and Simplification of the Taxation of Associations (Vereinsförderungsgesetz, 1989)*

see chapter 2. Taxation

*Relevance of associations for the Third sector*

- quantitative (estimated number of registered associations in Germany)
- qualitative (wide range of objectives, only partly „socially useful“; member-oriented / not only member-oriented)

### 1.1.3 Foundations (*Stiftungen*)

*Legal basis*

- German Civil Code (1900)
- regulated by state law, therefore not standardized in Germany

*Forms of foundations*

- distinction of:
  - *private law foundation*
  - *public law foundation*
  - *political foundation*

In NETS the private law foundation interests most.

- furthermore distinction of:

- grant-making foundations
- operative foundations

The main characteristic of the political and legal framework for foundations is the governmental authorization of foundations, which is subject not to legally fixed requirements but the individual policies of the states. Therefore the foundation's objectives are subject to political approval.

Generally, foundation's objectives have to be of public interest and non-profit-character.

- no obligation to publish balances

#### *Relevance of foundations for the German Third sector*

- quantitative: about 6.500 private law foundations

- qualitative: the main purposes of private law foundations are in the fields of social work (33%), education (21%), science (12%), arts and culture (10%), differing from state to state. The purpose "promoting job creation" generally misses.

#### 1.1.4 Cooperatives (Genossenschaften)

##### *Legal basis*

Law of Cooperatives:

- Formal and financial requirements of founding a cooperative;
- The recognition as a cooperative by cooperative-federations is very restrictive and has political character. Esp. unconventional, innovative purposes have great difficulties to be accepted by the federations.
- The character of cooperatives has changed very much during the last century. Nowadays, the commercial character of cooperatives is very much emphasized. The cooperative-federations only accept a newly founded cooperative, if it does not need to be promoted publicly. Therefore esp. small, self-organized initiatives have great difficulties to be accepted.
- The legally required internal structure does not have a democratic, participation-promoting character.
- Required membership: at least seven members.

##### *Relevance of cooperatives for the German Third sector*

It has to be thought over if in Germany cooperatives should be included in the Third sector research because of the legally required commercial character. Important for NETS is, that there are proposals to change the legal frameworks for cooperatives to use this legal form for non-profit-purposes and also for employment promotion (see chapter C.)

#### 1.1.5 Limited Liability Company (Gesellschaft Mit Beschränkter Haftung, GmbH)

##### *Legal basis*

Law of limited liability companies (*GmbH-Gesetz*, part of the Trade Law), regulating:

- character as a joint-stock company (*Kapitalgesellschaft*)
- formal and financial requirements of founding a GmbH
- objectives: commercial, but possible to have public benefit status (see chapter 2)

##### *Relevance for the German Third sector*

- tendency of using this legal form through outsourcing because of fiscal and economic reasons
- problem: lack of internal and external democratic control

#### 1.1.6 Stock Company (*Aktiengesellschaft*)

##### *Legal basis*

Law of stock companies (*Aktiengesetz*, part of the Trade Law), regulating:

- character as a joint-stock company (*Kapitalgesellschaft*)
- formal and financial requirements of founding a stock company

- objectives: commercial, but possible to have public benefit status (see chapter 2)

### *Relevance for the German Third sector*

The relevance is quite small since there are only few non-profit stock companies.

## **1.2 Taxation**

Generally, the German tax law system is highly regulated, very complex, and in spite of many (half-hearted) efforts not transparent. This is true also in respect to the taxation of Third sector organisations.

### 1.2.1 Associations

#### *Legal basis:*

- Law for Improvement and Simplification of the Taxation of Associations (*Vereinsförderungsgesetz, 1989*)
- German Fiscal Code (*Allgemeine Abgabenordnung, AO*)

#### *Regulations:*

– The fiscal status and the tax treatment of the income of organizations and of donations to them are regulated by the Law for Improvement and Simplification of the Taxation of Associations (*Vereinsförderungsgesetz, 1989*). An association has to apply and to negotiate with the local tax authority (*Finanzamt*), which is an important agency with discretionary powers. To achieve the “public benefit status“ (*Gemeinnützigkeit*) a voluntary association has to prove its non-profit making character, which has to be attested by the local tax authority. This agency checks the association’s charter on the basis of the German Fiscal Code (*Abgabenordnung*), a document containing the criteria for tax exemption. The promotion of the following *objectives* is covered by the definition of the “public benefit status“:

- public well-being in material, spiritual and moral spheres,
- charitable and benevolent activities to support persons in need and unable to care for themselves,
- church-related activities.

For each of these objectives the Fiscal Code mentions a more or less detailed catalogue of types of activities, which underlies political and societal developments and partly reveals a great deal of arbitrariness.

Furthermore, voluntary associations have to meet the following criteria for a beneficial status:

- the unselfishness of the organization’s activity,

- the exclusiveness of the organization's purposes, i.e. the exclusion of other economic or political purposes,
- the immediate directness, i.e. the organization works directly and not through other organizations.

To make things even more complicated, the public benefit status does *not* mean, that the entitled organization is exempt from all taxes.

The tax treatment of voluntary associations depends furthermore on its activities: the different fields of activities are treated differently, depending on their economic impact.

For example,

- activities in the ideational field (e.g. care for the elderly): all of the income out of these activities (through donations etc.) is *totally tax exempt*;
- business activities with the purpose of directly supporting the ideational field, like a residential home for the elderly, are *tax reduced*: if income out of this source does not exceed certain upper limits, the association is exempt from corporation tax and trade tax.
- business activities of beneficial organizations, which have the single purpose to gain income for the association (e.g. restaurant), are *totally liable to taxes*.

The local tax authority examines the non-profit status of an organization every three years.

### 1.2.2 Foundations

- tax reduction of donations to foundations
- tax reduction for foundations themselves

### 1.2.3 Cooperatives

no tax reduction

### 1.2.4 GmbH

taxation dependent on public benefit status, otherwise full taxation

### 1.2.5 Stock Corporation

taxation dependent on public benefit status, otherwise full taxation

## 1.3 Third Sector Activities

The legal framework for all fields of activity of TSO for receiving public grants is the “*Zuwendungsrecht*” (Law regulating public grant-giving).

### 1.3.1 Law Regulating Public Grant-Giving

Complex matter of law with little transparency in its practical application which should be mastered by all responsible of TSO if they need public money for their work. The regulations and rules cause enormous administrative time on the side of the TSO and derive from an authoritarian understanding of power structure between state authority and citizen.

*Legal Basis:* Budget plans of the states based on the state's budget plan plus main and collateral clauses.

*Principles:* voluntary subsidies of the state to organisations outside the administration for purposes the state is interested in and that could not be fulfilled or not completely fulfilled without allowances. Allowances could be: tied contributions, debt service helps, tied credits, pay off or not to be paid off contributions etc. The granting of allowances depends on the judgement of the administration. There is no claim to it. According to the public budget laws the annual principle is the rule.

### *Types of Grant-giving:*

- institutional promotion: The complete institution is promoted. All allowed expenses of the receiver of allowances are covered. All other sorts of income have to be used for covering expenses. The demanding institution has to submit and follow mandatory an economic, organisation, and personell planning. Institutional promotion presupposes that there is an enduring task to fulfill. The declaration of the task's endurance is done by the administration. The advantage of relative continuity of public subsidies given through institutional promotion have established institutions, only, like e.g. big theaters, hospitals.
- project promotion: In official language "project" only means a defined measure or a defined purpose for allowance that is limited in time. All sorts of income connected to the purpose of allowance have to be used for covering the expenses. A binding financial planning has to be submitted. An institution can get different grants for different defined measures.

### *Types of Financing:*

There are different types of financing with different regulations on the share of public grants, possible use or accounting of other income of the organisation, and on the administrative procedures.

- Fixed Financing
- Deficit Financing
- Share Financing
- Complete Financing

The *application procedure* for public grants is generally very lavish and requires professional competence. One condition for public subsidies is the public benefit of the organization and its management committee in accordance with its regulations. A financing plan, a detailed project description and reasons for the urgency of public subsidies concerning the project's aim have to be handed in.

In spite of all the bureaucratic obstacles and formalized procedures, not only the quality of a project is decisive for getting subsidies, but often it is the public and political support. Frequently, there are no transparent subsidy regulations and subsidy programmes on which applicants can refer to. Instead, subsidies are decided upon by officials in charge and at other levels of the administration as an individual decision. This leads to non-transparency and lacking democratic control of subsidies of TSO with public grants.

The demands concerning the *use and proof* of public grants is very lavish. The bureaucratic demands often contradict budget's customs and the daily work within the TSO, e.g. the strict separation of money into single subsidy purposes, cost types (personell, real, and investion costs), and the classifying of documents. Also the binding of subsidies to the calendar year leads to inefficiency. Normally, it is not possible to transfer remaining money into the next fiscal year.

### 1.3.2 Specific Legal And Political Frameworks In The Fields Of Activity Of The TS

Besides the law regulating public grant-giving, which applies for all publicly supported TSO, there are specific, highly complex legal frameworks for each field of activity, in which the TSO and their staff have to work. It is not possible to mention all legal regulations for all spheres of activity of the Third sector in Germany at this point. Rather, the following gives a short overview about the levels of regulation and the in our opinion most important laws in some fields, orientated towards the ICNPO-classification. Some fields are highlighted to show the complexity of the matter and the mainly governmental orientated political frameworks, while we will concentrate on those regulations referring to Third sector activities. It is important to say, that the legal frameworks often do not refer directly to Third Sector activities, but are generally applying.

#### **a) Culture**

In this field there is no standardized legislation because of its federalistic nature. The individual state laws regulate activities in this field. (*Ländergesetzgebung*)

#### **b) Sports, Leisure**

There are various financial promotion programmes by the individual states and by the Federal state. Besides the already mentioned tax legislation is an important promoting instrument for sports activities.

#### **c) Education (general and vocational)**

##### *aa) general education*

Generally, education is a task of the state, which is fixed in the Basic Law. The general lines of education are regulated by the Federal state and by the conference of state ministers for education. The responsibility for the specific legal and political frameworks has each of the German states.

The public dominance in the field of education can be illustrated by the quite restrictive and state-orientated framework for private schools. There are only few private schools in Germany because they have to prove that there is a need for them in addition to public schools. The legal framework consists of:

- the *Basic Law*, regulating generally:
  - education as a governmental task, restricted by the parental law of education;
  - governmental supervision of schools;
  - the state has to provide a certain plurality of different types of schools;
  - general requirements for governmental authorization of private schools (differentiated in “private schools as a substitute for public schools” and “private schools additional to public schools”).
- *individual state laws* for school education, regulating specifically:
  - the specific requirements in each state for governmental authorization of private schools;

- the specific standards required in private schools (e.g. qualification of teachers, standard of school building);
- the specific requirements of the comparable contents of learning;
- the specific requirements for receiving public subsidies.
- *Taxation Law* for schools with public benevolence status, similar to the taxation law for voluntary associations.

In practice there are often conflicts between the state and private schools about their claims of public subsidies. The governmental supervision often is interpreted extensively in some states. So, as a result, the scope for non-governmental schools is rather narrow.

#### *bb) vocational education*

Also this branch of education is highly regulated. The responsibility for vocational education and vocational training is splitted between:

- the state (part-time vocational school, providing compulsory part-time vocational and general education for young people),
- the firms (providing vocational training at a training place), and
- professional associations and chambers of trade and commerce (fixing the requirements for final examinations and the compulsory contents of the training).

Furthermore the legal frameworks of the Employment Promotion Act is important for regulating publicly promoted measures of vocational training (see chapter A.III.).

#### **d) Health**

*Social Code*, part V. (*Sozialgesetzbuch V*)

The German health care system is structured para-governmental by the different branches of the health and social insurance schemes (compulsory health/sickness insurance scheme, pension scheme, accident insurance), which play the most important role as financier and regulating agencies of health care services.

The main principles of the German health care system have been developed in the historical period of the German *Reichskanzler Bismarck* (1883) and read as follows:

- Principle of providing the sick with *benefits in kind* (*Sachleistungsprinzip*). For this purpose, the health / sickness insurance agencies are contracting with the service providing institutions / agents like doctors, hospitals, pharmacies etc.. These contracts bind these institutions to give the insured persons treatments at the expense of the insurance agency. These medical benefits have to be equal for all insured people. The principle only applies for the compulsory health insurance, not for voluntary health insurance.
- Principle of *solidarity*: The health insurance contributions depend on the financial capacity of the insured person, measured by the individual labour income. Other characteristics like age, sex, health risks are not important for the contribution rate. The eligibility for benefits is independent from the contribution rate.

- Principle of *self-governance*: (see also work package 1) Not the state itself carries out the tasks of the health insurance, but has transferred this task to independent bodies in the legal form of corporations of public law. Both employers and employees are represented in the self-government boards.
- Principle of *division in sections* (*gegliederte Versicherung*): The organizational structure of health insurance is not unified, but divided into 8 different kinds of insurance agencies, gearing to regions, professions and branches of industry. These agencies have historically developed.
- Principle of “*liberality*” of the health care system: the right to choose one’s doctor, self-employment in health care professions (*Freiberuflichkeit*), plurality of private, public and voluntary public-utility agencies.

Some of these principles, esp. the principle of solidarity, have become weakened through the last legal amendments. In recent years, two main laws have been passed, partly restructuring the German health care system:

- Health Reform Act (*Gesundheitsreformgesetz*, 1989),
- Law for Restructuring the Health Services (*Gesundheitsstrukturgesetz*, 1993)

Main cause for both laws was to cut the extensively growing expenses of health care in recent years. The first law introduced incentives to save and act economically for service providers, insured persons and insurance agencies. But it was mainly the insured people, who had to pay more for medicine, due to the strengthened principle of self-responsibility and subsidiarity. The second law tried to restructure the health care system, esp. by reforming the principles of financial transactions between service providers and insurance agencies and between insurance agencies. So the principle of covering all costs for products and services by the insurance agencies was abolished and substituted by achievement-oriented payments in form of flat-rate payments for each case (*Fallpauschale*). For a certain period budgets for medical treatment were introduced which did not have to be exceeded by the doctors.

Besides of several other organizational innovations, for the Third sector as service providing agencies is important:

- e.g. for *hospitals*: flat-rate payments for each case instead of all-costs-covering payment; hospitals have to be part of the governmental planning of hospitals in its state of residence or to be contract partner of the insurance agencies. Otherwise they are not governmentally authorized and don’t get payments from the insurance agencies.
- e.g. for *self-help groups* and infrastructure for self-help: insurance agencies *can* promote those self-help groups with health promoting or rehabilitation purposes by grant-giving. But these grants are dependent on discretionary decisions of the insurance agencies. Furthermore, the grants must not cover the basic expenses of the self-help infrastructure, but shall only be an additional subsidy.
- generally, “quality management” has been introduced in the health care system, requiring certain standards. In fact, this process has only just started and unfortunately is implemented in a rather formalistic, bureaucratic way.

#### **d) Social Services**

Highly regulated field.

*aa) Federal Social Relief Act (Bundessozialhilfegesetz – BSHG – 1962)*

*Principles* (relevant for 3<sup>rd</sup> sector org.):

- subsidiarity: privileges for voluntary welfare agencies (modified 1996)
- cooperation between state agencies and voluntary associations
- priority to ambulant social care instead of stationary care (modified 1996)

The first two principles mean:

Public social welfare institutions / authorities and voluntary welfare agencies should work in a complementary way. The public agencies and authorities have to collaborate with the free welfare agencies, to respect their aims and operating modes and to support their activities. The state has to give the voluntary welfare agencies a share of public social welfare tasks and can hand over duties to them. The authorities should not build up public agencies in a field, when there are enough voluntary welfare agencies. Of course, this means big advantages and privileges for voluntary welfare agencies, esp. for those belonging to the big peak association of the welfare system, but on the other hand the voluntary associations are strongly bound to governmental regulations and policies and have to implement these.

*Regulations of fields of social care activities, like:*

- social work with marginalized groups (e.g. shelter for homeless, ex-convicts)
- special support for the elderly
- nursing homes
- social integration of handicapped people (e.g. sheltered workshops, rehabilitation)
- help with family planning
- help for pregnant women and mothers

As described in the chapter about health care, the government tries to introduce “*quality management*” in social work, too. But as said above, this process only recently has started and actually this demand is too much for all persons involved. Generally, the principles of the hospital system are tried to implement in social work, which is not adequate in fact. The TSO themselves try to follow this process, some of them try to develop own indicators and standards of quality. One of the biggest problems is to “measure” the achievements of social work.

*Financial regulations for 3<sup>rd</sup> sector organizations:*

- contracts about home accommodation and treatment charges (*Pflegesatz*): contracting becomes more and more the most important basis for payment for social services.
- grants for counselling work (discretionary)

*Implementing regulations by the individual states:*

e.g. fiscal aspects, planning processes are regulated by the state authorities, not the federal state.

*bb) Children and Youth Services Act (Kinder- und Jugendhilfegesetz – KJHG- 1990 , Bundesjugendplan)*

*Goals:* promoting the welfare of youth

*Principles* (relevant for 3<sup>rd</sup> sector org.): generally for TSO the same as in the Federal Welfare Act:

- subsidiarity: privileges for voluntary welfare agencies (modified 1996)
- cooperation between state agencies and voluntary associations

*Regulations of fields of children and youth services, e.g.:*

- youth work (e.g. sports, informal education, recreation centres)
- child guidance
- residential homes for children / young people, supervised housing
- work with girls / boys (gender differentiated)

*Financial regulations for 3<sup>rd</sup> sector organizations:*

- contracting (see above)
- grants for counselling work (discretionary)

*Implementing regulations by the individual states:*

e.g. planning processes, contracting

*cc) Elderly Care Insurance Act (Pflegeversicherungsgesetz, 1994) Social Code, part XI (Sozialgesetzbuch XI)*

Highly regulating the field of elderly care by bureaucratic standards; claiming to involve voluntary workers while cutting down the expenses for paid workers. At this point only the most important impacts for the Third sector can be mentioned.

The Elderly Care Insurance Act has introduced several principles and regulations which have been mentioned in chapter d) Health care, so the principle of benefit in kind, the payment of service providers through contracts, basing not on covering the costs but on flat-rates.

Important for the Third sector is furthermore, that this law is the first one in which the privileges for voluntary welfare agencies have been partly reduced: For the field of elderly care not only the voluntary welfare agencies should be favoured instead of public agencies, but also private, for-profit firms have precedence. This regulation opens the market for more competition between private and voluntary welfare agencies for purchasing contracts with public institutions.

In respect to the introduced “quality management” in this field the above mentioned technical character has even worse or paradoxical consequences than in other fields: The benefits in kind for elderly care, the specific provision of care and nursing, are listed in a catalogue and splitted into tiny bits (like washing, giving an injection). For each of these services there is fixed a certain amount of time (under-)estimated. Only services listed in

this catalogue, within the fixed time schedule, are payed by the elderly insurance agencies. This system leads to a lot of negative consequences for the patients (who do not get the adequate care) and for the nursing staff (who have to hurry to keep in the time schedule). Of course, the service providing agencies are in conflicts between the different interests of patients, nursing staff and their own interests of efficiency.

More and very complex regulations for the field of nursing refer to the *occupational field*: Here the frameworks of the Basic Law, the Law for Nursing, the Law for Elderly Care (= direct occupational laws), social benefit laws (Social Codes), several regulations for liability of the nursing staff are applying.

In the field of social work there are, of course, several other legal frameworks (e.g. Law for Asylum) which are not covered at this point. Rather, the main principles of political and legal frameworks in this field have been mentioned here.

#### **d) Environment**

This field is regulated by several Federal state laws and also by individual state laws (and of course by EC legislation). A highly complex system of political and legal instruments is regulating environmental protection. There are several guidelining laws, covering the different dangers for the environment and the requirements for technical protection against them.

The laws also regulate the rights and obligations of citizens in respect to environmental issues. The obligations generally refer to conserving the environment and avoiding damages. The rights generally refer to the benefits and utilization of natural resources and to the protection against environmental damages by someone else. One big problem are the unequal chances for citizens on the one hand and private enterprises or authorities on the other side in fighting for environmental rights. Recently, the rights for participation in planning processes (e.g. for roads, building) have been reduced in order to save time.

TSO have several functions in the environmental field:

- as representation of citizen interests (*Bürgerinitiativen*)
- as operative agencies: e.g. voluntary associations or firms with public interest as service providing agencies for environmental tasks

#### **d) Representation of Interests**

First of all, the Basic Law applies here (basic human rights).

There are some groups demanding a Law against discrimination, which should cover all socially discriminated groups, like handicapped people, homosexuals, immigrants.

There are many groups and TSO active in this field, but up to now there is no specific legal framework for this work, besides the Basic Law.

## 1.4 Working In The Third Sector

### 1.4.1 Third Sector Organizations As Employers (Of Paid Employees)

#### a) regular employees

##### *Labour law & social security law:*

- labour contracts: full-time, part-time; fixed-term, long-term
- works constitution law: participation in decision making, works councils
- right to strike (right to free collective bargaining)
- special laws and regulations for institutions „of tendency“, i.e. churches, political parties:
  - \* works constitution law does not apply, no right to strike, special wage bargaining
  - \* these special legislation apply for all organizations and facilities under the roof of „institutions of tendency“, e.g. in every social service centre of Caritas, and in fact for all free welfare associations.

This last point is very important for TSO and esp. for the biggest employers in Germany, which are the church related social welfare agencies. Participation and representation of interests of the employed is very restricted and a permanent conflict between the churches and the trade unions. The churches demand a special devotion of their employees to the religious tasks and claim that there is not the usual conflict of interests between employer and employees. But also in non-denominational TSO rarely works councils and representation of interest of the employed exist. This is partly due to the small size and historical development as self-organized initiatives, partly due to the demand of “devotion” to the aims of the organization. This atmosphere often leads to “self-exploitation” in form of unpaid overtime of the employees.

##### *Regulations for professional training and occupation:*

- in every occupational field special regulations for training requirements, e.g. length and contents of training, entitlement for instructing
- in many occupational fields, esp. skilled trade, special requirements for starting one’s own business (special test procedures)
- for many professions special liability regulations, e.g. in health care, kindergartens

#### b) temporary employees

##### *different kinds:*

contract for services, staff on fee basis, “marginal” part-time workers (without social insurance)

characteristics: temporary, flexible, social risks individualized

##### *regulations:*

- different social rights for the different kinds of employment (accident, liability, illness, old-age pension, unemployment, holidays etc.)

The TSO often use these forms of employment because of the lack of money to provide regular employment and also for certain forms of services (e.g. cultural or educational services). The temporary employed people often live by several of these contracts, often hoping to switch to a regular job in one organization some time.

#### 1.4.2 Third Sector Organizations As Promoters Of Employment

##### *Legal basis*

- SGB III: Social Code, part III (Employment Promotion Act)
- BSHG (Federal Social Welfare Act)
- KJHG (Children and Youth Promotion Act)
- state laws for promoting employment
- EC regulations for promoting employment
- regional differences: between East / West Germany, between individual states. At this point, these differences only can be mentioned, not explained in full detail.

##### a) SGB III: Employment Promotion Act (Federal Law)

- character
- goals
- instruments and requirements for being promoted
- organization and financial resources

##### b) BSHG and KJHG (Federal Laws , local operating level)

###### *aa) Federal Social Welfare Act (BSHG):*

- *Goal:* protection of the subsistence level in case of income poverty, in case of special living situations (e.g. homelessness), and for other disadvantaged groups (e.g. settling-in allowances for handicapped people), individual help for social welfare recipients.
- *Instruments:* several kinds of social welfare benefits (cash and non-cash benefits), counselling and „labour assistance“ (*Hilfe zur Arbeit*):  
The HzA-Programme (BSHG §§ 18-20) legally is laid out as an individual help with the aim to give recipients of social welfare an entry into the working life via fixed-term employment and thus stabilizing the individual living situation (by means of regular income, social contacts, strengthening of self-confidence etc.). The details vary according to local authority. Legally, there are three different variants which can be combined partly:

1. Work in the public interest, so-called “public benefit work fare”, given by the local authority or by public benefit organizations; payment by additional expenditure or premium pay, which is DEM 2.00/hour in average. Maximum daily working time is 5 to 6 hours. This payment is added to the social welfare. The tenure of such an

employment contract varies according to the local authority and lasts between some weeks up to one year.

2. Work in the public interest like 1, but with agreed wages corresponding to the kind of work and with a regular working contract limited to one year as a rule. These working contracts are concluded between the local authority and the recipient of social welfare. The working place often is within the public benefit organization or public organizations and public companies. The financing is done by the local authority.

3. Wage subsidy of the local authority for private companies employing a recipient of social welfare on fixed terms (one year as a rule) and with agreed wages. The working contract is concluded by the company and the employed. This variant is applied to a small degree, only, as it is very difficult to find suitable companies ready to employ an unemployed recipient of social welfare. The financing by the local authorities is done with social welfare means saved during the time of employment of the recipient. Fiscally, this programme is positive for the local authorities when the recipient finds work after the end of his employment contract, or - which is the rule - when her/his unemployment continues and she/he gets then unemployment benefits from the insurance scheme (and no longer from the local authorities).

- *Problems:*

- Transfer of public tasks at the expenses of low paid recipients of social welfare: Public benefit works often are limited to particular areas: 1. Areas with no competition to the market, i.e. works with no interest for the private economy, 2. Works for which the local authorities can find no financing or which performance by public service employees has been reduced due to the cut of expenses. Therefore, the criteria for “public benefit work fare” depend on the political and economical situation of the local authorities, so that their actual social utility in many cases is questionable. For example, recipients of social welfare have to do simple work caring for green spaces (e.g. sweep up leaves) to cut expenses for regularly paid employees of the public departments for this task or of external companies. The individual benefit of the working social welfare recipient which, by law, should have priority fade into the background or is not recognizable at all.

- Due to public budget deficits and the shift of the growing problem of mass unemployment upon the local authorities, the HzA-Programme is under growing pressure. As unemployment benefits have been reduced gradually within the last few years due to growing unemployment, local authorities have to pay a bigger part of their budget for the financing of social welfare for unemployed people (Bremen: approx. 50% of its budget). Although the HzA-Programmes could be rated fiscally (at least on a medium-term basis), they are made worse by pressure of conservative parties. Payment on premium basis in contrast to agreed wages is extended, paid-for working time is limited to reduce costs, the height of wages is reduced by specially agreed regulations. Due to these standard reductions, the programme loses attractiveness for

social welfare recipients because in some fields the gain of income through these jobs is scarcely worth mentioning. Also fiscally, the programme loses its effectiveness because the recipients only get little employment benefits from the insurance scheme after ending their working contract and renewed unemployment, and therefore need social welfare benefits again. This vicious circle of recurrent dependence on social benefits demotivates the recipients and contradicts the actual aim of the law which is the promotion of independence from social benefits.

– Under the pressure of budget deficits, growing unemployment and propaganda against unemployed (individualization of the problem, stressing the blame of the unemployment to the unemployed people) the drawing of social benefits is more and more strictly linked to mandatory work for “public interests”. When this obligation is not fulfilled, social benefits are reduced of at least 25 % or even can be refused completely. Due to different fundamentally social and socio-political reasons this is very problematic. Social welfare is the last social network ensuring the subsistence level to all citizens of the Germany who cannot reach this by personal means. A society living up to the slogan “Nobody should eat when he is not working” leaves behind its socio-political obligation to ensure a humane life to all people. Additionally, this obligation to “public interest work” suggests that there are enough jobs available for all and that unemployment is an individual problem for which the unemployed themselves are to blame. There are very negative consequences for certain groups of social welfare recipients who due to their living conditions cannot start or maintain a job and who therefore are forced to live with enduring reduced social benefits which are below the subsistence level. This intensifies the poverty problem instead of eradicating it.

#### *bb) Children and Youth Welfare Act (KJHG)*

- *Goals:* Promotion of individual help for children and young people

*Instruments:* several different measures to promote the welfare of youth, one of them are measures to promote professional training and employment for young people (up to 25 years), who are disadvantaged by their social or personal situation (e.g. persons with learning difficulties or lacking knowledge of the German language). Like the BSHG the KJHG is not a means of labour market policy but should help towards the individual promotion of young people. This principle is taken into account much more than with the BSHG. According to the KJHG, employment promotion plays only a secondary role quantitatively.

#### c) conclusions

- There are conflicts of aims and interests because of the financing of main parts of the TSO's work by employment promotion measurements. The TSO is beneficiary as well as helping to execute legislation which is to a great extent restrictive, inflexible, and socially discriminating. The TSO's interests (the protection of the institution by employment promotion measurements) contradicts the interests of the unemployed (enduring reintegration into working life under appropriate conditions).

### 1.4.3 TSO As Working Place For Unpaid Volunteers

Different groups of unpaid volunteers:

- „honorary office“ = indirect (social) work, e.g. executive board
- volunteers = direct (social) work, e.g. day care for children

#### a) legal basis

- There is no law concerning voluntary work. Instead there is an isolated acknowledgement / promotion of honorary commitment.
- Law for Improvement and Simplification of the Taxation of Associations: flat-rate payment for trainers, expense allowance for certain fields of activity (esp. sports).
- Law for the Community Service as an Alternative to Military Service
- Law for the voluntary social and voluntary ecological year: for young people below 25 years; only a small number of places in TSO are promoted by public grants.

#### b) social rights

different for volunteers working in fields of statutory services and for volunteers in voluntary services

- Insurance cover, liability
- Labour Law does not apply for volunteers as there is no employment relationship

*conclusion:*

competition between paid and unpaid workers

## **2. Legal Framework Of Labour Policy**

### **2.1 Central Government's Labour Policy Legislation**

The labour policy (resp. economic policy) of the German conservative Federal government follows several principles or premises. In the following the most important principles and the corresponding policies and laws are mentioned.

#### 2.1.1 Economic policies

##### 1. Economic growth creates jobs / employment.

- Investment aid policies
- Abundance of „obstacles for investment“ like wealth tax

##### 2. Lowering of additional wage costs creates employment.

In Germany gross wages consist of the basic wages, which are negotiated between unions and management, and of the additional costs, consisting of the social insurance contributions and the income tax. The additional costs come up to about ... (40 ) % of the total. The employer and employee each pay half of the social insurance contributions. There are four branches of social insurance in Germany: health insurance, pension scheme, elderly care insurance, unemployment insurance.

The policy of lowering the additional costs for work force of the German federal government follows the strategy of

- Cutting down social security benefits: e.g. rehabilitation programmes for handicapped people, health curing, sick pay;
- Raise of retirement age for women.

*Law:* Act for promoting economic growth and employment, 1996

##### 3. Deregulation of labour law creates employment.

- Reduction of dismissal protection
- Extension of fixed-term labour contracts

*Law:* Act for promoting economic growth and employment, 1996

##### 4. Promotion of self-employment reduces unemployment.

- Mainly propagandistic measures which should promote self-employment.

#### 2.1.2 Labour Market Policies

##### Reducing the labour supply reduces unemployment.

### 1. Restrictive immigrant laws

- Restrictions of work permits for immigrants from countries outside the EC:

several requirements for immigrants:

- valid residence permit for an indefinite period,
- permanent residence in Germany,
- for the first work permit a period of at least 5 years permitted residence in Germany can be required,
- no negative consequences for the German labour market through the work permit,
- no German workers or workers from EC countries are available for the specific job,
- same working conditions as those for German workers,
- the work permit can be valid for a limited period only and restricted to a certain business, economic branch or regional area.

All of these requirements have to be proofed, partly by the employer and partly by the applicant.

- For refugees and people seeking asylum there are even more restrictions because of their more restricted residential status.

### 2. Promoting the early retirement of persons on health grounds

- public promotion schemes for persons who want or have to retire below the normal pension age

- compulsory military service serves indirectly as a means of reduction of work supply

#### 2.1.3 Policies Directed To (Or Against) The Unemployed

##### 1. Pressurizing the unemployed reduces unemployment.

- Lowering the threshold of what suitable job-offers the unemployed are reasonable expected to accept: e.g. after 6 months of unemployment every job with a wage on the level of the unemployment benefit has to be accepted (no matter which qualification); the reasonable daily commuting time was extended to 3 hours;

- Cut down of unemployment benefits.

- The unemployed are obliged to notify personally every three months at the local employment office to be registered as unemployed, otherwise the unemployment benefits are stopped.

- Cut down of the wages in job creation measures.

*Law:* Employment Promotion Act, 1997/98

##### 2. Low social welfare and low wages create employment.

- The level of social welfare benefits (*Sozialhilfesatz*) is legally fixed according to the assumption that it has to be noticeable less than the average income from wages

(„requirement of noticeable difference of wages and social welfare“ – „Lohnabstandsgebot“). The calculation method of both the average wage income and of the minimum difference to the social welfare benefits shows a great deal of arbitrariness. The difference between social welfare and wage income should be at least 15 %. Because of the heterogeneous social and family situation it is very difficult to get a liable basis for an average calculation of the income. The background for this „Lohnabstandsgebot“ is the assumption that it is necessary to motivate social welfare recipients to take on a job by reducing the social welfare levels. As an indirect consequence this principle raises the pressure on the wage rates.

- As another incentive for taking on a job social welfare recipients can work and receive wages up to a certain level without losing all of their social welfare benefits. The allowed limit of additional wage income is (?) 200 marks monthly. Above this allowance limit the social welfare benefits are reduced by the exceeding wage income. The allowance is given only for a period of six months, after that the allowance is cut. Also this regulation raises the pressure on the wage rates.

*Law:* Federal Social Welfare Act, last amendments 1997

## **2.2 Local Labour Policy**

As described in chapter A.III.2. there is a growing pressure on local authorities to make labour market policy. Growing unemployment and its following social problems are obvious in towns and communities even if its extent varies regionally. The drop in taxes due to a high unemployment rate intensifies budget problems of the local governments. At the same time, the local level politicians have to act within a restrictive Federal legislation and within narrow leeways. On the one hand, the Federal legislator allocated more responsibility in the solving of the problems to the local authorities and the employment administration. The employment administration has been decentralized with the last alteration of the Employment Promotion Act. With the last amendment to the Federal Social Welfare Act the local social welfare bureaus were called upon increasing cooperation with the employment offices and to intensify own efforts. On the other hand, financial means for active labour market policy (employment promotion) have been reduced by the Federal legislator in favour of passive legislative payments (unemployment benefits).

Which weight local labour market policy has and which concrete design it will have, depends on the specific political and economical conditions. Predominant tendencies are:

- Decentralization of employment services and the stressing of competition among regional employment offices in regard to best results in the integration of unemployed into working life according to law (SGB III), results in a growing competition among regions for financial means for employment promotion. The former indicator for the allocation of means, the unemployment rate, was abolished. This means that economical crises regions with a high unemployment rate (like e.g. Bremen or Eastern

Germany) have to compete with economically flourishing regions with a lower unemployment rate (like Bavaria) to get financial means of employment promotion in spite of the different regional demand. The pressure to achieve high integration rates can lead to a promotion of only the most efficient, most mobile, and most qualified unemployed by the employment services. As a result, other groups of unemployed like certain groups of female, insufficient qualified and elderly persons are ignored and given up. So this group once again depends on the local social welfare system when they cannot find a job by own efforts.

- The main aim of local authorities and local employment services is the integration of unemployed into the so-called first, private sector labour market. To reach this, ever new concepts and methods are tested where private suppliers have a growing chance. Contracts between local authorities and private job placement agencies are concluded which are obliged to place a certain number of unemployed social welfare recipients into the labour market. For this the agencies get a “head bonus” from saved social welfare means (“Maatwerk”). Another way is the fittings of publicly sponsored temporary employment agencies which should integrate unemployed into a fixed employment relationship in companies. The social welfare offices already cooperate with commercial temporary employment agencies. These measures succeed in a different degree and depend on the capacity of the local labour market. Quantitatively, they are far from solving the problem of mass unemployment. As described above the local authorities are under socio- and financial political pressure to alleviate the consequences of unemployment for the people and for public money. Programmes like HzA (assistance for employment) are under growing pressure and are performed more strictly and with lower standards. Quantitatively, the increase of the “number of cases” is attempted to shift as many unemployed social welfare benefits recipients as possible back into the unemployment insurance scheme. This results in the unemployed being temporarily entitled to (further) active promotion and passive unemployment benefits. But this is no solution to their problems of getting a regular job.
- Already mentioned was the tendency towards a strictly linking social welfare benefits to “public benefit work”. This increases the social pressure upon the unemployed and individualizes their problems without offering any solutions. Paradoxically, the local authorities strengthening these coercive measures are not in the financial or organizational situation to offer enough “job opportunities” to all social welfare recipients capable of work. This leads to lower standards of the jobs’ quality and often leads to pointless tasks.
- On the one hand, the TSO function as beneficiaries of the increasing influence of local labour market policy and its quantitative extensions and therefore are executing restrictive legislation. On the other hand, they partly are forced to fall back on instruments of the employment promotion to finance their staff costs because the

financing of their original tasks is inadequate.

- The other way to fight unemployment is economic policy. The classical promotion policy of investments claims to be employment policy and is pursued more or less intensely depending on political colour. But one can note that employment policy conditions are reduced especially in areas of economic crisis with only small attractiveness for economy promotion. Economy promotion and the care of the site factor is performed traditionally, i.e. with orientation on big investors and limitation on so called “hard” site facts like road building. Other factors for a favourable investment climate by increasing the social and cultural attractiveness of the region (e.g. cultural diversity, social infrastructure) are neglected as a rule. The real employment effects of economy promotion are controversial and cannot be proved correctly.

### **3. Proposals For Change**

#### **3.1 Proposals Referring To The Third Sector**

The suggestions presented here mainly refer to those in political and scientific debate and corresponding publications. Partly, they also result as hypothetical suggestions of our present analysis of the existing prevailing conditions.

##### **3.1.1 Legal Framework Of The Third Sector**

In accordance to the statements given in chapter A.I that the TS has no common legal basis as a whole, suggestions for reforms for the TS have to refer to the individual legal type of the TSO.

###### *a) Associational Law*

- Examination and alteration of historically outdated regulations of the BGB in regard to undemocratic, restrictive, and inflexible regulations. Reforms are necessary for:
  - aa)* legal prerequisites for the foundation of associations: Alleviation and simplification of recognition procedures (e.g. abolishment of attestations by a notary, simplification of statutory regulations, abolishment of an “official” foundation protocol). reduction of the least number of members to e.g. three, newly ordering of internal organizational demands (executive committee / general meeting)
  - bb)* flexibility of legal basis of the associations’ activities; simplification of new orientations on new association purposes and activities without legal measures, simplification of internal organizational demands (e.g. conscription of general assemblies).

cc) Revaluation of not-registered associations.

- Abolishment of discrimination against non-German citizens within the Law for Controlling the Public Right of Coalition (basic law and association law). They have to have equal rights to the founding of associations and their activities. There should not be special laws for associations with a majority of non-German members, depending on their “political appropriateness”.
- The bringing together of simplified and democratic new legal basis in a common law for associations.

b) *Tax and Public Benefit Law*

- Drastic simplification and greater transparency within the tax law for associations and their private contributions (donations, membership subscription), abolishment of bureaucratic obstacles for tax deduction of private donations, increased self-determination of taxpayers concerning the use of a part of their taxes as tax reduced donation to a public benefit organization.
- Simplification of enterprise sponsoring by exemption of sales tax.
- Reform of the Public Benefit Law:
  - aa) The term public benefit should be made more precise in regard to clear, comprehensible, and commonly accepted criteria. Parallel to that the arbitrary listing of concrete purposes recognized as public beneficial should be abolished so that the spectra of public benefit activities can be increased. This might have consequences on the creation of new public benefit organizations with the aim to create new job opportunities.
  - bb) Abolishment of dividing into charitable, ecclesiastical, and public benefit purposes of organizations and accordingly an equality in taxes.
  - cc) Drastic simplification of regulations for economic activities of public benefit organizations: enabling of increased self economic activities of TSO with maintenance of tax reduced public benefit status, if necessary with compensation of less direct state promotion (see *Anheier* 1997, pp 11ff).
  - dd) Checking of the public benefit within larger periods (e.g. five instead of three years)

c) *Foundation Law*

- Drastic simplification of the foundation of foundations, independence of foundation associations.  
Limitation of the state’s control on foundations: free choice of the foundations’ purposes within the constitution.
- Simplification of the demands to the internal organizational structure, democratization of the internal organization.
- Better tax reduction
- Other measures of promoting the further development of foundations and donating are proposed in a motion put forward in the German Federal parliament by the Green Party.

## b) *Co-operative Law*

- Drastic simplification of the foundation of co-operatives, independence of co-operative's federations
- Possibility of public benefit status of co-operatives and therefore tax reduction
- Other proposals put forward by self-organized economic initiatives and firms

### 3.1.2 Proposals Referring To Third Sector Activities

The suggestions mentioned in 1., especially the tax law, of course influence the activities of TSO by being rather promoting than hindering. The following suggestions go back to the last evaluation of the German part of the Johns Hopkins research by Helmut *Anheier* in 1997.

#### a) *Increasing political acknowledgement of TS, active role for employment policy*

*Anheier* detects a contradictory presentation of TS in Germany: on the one hand, the TS had an enormous growth regarding to employment within the last ten years and therefore plays an important role especially for services in the social and health sector. On the other hand, the TS is ignored or not acknowledged by economy and employment policy.

*Anheier* suggests that policy as well as economy has to acknowledge the real great importance of the TS for many areas including its employment policy function. Therefore they have to develop logical concepts for the social role of TS. The TS itself should be aware of its employment policy tasks and significance and should engage in active employment policy.

#### b) *Loosening the ties between state and TS*

*Anheier* detects a strong interconnection between the state and the TS in Germany. This is due to the historically developed interpretation of the principle of subsidiarity which links the free welfare associations to state activities. This results in a strong dependency of the TSO from public promotion.

Because of this, *Anheier* suggests the loosening of ties between state and TSO and a search after alternatives of public promotion.

#### c) *Increase of private financing of TSO*

As an alternative to public promotion *Anheier* suggests to use the following financial sources:

- aa) Charging of services when it is compatible to the social aims (if necessary graduation of charges)
- bb) proceeds from product sales

- cc) income by capital and land holdings
- dd) raising of donations (methods of fund raising)

*d) Creation of appropriate legal prevailing conditions*

*Anheier* suggests legal alterations partly already mentioned at point 1. which simplify and flexible legal conditions for the TS. Additionally, he suggests a restructuring of state promotion of the TS: instead of direct subsidizing he suggests indirect tax demands to strengthen the financing independent from the state. The state should restrict itself to complementary financing and its role as presenter.

*e) Well-directed political measurements to strengthen the TS*

*Anheier* analyses that the TS plays only a small role in some fields in Germany like in the cultural and educational field. To support activities in those spheres *Anheier* suggests to decrease the influence of the state and to create new areas of activities for the TS by e.g. privatization of universities and parts of research, but also of museums, theaters and libraries.

With this, new impulses for employment are possible. But one has to keep in mind possible job losses due to privatization

*f) Reform of the Law regulating public grant-giving*

For many years there has been increasing criticism of the law regulating public grant-giving by TSO, esp. by those not being organized within the big Free Welfare Associations (socio-culturell projects of the alternative and the women's movement) (see chapter A.II.).

Suggestions for a change has been developed for years. But these were not implemented by those who are responsible. The following suggestions refer to a legal expert report that has been performed in 1992 in behalf of the parliamentary party of the Greens in the Berlin Chamber of Deputies as well as to other publications. According to that a reform should include:

- reliable promotion and substantiation by increased application of institutional form of public grant-giving, with longer minimum periods of promotion and periods of notice,
- breaking-up of the authoritative relationship between state administration and grant-receiving organizations. Instead there should be co-operative negotiations of promotion agreements.
- an increase in flexibility and independence for the grant-receiving organizations by alterations of the main and secondary by-laws of the public budget rules and the practice of public grant-giving: allocation of total sums instead of restrictive fixing of a financing planning, a decrease in the charge of other income, allowance of reserve for the next year etc.

Especially the increased reliability of public financing and the simplified fund raising of private donations and grants would surely have positive employment effects on the TSO.

### 3.1.3 Proposals Referring To Working In TSO

#### *a) Paid work*

##### *aa) Rededication of honorary tasks into paid work*

According to *Anheier* there are some areas where the main part of the work is done on a honorary basis, especially in the area of sports. If the TS should have a greater responsibility within the employment policy, a partly rededication of honorary tasks (especially within important fields like the promotion of young people) into paid work is the logical consequence. This would result in a strong positive employment effect.

##### *bb) Regularly paid service function of the TS*

Services within the TSO especially in the psycho-social and health sector are done unpaid or low paid although those are essential for the public supply (e.g. in the sector of self-organized projects the main part of the work often is done unpaid). The TSO have to develop a profile and a conception of themselves which realizes the worth of their work while the public administration have to acknowledge and financially promote these tasks. Clear political decisions towards high quality work as well as employment effects are necessary.

##### *cc) Reduction in working hours within the TSO*

Abolishment of unpaid overtime and redistribution of paid work on more people creates new jobs. This again on the pre-condition that the work and the offers are acknowledged and financed.

##### *dd) Democratization of employment relationships within the TSO*

Abolishment of the limitations of the labour law in ecclesiastical organizations. This would show need of new employment and would lead to an increase in transparency and free interchange of the TSO.

##### *ee) Relaxation of labour law regulations*

Simplification of setting up one's own business in the crafts sector (alteration of the Law Regulating the Conduct of Craft Trades), simplification of the labour law for example in the health care sector. This would make it easier to set up one's own business and would create new jobs.

##### *ff) Abolishment of Community Service as an Alternative to Military Service and of Military Service*

People doing Community Service as an Alternative to Military Service have firmly established themselves in many TSO (especially in the health and social sector) but they are low paid and they block regular jobs.

#### *b) Unpaid work*

The demand for an increased immaterial acknowledgement of voluntary unpaid work in the TS in the research for „new employment opportunities in the Third Sector“ is contradictory. An increase of voluntary work might contribute to a reduction of paid work and so would be in contrast to the aims. By the way, the complaints by some associations of the lacking willingness for social commitment can often be traced back to unattractive and old structures and to the luckily decreasing self-sacrifice of women. Therefore, the associations should sometimes think about turning unpaid and honorary work for which there is a lack of willing volunteers into regularly paid jobs instead of desperately searching for new incentives for volunteers. Of course this would have a positive employment effect.

But it's true that one has to weigh up this “employment critical” argument against the following:

Voluntary citizens' commitment in various fields is useful to the society at large because it strengthens the participation of citizens and the integration of people. Both effects are not given automatically by voluntary work, but need specific support of participation and involvement structures within the TSO. So there is a demand of space to be shaped by people with the need for voluntary commitment and these people rather should be supported instead of being hindered. But this strengthening of voluntary commitment is not for free or by a “nice word” of a politician or of the head of a TSO. Improved legal frameworks through which volunteers are rewarded as well as favourable conditions in the TSO have a price and need additional personell resources in the TSO. Once again this has a positive employment effect. There already are a lot of suggestions for improvement made by the political sector as well as by the TSO. Sources are motions put forward to the Federal House of Parliament by the parliamentary party of the Greens and the Socialdemocrats as well as statements by associations and experts for the public hearing of the Committee for Family, Seniors, Women, and Youth of the House of Parliament. The topic has been “Voluntary social commitment and honorary work” (4<sup>th</sup> of February, 1998).

*aa) Constant contacting persons for volunteers in the TSO and professional organizing of voluntary work*

Crucial for the support of voluntary work is its acknowledgement and an organizational scheme. There have to be constant contacting persons to whom interested people can turn and who explain the suitable activities, and the periodical scheme to the potential voluntary worker in accordance with her or his expectations and abilities and the need of the TSO. So, voluntary work within the TSO has to be organized and coordinated. Potential conflicts between volunteers, regular workers and possibly clients have to have space and have to be worked out. This requires professional resources and an understanding for its necessity within the TSO.

*bb) Creation and support of an infrastructure for voluntary commitment*

There are many suggestions by representatives of the TSO as well as by other experts (see *Hummel*) who are valued as much more important than the individual (financial) promotion of volunteers. For example:

- Creation and promotion of voluntary offices working as mediators
- Strengthening of self-help offices
- Support of barter societies ("*Tauschring*")
- Improved public promotion of self-organized groups and projects
- Free of charge and unconditional providing of places / centres of communication incl. technical equipment (phone, copy machines and other media) in each community / county by local authorities, welfare associations and also private companies for self organized groups, citizens' action groups, self-help groups etc. and single persons who want to organize. The administrative organization of these centres might occur on a voluntary self-organized basis, in large communities this might be done by a paid worker. Unbureaucratic taking over of the consuming costs must be guaranteed.
- Possibility for self-organized groups of using infrastructure like e.g. mailing of great masses, borrowing of technical equipments / tools incl. introduction into the use, providing of special working clothes and other. These infrastructures could be supplied by private companies within a sponsoring agreement concluded between the company and local authorities.
- Support and proposals for regular meetings of exchange with self-organized groups and action groups by local authorities to promote the linkage and further development of the work

*cc) Improvement of further and continuing training for volunteers*

Commonly it is understood that there is a need for the improvement of the further and continuing training of volunteers to meet the needs of clients especially within the health and social sector as well as for the volunteers themselves.

But further and continuing training should not have specialist's knowledge as its main contents. Rather, the development of already existing personal resources and self-reflexion should be the centre of it. In some areas there are legal orders to the TSO or to responsible public authorities to make appropriate qualifying offers (within the KJHG, the Elderly Care Welfare Act and the Law for care of disabled persons). These legal obligations have to be extended on all services related to people. To fulfill this task, public grants have to be provided.

*dd) Improvement of the right for participation and involvement for volunteers*

To meet the demand for increased social integration and participation through voluntary work, concrete forms of participation and involvement have to be created by the TSO as well as by public authorities involving volunteers in matters of interest.

- In the TSO there have to be developed reliable structures for the participation of volunteers in respect to the goals, contents and methods of the work. There must be an atmosphere, in which the regular staff is open for proposals and innovations from the side of the volunteers.
- On the local level volunteers should be involved in decisions of the authorities concerning their interests. For this purpose committees could be built or the plans of the authorities could be made known in the volunteer centres so that volunteers could speak up.

- Perhaps a “citizen initiative centre” would be reasonable for collecting proposals, criticism and ideas, which then could be transferred to the appropriate authority. The citizens should have a claim to know what has happened with their initiatives.

*ee) Tax reduction*

Extension of tax allowances for payments and expense allowances to all fields of activity and forms of organization. Today tax allowances only exist in the fields of sports, education and family care, up to 2.400 DEM a year. Further condition is that the voluntary work is done within a legal form of public law or in a tax reduced TSO. So, payments and expense allowances received in self-organized groups, which are no members in the associational system, can not get tax allowances. Also the amount of tax allowance should be thought over.

*ff) Abolishment of constraints for voluntary work by the *Employment Promotion Act**

- Unemployed are only allowed to work voluntarily up to 15 hours a week in order to remain registered as unemployed and receive benefits (the official argument for this is the obligation for unemployed to be totally available for the labour market). This time limit must be abolished, since voluntarily working unemployed can nevertheless start a job.
- Abolishment of charging small payments and expense allowances for voluntary work for unemployment benefits.

*gg) Standardized regulations of leaves from the job for voluntary workers in public services and in private economy*

Today there are only singular and in contents as extent different regulations and state laws regulating leaves from the job. There should be a uniform law regulating the time for leaves from the job, the continued payment of wages and the mode of financing and the accepted fields of voluntary work.

The Socialdemocrats demand furthermore leaves from school for pupils for voluntary activities.

*hh) social security for voluntary workers*

The today's social security for voluntary workers is generally meant to be insufficient. Only within the scope of the Elderly Care Insurance Act voluntary caring persons have been included in the pension scheme and accident insurance. The protection of voluntary workers against accidents and liability risks in other fields is left to the TSO and is incomplete. Therefore the obligation for TSO to pay flat-rate payments for their volunteers into the accident- and the liability insurance and the pension scheme is demanded. Should the TSO not be able to pay this out of there budgets, public grants are necessary.

### **3.2 Proposals For Labour Policy**

There are various proposals and concepts in the political and scientific debate searching for a new orientation and new ways of employment policies which leave the traditional “male orientated normal regular labour contract” and the traditional demand for full employment behind and accept the structural causes for the employment crisis. According to their main focus on different meanings and “spheres” of work / labour they can roughly be distinguished in three major groups with blurring boundaries:

1. Concepts referring to “public utility work” / “civic society work” (*Bürgerarbeit*)
2. Concepts referring to “subsistence work” (*Eigenarbeit*)
3. Concepts referring to “gainful employment” (*Erwerbsarbeit*)

At this point only a small part of the various concepts can be mentioned.

### 3.2.1 Concepts Referring To “Public Utility Work” / “Civic Society Work”

In Germany, the most famous advocate of this concept is *Ulrich Beck*, member of the “Committee for future questions of the states of Saxonia and Bavaria” (about employment and unemployment in Germany). The basis of the concept is the realization of the end of the time of (traditional) full employment and the need of an alternative to gainful employment.

The concept of “civic society work” (Beck) is shaped as follows:

- “Civic society work” means voluntary social commitment which is self-organized and performed in temporary projects.
- The aim of “civic society work” is to perform tasks which have been state organized on the basis of the citizens’ initiative. In respect to the labour market the aim is a “society of plural activities” in which gainful employment loses its monopoly and in which phases of employment, family work and “civic society work” alternate more natural.
- “Civic society work” should be mainly a chance for the unemployed to be active in a useful way besides being regularly employed and to achieve qualification and social integration. Moreover “civic society work” should be additional to regular employment for people who like to do social useful work in a self-determined way. By this, “civic society work” can use the creative potential of the citizens.
- As reasonable fields of activity for “civic society work” are mentioned: education, environment, health, care for dying people, for homeless, refugees, slow learners, arts and culture etc., so central societal tasks.
- “Civic society work” should be financially *rewarded* on the basis of minimum subsistence for those in need under the conditions of social welfare benefits, and not *paid* for on a wage basis. For “civic society workers” no obligation to work should apply like for social welfare recipients. The “civic society workers” should also be rewarded with achievement of qualification, allowances in the pension scheme, tax allowances and immaterial awards.
- The organising of “civic society work” should be performed by a so-called “public utility employer”, a person overseeing the local needs and being charismatic.

Nevertheless the “public utility employer” has to collaborate with the local authorities resp. a committee for “civic society work”. This committee decides which local tasks should be taken on on the basis of “civic society work” and which by the local authorities. The committee consist of representatives of the administration, free welfare associations, volunteers, sponsoring persons etc.

- “Civic society work” could be financed by the savings of social welfare benefits and by contributions of transnational companies. There is no exactly calculated financial model yet.
- Point of realization: According to Beck the states of Saxonia and Bavaria gave assurance for introducing model projects for “civic society work”.

Central points of criticism of the concept of “civic society work” which are in public debate and are important in our opinion:

- Dequalification and devaluation of social, personal services and thus of women’s work mainly. “Social work can do anybody” and does not need to be paid by agreed wages, but only by “nice words” and subsistence benefits on a low level.
- For the clients who should be cared for by non-professional “civic society workers” the question rises whether so much “self-experiencing” care is appreciated and whether they would sometimes not be “guinea pigs” of well-meaning middle-class citizens who always wanted to show the way to certain groups like junkies, homeless, refugees.
- The concept is only a money-saving plan for the public budgets because of outsourcing public tasks on a regular employment base. So “civic society work” is instrumentalized for filling the gaps in public budgets, dressed up as “societal participation”.
- “Civic society work” serves as legitimation for the insufficiency of politics to solve the problem of mass unemployment and which watches social desintegration seemingly powerless. *Beck* sees the chance for politics to gain back influence through the concept of “civic society work” since it has lost its power in times of globalization.
- The values of solidarity and social justice are no longer demanded from state and economy, but should be personified by those who have been eliminated from the economic exploitation process.
- The offer of “civic society work” for unemployed who are immaterially awarded and then are no longer counted as unemployed is zynical, since they are permanently excluded from the labour market. The dimension of unemployment becomes covered up.
- According to all researches voluntary socio-culturell commitment requires certain competences and qualifications which the majority of (longterm) unemployed people – who should take over these works - do not have. The recent research of the German Institute for Economic Research (DIW) shows that today mainly regular employed people, old age pensionists, people having families, good qualifications and social contacts are those doing voluntary work. In contrast unemployed people make up only little percentage. Therefore the concept of “civic society work” does not match with reality.

- The voluntary character of “civic society work” is only superficial and theoretical in view of the practical linkage of social welfare benefits with mandatory work. According to the concept unemployed social welfare recipients can only decide whether to take on “civic society work” “voluntarily” and further receive social welfare benefits or to be obliged to take on “public benefit work”, prescribed by the authorities, and further receive social welfare benefits. There is actually no substantial difference between the two forms of “public utility work”.
- The financing of the concept is unclear: the German Institute for Economic Research (DIW) has calculated the need of 126 billion DEM a year, on the basis of all unemployed people and a subsistence level of 1.500 DEM. Last year the total for unemployment and social welfare benefits was 64 billion DEM in whole Germany. The simple redistribution of this sum would not be possible since the groups of people only partly match.
- Contradictions in the concept resp. unclear points:
  - On the one hand “civic society work” should be self-organized and creative and self-experiencing, on the other hand it is part of the planning process of local authorities and organized by a “public utility employer”. Presumably concrete tasks would have to put out to tender for “civic society work” for which people then could apply. Bureaucratic organization can not be avoided.
  - Bureaucratization can not be avoided also because “civic society work” should entitle to certain awards and privileges, like kindergarten for-free. Besides it has to be decided which kind of activity is accepted as “civic society work” and thus not linked to mandatory work for social welfare recipients.

The commitment to civil society and the self-organized, voluntary fulfilling of societal tasks is, of course, desirable and should be promoted. It also includes a potential of protest against a totally economic and bureaucratic society. But this commitment must not be instrumentalized under covered up economic aspects and claimed as a solution to the employment crisis. Besides the negative employment effects of the outsourcing of public tasks and public service jobs should be considered.

A similar concept although not so recent comes from the USA and was developed by *Jeremy Rifkin*: the “social wage for community services”. At this point we refrain to go deeper in this concept. Its shape is not so concrete as the one of *Beck* and does not refer to German conditions directly.

### 3.2.2 Concepts Referring To “Subsistence Work”

Several proposals aim at strengthening “subsistence work”. With this term different forms of activity are named which are done for oneself and normally do not have exchangeable character. The classical form is subsistence production of rural or crafts products.

One idea which has already been realized in the middle of the eighties in the USA is the concept of the American philosopher *Frithjof Bergmann*. He has called it “*New Work*” and it aims at the rediscovery and well-directed promotion of subsistence work.

- Starting-point of the concept is on the one hand the dramatic mass unemployment, concerning half of the population in some regions (realistically calculated), on the other hand the monotony, on-sidedness and anti-creative character of precedent jobs. Because of this the majority of people – employed or unemployed – do not have any opportunities to discover and develop their own abilities and potentials.
- The concept of “*New Work*” favors the diversity of different activities offering possibilities for the discovery of individual desires and abilities. According to this concept regular employment should only absorb two thirds of time, about two days a week. On two more days the people do subsistence work on a high-techn level. Other two days are free for everything one always wanted to do.
- With subsistence work as it is done e.g. in Detroit with unemployed out of the automobile industry about seventy to eighty percent of products necessary for life should be produced. By means of modern technical equipment and ecological material e.g. high-rise-buildings are built by homeless people who later on live there. Also clothing is sewed and vegetables grown with a special growth-promoting substance on the balconies.
- The losses of regular jobs by displacement through subsistence production are consciously accepted because of the often unattractive working conditions and in order to save time for useful and self-determined activities.
- The people become much more independent from public benefits by subsistence production and gain more self-confidence, creativity and freedom. Besides public expenses for social welfare benefits are saved which partly compensates the losses in the insurance schemes caused by lower employment.
- For financing the drastic shortening of work-time the big companies should contribute with higher taxes and donate money saved with technical rationalisation for “*New work*” -projects.

In Germany already some centers for “*New Work*” exist in some regions (Thuringia, Aachen, Cologne).

Another concept related to “*New Work*” are the “houses of subsistence work”, e.g. the one financed by a foundation in Munich. Also this model is founded on the realization that often in normal jobs the creative potential and freedom of action of the people get lost. To support self-determined subsistence work, certain resources besides time are necessary: a place, tools, information, cooperation, rights, support by institutions (see chapter C.I.3.b). Such “houses of subsistence work” can be run by private initiative of single persons or of groups, when different public and private grants are combined.

Further proposals and concepts strengthening “subsistence work”:  
- *Time Dollars / Service Credits (Cahn 93, Offe/Heinze)*

- “barter groups” („Tauschbörsen“), in which the members exchange different sorts of services without money.

### 3.2.3 Concepts Referring To The Gainful Employment Sector

Of course, there is an immense variety of employment concerning proposals. In the following only a small collection of those concepts are mentioned which in some way are related to the Third sector. It is not possible to go into details of all aspects, we rather concentrate on those aspects in connection with the TS. The shortly mentioned concepts have different scope and level of concretion.

#### a) *General reduction in working hours and redistribution of labour*

The demand for a general reduction in working hours and for a redistribution of labour is the basis of various concepts. Yet the needed extent, the concrete form and the financing is very controversial.

In connection with our question the general reduction in working hours is an important prerequisite for the necessary new assessment of work, for social justice and a possible new role for the Third sector. The good-bye to the traditional meaning of full-employment and the connected traditional vision of “normal employment” orientated on male life-styles and patterns of carriers – contingent, lifelong, regular employment – is overdue. It is of great importance to see the “crisis of the labour society” as the crisis of gainful employment only and yet as a chance for developing a richer life: more time for social contacts, the family, subsistence work inclusive housework, for further education, voluntary work and – according to *Bergmann* – for everything one always wanted to do. Last but not least drastic reduction in working hours on all levels of the hierarchy and in all professions is a necessary although not sufficient prerequisite of “democracy between the sexes” and for equal opportunities.

These opinions advocate e.g. scientists like *Ingrid Kurz-Scherf*, *Martin Kempe*, *Peter Grottian*, parts of the trade unions resp. their officials, as well as politicians, esp. of the Green party like the member of the German Federal parliament *Marieluise Beck*.

Generally, there is consensus about the fact that reduction in working hours only has positive employment effects, if it is introduced in a big step. A reduction of the average weekly working hours for one or two hours would be easily compensated by the enhancement of productivity and by intensifying labour without creating new jobs, as experience shows. The mostly demanded average extent of weekly working hours is about 30 hours, partly below.

The differences in the concepts are mainly in respect to the concrete practice of a general reduction in working hours and of the instruments of regulation. So some advocates of the trade-unionists demand a legally fixed maximum weekly working time and only want to allow little periods for compensating overtime work. Other advocates,

partly labour councils, favor more flexibility for different branches and individual firms. Legally only an average frame should be fixed while allowing various models of reduction in working hours in practice. As far as possible the conflicting interests of flexibility in operating hours of the firms and of the individual desires of self-determined working hours should be reconciled.

With regard to the financial consequences of reduction in working hours for the employees the demand of full wage compensation has widely been given up even by the trade unions. Generally, a social compensation for the low up to middle class income is demanded, although the classification of these classes differs. About the financing of income compensation there are also controversial discussions. The proposals reach from redistribution of public benefits to redistribution of business profits. As fiscal instruments ecological taxes, profit taxes on technology etc. are discussed. In the debate are also incentive models for both employers and employees which should motivate to reduce working hours (e.g. the model of “bonus and malus” of the Green party). For employees e.g. the public supplement of contributions to the pension schemes and the extension of social insurance for employees working less than 15 hours a week are discussed.

Also necessary for the realization of reduction in working hours and increasing its attractiveness is the abolishment of discriminating facts for part-time workers in respect to social rights.

#### *b) “Transition labour markets” / “Bridges for employment” / Lifelong learning*

The idea of “transition labour markets” which mainly has been developed by the Berlin scientist *Günther Schmid* and advocated esp. by the Green party, also presumes that the “classical” forms of employment will more and more interchange with other forms of activity and that the transition between these forms and the referring income types must be simplified. A double motive is behind this concept:

1. Flexible, easily accessible and socially insured transitions between full-time and part-time employment, family and elderly care work, unemployment and occupational education, voluntary work etc. are effective against social desintegration and give many people participation on employment. This is even more important in the light of the fact that the percentage of longterm unemployment in the European Community on all unemployed is about 40 %.
2. Due to the technological and demographic development there is growing need in lifelong learning and continuing occupational education which has to be allowed through leaves from the job. Lifelong learning is an integrated part of the concept of “transition labour markets”.

To realize this idea there must be legal rights which give access to unemployed into useful and acceptable occupational education schemes or into publicly promoted employment. Legal restrictions for follow-up promotion schemes existing in the Employment Promotion Act have to be abolished. The connection between forms of module learning with practical training on the job and jobrotation must be promoted. For

organizing the different forms of occupational education, job placement and employment private and public benefit organizations like job centres, temporary employment agencies and service centres should be taken on besides labour administration. Here is broad field for TSO.

Necessary for simplified transitions between publicly promoted and private economy employment is the deregulation of certain rules for organizations supplying employment schemes. They must be allowed to combine fields of public benefit and public promotion with the production for the market. So more economic efficient jobs can be created and more independence from public subsidies can be reached.

Legal rights also must be introduced for leaving the jobs. Necessary are individual rights for leaves from the job for the purpose of learning, combined with income compensation and the right to come back to the job. To reach positive employment effects the concept of jobrotation must be legally fixed and used to a great extent. In this model unemployed people take over the job for the period of educational schemes of the employee and so gain practical experience and contacts to firms (in Scandinavia this model works very successful for years).

Longterm leaves from the job for all groups of employees for individual purposes – personal education, family or voluntary activities, long journey etc. - should be possible in combination with “working hours savings”.

Further prerequisites for flexible, social transitions are the combinations of labour income and social welfare benefits. Yet there are grave controversies about this point. The trade unions are against it because of negative effects on the level of wages. The employers demand “combi-wages” to cut expenses – the supplement of wages by social welfare. Yet there are advocats in the parliamentary opposition who are in favor for lower charging job income to social welfare benefits for certain groups.

c) “Jobs on loan basis” and “innovation contracts”

The proposal of “Job on loan basis” aims to more autonomy of the unemployed and to job creation as well. It has been developed by the Berlin scientist *Peter Grottian*. Basis of the idea is the assumption that neither normal economy promotion policy nor publicly directed wage subsidies are really effective in job creation. Besides of that, it is important to strengthen the initiative and independence of unemployed and not to treat them like objects of governmental reglementation or welfare policy. *Grottian* therefore proposes to spend the money for economy promotion on individual loans for unemployed people in order to finance the wage costs for about three years. The unemployed looks for an adequate job of his / her choice and concludes a regular labour contract. As an alternative the unemployed can set up on his / her own. The loan is paid regular interest on and paid back in fixed rates. The “newly employed” take over part of the repayment, according to their reached income. The rest of the repayment pay the employing firm and the state. (according to *Barloschky/Spitzley*)

This proposal can very well be used for creating jobs in TSO, which yet have to be attractive enough for being chosen by the unemployed – a positive incentive for good working conditions. It also can be used as an instrument in the concept of “transition labour markets”.

A similar idea have proposed *Katja Barloschky* and *Helmut Spitzley* (Bremen) with their concept of “*innovation contracts*”. Unemployed social welfare recipients can develop own projects of public utility, e.g. building up children’s playgrounds, cultural, social or ecological projects, development of technical or social inventions. They receive subsistence benefits for a 6 months period of preparing the project (above the level of social welfare benefits). At the end of this phase there should be a labour contract with social insurance, which yet requires a formal organization with enough financial background. The aim of these “*innovation contracts*”, being promoted by the social welfare department, is to strengthen the creative potential and independence of the unemployed and the promotion of social commitment. This concept, too, would enhance the status of the Third sector and its work.

*d) The concept of “Three work shifts“ (Club of Rome)*

A comprehensive socio-political concept have presented the authors *Orio Giarini* and *Patrick Liedtke* with their latest report to the Club of Rome under the title “How we will work” last year. On the basis of a comprehensive economic analyses they propose a “three work shift” model, similar to the proposal of F. Bergmann. At this point we can not get into detail of the model, but outline only the main idea.

The “first shift” is 20 hours a week of working in the social field. For this work all people receive a guaranteed subsistence income. These jobs also can be mandatorily assigned.

In the “second shift” normal gainful jobs are done, in a drastic deregulated labour market. Through this work one gets access to company pensions and can create wealth by participating in savings and share-ownership schemes.

The “third shift” consists of unpaid family and voluntary work, awarded with higher immaterial esteem.

**THE THIRD SECTOR IN SPAIN:  
REVIEW OF PRESENT POLICIES**

*Gemma Martin, Joan-Francesc Pont i Clemente*

**1. Definition, Activities And Legal Regulation**

Non-profit organisations are legal entities. Legal entities are human organisations leading to the achievement of a certain aim that is accepted by the Law as a member of the Community, being granted with legal capacity to act. What the United Nations in the Universal Bill of Rights (Dec. 16<sup>th</sup>, 1948) stated in its article number 20; that every person has the right to freely unite and associate peacefully, likewise is the meaning stated in the Spanish Constitution (Art. 22) .

Non-profit private legal entities can be in Spain of:

- a) **Public interest** (but not belonging to the State), which are the corporations, associations and foundations.
- b) **Private interest**, which are only associations, since it is not possible in the Spanish legislation to have corporations or foundations of private interest.

Non-profit organisations in Spain must have the following requirements: 3 general requirements and 2 formal requirements;

**General requirements:**

- a) To be formed by a group of persons.
- b) To be provided with a patrimony.
- c) To have a non-profit aim.

**Formal requirements:**

- d) To have a set of rules or norms for their appropriate functioning.
- e) The publicity factor.

a) To be formed by a group of persons:

The Spanish Law of Associations (1964) establishes that there should be two or more persons to set up an Association; this does not mean that in a certain moment of the Association's life there could be only one person in it, but only temporarily ñan example could be, in case of death of one of the associates or any other circumstance.

It is interesting to mention, that in the region of Catalonia there has been drafted, in 1997, a new Law of Associations to update the national Law at a local level. This law has been

appealed by the national Government alleging to be unconstitutional, on the basis that the Catalanian Parliament (according to the Spanish Constitution) has no power to enact a law of such kind. This matter is still to be solved by the Constitutional Court of Justice.

b) The need of an Association to have a patrimony:

It is mandatory (according to the Spanish Law of Associations) for an Association to have a patrimony of its own. The quantity is not so important, it can be a small one to begin with; such as donations, dues, etc., this is expressly specified in the law.

c) Non-profit aim:

These people united in the form of an association pursue a common purpose which must be non-profit. The Spanish Law of Associations requires them to be legitimate and ascertainable.

d) A set of rules for their functioning:

The Law establishes that all organisation must have a set of rules which at least states their name, corporate purpose, the board, the patrimony, and the rights and duties of their members. All these rules must be specified in the Statutes of the associations, as a legal requirement when starting an association in Spain.

e) The publicity factor:

It is necessary for the Associations to be registered in a special Registry (at a regional or national level depending on the association's scope) for everybody to know their existence. This is expressly established in the Law.

## 2. Classification

- Associations ( which includes Corporations (Corporaciones))
- Foundations.
- Co-operatives.
- Insurance Mutualities.
- Mutual Guarantee Companies. ( Saving Banks - non-profit)
- Labour Corporations (S.A. Laboral)
- Farm Partnerships ( Sociedad Agraria de Transformación)

The two last ones, have mutualistic features, but are not co-operatives.

### 2.1 Associations

They are regulated by the **Law 191/1964** and the **Decree-Law 440/1965**.

- According to the Spanish Civil Code, in its article nº35 defines an association as an organisation composed by a group of persons which decide the

functioning of the entity and its way of action (what in Latin is called a *universitas personarum*).

- There also exists, in the Spanish regulation, the figure of the corporations (*Corporaciones*) which are associations only established by a special law to regulate them and to define all its premises. The difference with the other associations is that these are created by contract.
- The Spanish legislation distinguishes two kinds of associations :
  - ñ the associations of public or private interest; that can be non-profit or forprofit,
  - ñ and the civil or mercantile partnerships; this inclusion of the partnerships in the denomination of associations in the law, can lead to confusions in concepts in some cases.

## 2.2 Foundations

There is a special article in the Spanish Constitution that refers to the Foundations in general; Art. 34 expressly recognises the right to set up foundations of general interest, according to the law that regulates them, (this means to the specific **Law of Foundations of 1994**). In the case of Foundations in Spain, it is important to mention that the regions of Catalonia, Galicia, Canary Islands and the Basque Country have their own legislation concerning this matter.

### Definition

An organisation created by one person to accomplish a purpose of general interest established by the founder, who has given to the entity the necessary economical means to achieve it. They will always be of public or general interest, non-profit purposes.

### Legislation

The Law of Foundations of November 24<sup>th</sup> 1994, is the latest law enacted regarding Foundations in Spain. Previous to this new law of Foundations, foundations were divided in three major groups: 1) Charity foundations, 2) Labour foundations, and 3) Cultural foundations.

With the new law, these classification disappears and the law now refers to foundations in general; although, it continues to make a special mention about the specific regulation of the Religious Foundations (which have their own regulation).

The articles of this law expressly mention that the non-profit feature of the Foundations do not avoid them to obtain benefits, as long as their revenues are assigned to the foundation's purposes. Another change, in this new law, is concerning the terminology; such as stating that the foundation's aims should be of 'general interest' not as it was worded before stating that their purpose should be for Charity.

General Interest Purposes as the law defines them, are very difficult to list, they could be endless; that is why in their Statutes they state some (to comply with the legal requirements), such as for cultural, scientific or educational purposes, although their activities may extend to other fields.

There are two formal requirements when creating a Foundation which are unavoidable; Public title deed (signed in a Public Notary Office), and the inscription in the Special Foundation Registry in the Protectorate, which can be at national level or regional, and it can also be divided among different Ministries or Departments of the central Government, depending on the purpose of the Foundation.

It is interesting to mention that for the effects of the protectorate, Foundations can be classified as:

- Educational Foundation
- Cultural Foundation
- Labour Foundation
- Charity Foundation

## 2.3 Cooperatives

The Spanish legislation concerning Cooperatives has been a pioneer in their regulation and establishment, we can go back to the historical period of the Second Republic (1934-36) and find regulation about this matter; which was followed by other countries, specially by the Latin-American countries.

Cooperatives are regulated in Spain according to the **Law of Cooperatives of 1987**, which expressly defines them in its article n°1 as:

The Cooperatives are companies, that with a variable capital and a democratic structure and management, associate ( in a regime of free join and voluntary leave) persons which have common interests or common social-economic needs, and for the fulfilment of those purposes and to make a service to the Community they accomplish business activities; distributing the economical results to the partners, once the necessities of the common fund have been achieved, in function of the cooperative activities which they develop.

The Law also specifies that the Cooperatives will conform to the structure and functioning of the International Cooperative Alliance. This International Alliance follows the Statutes of the Rochdale Society of Equitable Pioneers, amended in the 26<sup>th</sup> Congress celebrated in Paris in September 1976. The definition of a cooperative according to this International Alliance, is very similar to the one stated in the Spanish Law; the wording is less juridical and it states the following:

«Any association of persons or companies established for the purpose of obtaining a social and economic improvement of its members through the creation and functioning of a company on the basis of a common aid and observing the Cooperative principles as they were established by the Pioneers of Rochdale»

Scholars discuss if they should consider Cooperatives as a mercantile organisation, and therefore they would be regulated by the Commercial Code. There are different opinions concerning this matter, and the thinkers seem to have several opinions about it, specially regarding the issue of insolvency of a Cooperative; should the Law of Temporary Receivership regulated in the Commercial Code, be enforced or not?, the majority of the scholars think that in such case it would be necessary to enforce the mercantile legislation only. There are also problems when discussing the nature of the Cooperatives being non-profit, and sometimes acting as a forprofit company, it is very difficult to trace the border line.

The surplus of profits of the Cooperatives are distributed between its members according to their social participation and social services proportionally, they have an absolute democratic control.

There are two kinds of Cooperatives, in the Spanish legislation, which are called «Consume Cooperatives» and «Production Cooperatives»:

- a) «Consume Cooperatives» have as their main aim or purpose to achieve the supplies for its members at the lowest price available.
- b) «Production Cooperatives» have the purpose of remunerating the services of its members as maximum as possible.

The Company (Cooperative in this case), as a legal person, has a non-profit aim since it tries to avoid intermediaries. The members of the Cooperative have a forprofit purpose due to the fact that their main intention is to save money or to get a higher remuneration. These Cooperatives are set up to favour the workers and the population with less economical possibilities. The Company is the mean to satisfy the needs of this sector, and to avoid the capitalist businessman, creating employment with the own members of the cooperative.

We just want to point out, that in Spain new kinds of partnerships with mutualistic features (non-profit) have been emerging recently; as an example, we can mention the «Associations of Economical Interest» regulated by the Law n• 12 of 1991. The aim of these associations is to help the activities performed by its members, always following the European Community reglamentation on the matter.

### **3. Other Non-Profit Organisations**

#### **3.1 Insurance Mutualities**

They are regulated by the Law of August 2<sup>nd</sup> 1984 (law n• 33/1984). This Law includes all kinds of insurance companies; which can have the legal form of Corporations (îSociedades AnŪnimasî), Mutualities or Cooperatives .

Depending on the legal form they acquire their regulation differs, and it is all specified in this Law; therefore they can be forprofit or non-profit.

#### **3.2 Mutual Guarantee Companies**

This normally refers, concerning the non-profit sector in Spain, to the Saving Banks (îCajas de Ahorroî ).

They are regulated by a specific legislation, the Law of August 2<sup>nd</sup> 1985 (law 31/1985). This law specifies the management of these entities, their social function, their non-profit feature and the special clause stating that their profits must be applied for the interest of the purpose of such companies.

#### **3.3 Labour Corporations - Farm Partnerships**

They are very similar to the Cooperatives, self-owned and governed by the workers to improve their labour relationship and their common interests. They also are non-profit companies , and have a special regulation and sometimes are included in the regulation of mercantile companies mentioning their special characteristics, like the Labour Corporations are regulated in the recent enacted law of the 24<sup>th</sup> of March 1997 regarding the limited liability companies.

### **4. Taxation System Of The Non-Profit Organizations**

All non-profit organisations have tax exemptions granted by the Government to encourage the establishment of such kind of associations which benefit the Community as a whole.

With the enactment of the new Law of Foundation of 1994, two different kinds of taxation systems concerning the non-profit organisations, have appeared.

One is the traditional Corporation Tax Law of 1978, in its article nº 5.2, and the other one is the established in the new law of 1994 about certain Foundations and Associations of public interest.

The new taxation system established in the Law of 1994 has the following characteristics:

- 1) Tax exemption of the revenues obtained by the performance of the activity which is the purpose of the creation of the organisation.
- 2) The obligation to notify this tax-exemption to the Tax Authorities when its purposes are achieved by the means of an economic exploitation.
- 3) Taxation of the income not object of exemption on a 10% rate (the Law of 1978, art. 5.2 has a tax rate of 25%).
- 4) A 30% reduction of the tax base of interests and income coming from the real estate capital, percentage that can amount to the 100% in case of income coming from real estate donated to the Foundation.
- 5) Bonuses and deductions of the tax liability without any restriction at all.
- 6) A minimum tax ñexemption of Ptas. 200.000ñ for the non-profit entities which exclusively accomplish free services.
- 7) The deduction of taxes beared, are deductible with the possibility of a refund.

#### **4.1 The Taxation System Of Art. 5.2 Of The Law Of 1978**

- There is no possibility of requesting a tax-exemption when the income comes from the activity of an economic exploitation; they are always taxable.
- There is no reduction in the tax base.
- A 25% tax rate.
- They are only enforceable the following deductions:
  - a) Deduction due to an International Double Taxation.
  - b) Deduction due to investments .

- c) There is no minimum tax-exemption.
- d) There is always a minimum tax payment.
- e) They only have to state the income not exempted from taxation.

They are certain requirements to be favoured by the special taxation system of the Law 30/1994, which are the following:

- 1) To be entities with general interest purposes, (cultural, scientific, welfare, etc.).
- 2) Application of the income or revenues; at least the 70% of the total net income (deducing taxes and expenses) and revenues obtained have to be for the achievement of the mentioned purposes. They have a time-limit of three years to do it. This obligation does not include donations.
- 3) When there is a majority holding in mercantile companies.

It is understood by a majority holding a direct or indirect representation of more than the 50% of the social capital or the right to vote of the enterprise. When this occurs, the entity will have to certify to the Ministry of Finance (in case of Foundations) and to the Ministry of Justice (in case of Associations of public interest), that:

- a) Such ownership helps the better fulfilment of the purposes to be accomplished by the organisation, with the economical revenues obtained.
- b) Such ownership is not an infringement of the fundamental principles of the organisation.

There is a special regulation in this case, which is widely detailed, specially when asking for all the documents required to accept this engagement in a mercantile company. The request can be denied or accepted, and the resolution is informed in three months time.

- 4) A yearly rendering of accounts. The Foundations have to render accounts annually to their managing body. The Associations of public interest have to render accounts to the Ministry of Justice or to the Public Authority who authorised their inscription in the special Registry.
- 5) In case of liquidation of the organisation, their patrimony must be used for the same purposes that were described in their creation.
- 6) The managing body of these non-profit organisations must be a non remunerated position.
- 7) They have to certify to the Tax Authorities their non-profit condition.

## **4.2 Exemption Of The Local Taxes**

The non-profit organisations are tax-exempted from the Real Estate Tax and from the Tax on Commercial and Professional Activities

## **4.3 Corporate Income Tax**

According to the new law of 1994, there is a tax-exemption in the following issues:

- a) The membership fees.
- b) The public grants, except the ones used for the economic exploitations.
- c) The donations for collaboration with the organisation's aims.

The law specifies the taxable income and the deductible income, plus other matters concerning the tax base, for example, which are always trying to favour the non-profit organisations.

## **4.4 Transfer Tax And Stamp Duty And The Value Added Tax.**

The non-profit organisations are exempted from these taxes, with some legal requirements established by the law.

## **4.5 Taxation System Concerning Cooperatives.**

Cooperatives tax law has a special legislation in Spain, regulated by the **Decree-Law of May 9<sup>th</sup> 1969**.

They are divided in two groups; the 'protected Cooperatives' and the 'Non-protected Cooperatives'. Both have to be registered in a special tax registry of the Ministry of Finance. They have to fulfil formal requirements to be considered of such nature.

ñ The non-protected Cooperatives are subject to the normal taxation of the law of 1978.

ñ The protected Cooperatives have a special fiscal treatment, with special tax exemptions. To name some of these protected Cooperatives, we can list the following: The Country Cooperatives, The Cooperatives of Industrial Production, Tradesman Cooperatives, Students Cooperatives, etc.

## **5. Labour Legislation In The Third Sector**

In relation to the people working in the non-profit organisations, the first Law that we have to mention is the **Law of Volunteering Work of January 15, 1996**.

This Law states the legal requirements for an individual to be considered a volunteer and when the law is enforceable to the third sector. This law was enacted to encourage and promote the citizens to engage in non-profit organisations, public or private.

The legal requirements of this law are the following:

Activities performed by natural persons, who are not remunerated and gather the following conditions:

- a) To have an altruistic and solidary nature.
- b) That its performance is done freely, without any personal obligation or legal commitment.
- c) The non-existence of remuneration, except the right to receive payment for the expenses made while carrying out the activities of the organisation.
- d) The activities have to be performed exclusively for the non-profit organisation, excluding the ones carried out for other reasons, such as a friendship relationship or family links, etc.

The Law also protects the volunteers by making mandatory for the organisation to insure the volunteers against accidents, illnesses, during the fulfilment of their job. They are also protected, with the duty established in the law for the organisations to provide safe and healthy installations in the place of work (just like for any other kind of company, regulated in the labour legislation to protect the workers in general).

The volunteers also have the same rights as the normal workers, concerning the right to be non-discriminated in their job, the right of respectfulness of their freedom, dignity, intimacy and religious beliefs.

Volunteers also have duties, according to this specific law; they have to perform their work with the due diligence (that is also required for the normal workers), to take care of the installations and material that they work with and to follow the instructions of the managing body to achieve the purpose of the organisation.

The Law specifies the measures that the Government will use to promote and encourage the existence of volunteers:

- The volunteers will have special bonuses and reductions established by the competent Ministries, such as the use of public transportation, the entry to Museums, etc.
- The time served as a volunteer can be taken into account when the male population is called by the State to attain the Military Service (which is mandatory in Spain).

Apart from this specific Law of Volunteering Work, the non-profit organisations can hire people for the administration of the organisation, when needed, according to the Labour Legislation in terms of temporary work. There are in the Spanish Labour Legislation different kinds of labour contracts for specific purposes; for example, we can mention the temporary contract for a specific period of time, such as days or months, or the contract to fulfil a special work to be done, regardless the time involved but only

taking into account the achievement of work. These contracts are beneficial for the organisation or for any kind of company, since the Government grants a special legislation less expensive (in taxes, social security payments and regulation) than a normal indefinite labour contract.

## 5.1 Types Of Contracts

According to the Spanish Labour Legislation, there are 15 main types of employment contracts established and regulated by Law.

### 1) INDEFINITE CONTRACT

- It is the kind of contract that has no limit of time. The Law that regulates this kind of contracts is of August 2<sup>nd</sup> 1984.

### 2) INDEFINITE CONTRACT FOR WORKERS OLDER THAN FORTY-FIVE YEARS OLD.

- Contract regulated by the Law of July 30<sup>th</sup> 1992.
- Its main purpose of the Government in enacting this Law is to encourage the employment of these kind of workers that are in a situation of unemployment. There is a specific requirement for their recruitment: these workers must have been inscribed in the Unemployment Office for at least one year.
- The Companies that hire them get grants and bonuses from the Government, and the legal proceedings for the employment contract are made easier for the Company

### 3) INDEFINITE CONTRACT FOR YOUNG WORKERS , LESS THAN TWENTY-FIVE YEARS OLD OR IN THE AGE BETWEEN TWENTY-FIVE AND TWENTY-NINE .

- This contract is regulated by the Law of July 30<sup>th</sup> , 1992.
- The purpose of the Government and the legal requirements are the same ones as in the previous contract stated above , with very little differences, such as the following:
  - \* The workers in age between 25 and 29 have the legal requirement of not having worked for more than three months before the signature of this kind of contract.
  - \* The grants and bonuses given to the contractor are a little less favourable than in the contract stated above.

### 4) INDEFINITE CONTRACT FOR HANDICAPPED PERSONS .

- This contract is regulated by the Decree-Law of December 14<sup>th</sup> , 1990.
- The main purpose is to promote the labour integration of disabled workers.
- They also have the legal requirement of being inscribed in the Unemployment Office.
- The grants and bonuses given to the contractor are very beneficial.

#### 5) CONTRACT FOR PERMANENT WORKERS WITH A DISCONTINUOUS CONDITION.

- This kind of contract is drafted specifically for works of cyclic performance , such as firms which activities are only seasonal or of campaign, or companies which activities are permanent but they do not need workers the 12 months of the year.
- The contract is indefinite but with a discontinuous nature. The fulfilment of the contract is interrupted at the end of each period of activity.
- The main legal requirement of this contract, is that the workers must be hired according to a criteria of seniority.

#### 6) PART-TIME WORKING CONTRACTS

- In this kind of contract the worker is compelled to work during a certain number of hours per day or per week ( or even some days of the week or of the month) always being the number of hours worked inferior to the two thirds of a normal working time-table of the specified activity.
- This contract is regulated by the Law of January 7<sup>th</sup> 1991.
- Any kind of worker can apply for this type of contract.
- The Government encourages this kind of contracts, for unemployed people inscribed in the Unemployment Office, with different kind of grants and reductions in the Social Security payments, etc.
- The period of time of this contract has to be; no less than 12 months and not exceeding the three years time. It can be extended according to the established legal requirements.

#### 7) CONTRACT OF RELAY.

- Regulated by the Law of January 7<sup>th</sup> , 1991.
- Contract drafted for the substitution of a worker who requests a partial retirement.
- The worker hired has to be inscribed in the Unemployment Office.
- The main legal requirement of this kind of contract is the following: The partially retired worker ( who is still working for the company part-time) has to have only three years left for the total retirement , and the employer can change this contract to an indefinite one if necessary.
- Social Security payment advantages.

#### 8) CONTRACT FOR PROFESSIONAL TRAINING.

- Contract drafted for those people with a professional degree .
- The position of the worker must help the training and knowledge of the worker.
- Legal requirements: No more than four years have to pass , after the worker obtained his/her degree to be able to apply to this kind of contract. They must be inscribed in the Unemployment Office. The duration of the contract has to be between three months and three years, extensions are allowed (according to the labour regulation).

- The Government gives grants and reductions in Social Security payments, and a special grant, if the Company hires the worker, when the training period has finished, as an indefinite worker.

#### 9) CONTRACT FOR THE EDUCATION.

- Regulated by the Law of July 30<sup>th</sup>, 1992.
- Contract drafted for the worker that simultaneously to the performance of the services in the job, studies a profession that will allow him/her to be fit for the work he/she is doing.
- Legal requirements: The worker must be between the age of 16 and 20, except the handicapped persons that have no limit of age.
  - \* If the worker is under the age of 18, he/she will need their parents consent.
  - \* Duration of the contract; between three months and three years, extensions are permitted, no less than three months.
  - \* The working schedule must be co-ordinated with the time the worker has to dedicate to his/her study.
  - \* The Government promotes these kind of contracts by giving grants and bonuses to the Companies, which are very beneficial.

#### 10) CONTRACT FOR A SPECIFIC WORK OR SERVICE.

- These kind of contracts are used by the Companies in cases of specific works or services to be done for a certain period of time.
- Regulated by the Law of January 7<sup>th</sup>, 1991.
- Any kind of worker can apply for this contract.
- When the work or service is finished, the contract is cancelled automatically.
- Extensions can be agreed, according to the legal requirements.

#### 11) TEMPORARY CONTRACT FOR PRODUCTION PURPOSES.

- Regulated by the Law of January 7<sup>th</sup>, 1991.
- This contract is drafted when the Company, due to market demands, needs more personnel to fulfil its commitments.
- Any kind of worker can apply for this contract.
- The duration has to be of a maximum period of time of 6 months .

#### 12) INTERIM CONTRACT.

- This kind of contract is used to substitute employees that have the right to retain their position in the firm.
- Any kind of worker can apply for this contract.
- The duration of the contract is strictly linked with the period of time the other employee has the right to quit temporarily.
- Regulated by the Law of January 7<sup>th</sup>, 1991. All the legal requirements are very well established for those cases.

#### 13) CONTRACT FOR A NEW ACTIVITY.

- This kind of contract is drafted when an enterprise engages in a new activity and needs to increase its activities.
- Some examples could be: a new line of production, a new product, or the opening of new offices.
- Any kind of worker can apply for this contract.
- The duration of this contract has to be between 6 months and 3 years.
- Regulated by the Law of January 7<sup>th</sup>, 1991.

#### 14) PRIVATE RESIDENCE WORK CONTRACT.

- Regulated by the Law of January 7<sup>th</sup>, 1991.
- This kind of contract is when the work performed by the employee is done in his/her home without the supervision of the employer.
- Any kind of worker can apply for this contract.
- The duration can be indefinite or for a specific period of time.
- The main legal requirement is that the Company has to have a document of control of the work done, filled in with the legal requirements established by the Law.

#### 15) CONTRACT OF TEAM WORK.

- Regulated by the Law of March 10<sup>th</sup>, 1980.
- This kind of contract is drafted by the employer and the chief of a group of workers, taking them into account as a whole group.
- The chief of the group of workers is the person that represents them in the contract and is liable for it.
- The duration of the contract can be indefinite or for a certain period of time.

## **5.2 Labour Legislation For Cooperatives**

In relation to the Cooperatives, there has been many discussions between the scholars; if to consider the relationship between the partner and the partnership a labour-juridical relationship. The Labour Legislation in Spain requires a relationship to be considered according to the labour law, the condition of subordination of the worker to the businessman, (which does not exist in the Cooperatives). There is an extense jurisprudence that confirms the fact that the relationship of the partners in a Cooperative is not considered a labour relationship. The fact that the Cooperatives can advance payments to their partners has confused this issue, and the scholars are still writing about this matter, although it is an absolute hybrid that they want to create. What they really want is to separate the Cooperative as an entity and its partners as individuals dealing with such entity.

### **5.2.1 Activities**

We list several activities performed by non-profit organisations, as an example, since there are many activities in which these organisations are involved.

- \* Cultural, special courses , lectures , etc.
- \* Information in general.
- \* Library service, documents, etc.
- \* Entertainment.
- \* Publishing.
- \* Welfare assistance.
- \* Permanent education.
- \* International cooperation and solidarity.
- \* Sports.
- \* Social aid.
- \* Personal aid to serious problems.
- \* Exhibitions, Museums.
- \* Working for a better environment.
- \* Encouragement of Democracy in several ways.
- \* Scholarships.
- \* Management of the installations of the organisation.
- \* Cultural issues.
- \* Health.
- \* Communication.
- \* Holidays.
- \* Assessment in different matters.
- \* Lectures of general interest.

## **6. Political Debate**

### **6.1 Foundations**

(*Centro de Fundaciones*, main lobby on Foundations in Spain.)

The *Centro de Fundaciones* is an Association formed by the main existing Foundations in Spain. They have drafted a proposal of modification of the Law enacted November 24, 1994, which the main innovations are the following:

- 1) Art. 19; ìThe functions of the Protectorate should come down to the strict control of the legal performance of the Foundations, practised subsequently and not before. Therefore, the administrative scheme of permissions should be replaced, in a general basis, by accountings, in case of a possible objection of the Protectorate only for legal reasons. Never for reasons of convenience.î
- 2) Title II, General Principle. ìThe Foundation should not be liable for the payment of the Corporate Income Tax or, optionally, be granted with an absolute

exemption of such tax. The remarks stated below, therefore, have a subsidiary nature.â

- 3) Art. 48.1 or 51.1. âIt should be anticipated, in general terms, in any of these articles that the quantities designated to the foundational aims are exempted from the system of taxation or are deducted from the tax base.â
- 4) Art. 48.2 (first paragraph), âIn general terms, and without the need of a requested exemption, the results of the complementary economic activities as a development of the specific aim of the Foundation, must be considered not taxable, as can be the expenses of maintenance or accommodation of the people attending the organised courses of the Foundation.â
- 5) Art. 48.2. (second paragraph). The hypothesis that the foundational activities may affect the unfair competition, is an unacceptable conception. In any case, if the possibility of an interference with the concept âunfair competitionâ, the solution must be founded in the appropriate regulation, which already exists, not interpreting the expression as a vague juridical concept, which it is not its meaning.â
- 6) Art. 52. âThe exemption for re-investment must be permitted, even though the increase in patrimony does not come from the transfer of the material elements of the assets, since many Foundations have their patrimony invested in share stock which are non-material assets.â

#### 7) MAIN LEGISLATIVE INITIATIVES TO DEVELOP EX-NOVO.

- \* âThe specific regulation of the Labour Foundations, subject that the Additional Regulation eighteenth of the Law complied to regulate before November 26,1995.â
- \* âThe establishment of a Central Registry of Denominations of the Foundations, which will include all the Foundations existing in the national territory.â
- \* âThe tax deduction of the initial endowment in the moment of establishment of the Foundation.â
- \* âHarmonization, regarding the fiscal aspects, of the Scholarship schemes granted by the public powers and the ones granted by the Foundations.â

âThe exemption for the Foundations of the Corporate Income Tax, in general terms, of the increase in patrimony coming from the transfers of the properties existing in their assets, having to be always re-invested in the aims of the Foundations.â