Challenges and Opportunities Confronting the Third Sector and Civil Society under the Treaty of Lisbon

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The new treaty of the European Union, the Treaty of Lisbon of 2007 which has been concluded but not yet ratified by all Member States, is a daring new treaty that observes the principle of equality of its citizens, whom according to the treaty, shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union.

Although article 10 of this treaty states that the functioning of the Union shall be founded on representative democracy, citizens and their representative associations are given the opportunity to make known and publicly exchange their view in all areas of Union action. To that purpose European institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society (article 11 para 1 Lisbon Treaty). This implies the concept of a participatory democracy. The European Commission is given the tasks to carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent (art. 11 para 3 Lisbon Treaty). The idea of a participatory democracy is meant as a means to get more European citizens involved in the democratic process. The main thought is of “civil society” playing an important role in the European Union. This means a better role for non governmental organizations (NGOs) such as foundations and associations and the citizens as participants of the participatory democracy. However, there are uncertainties concerning the definition and the nature of “civil society” of which NGOs may be regarded as typical. What organizations are considered as participants of European “civil society”? And what principles are laid down as principles of NGO-law in Europe? There are Recommendations of the Committee of Ministers of the Council of Europe to member states on the legal status of NGOs in Europe, and there are other publications without legislative authority rather expressing ideas from European experts about what should be regulated for associations c.q. foundations functioning in between EU countries. Though, historically, there is a great diversity of regulations regarding NGOs in the Member States of the European Union, in which the cultural differences between the Member States can be recognized. The result is that the practical forms and legal status of NGOs vary widely from one EU Member State to another within the European Union.

The main aim of this proposal is to identify the different aspects of NGOs in the Member States of the European Union, and especially to look at the concept of “public benefit” as a basis concept of NGOs as far as this concept differs from the concept of the Council of Europe. The question will be whether it will be possible to formulate minimum requirements concerning the concept of public benefit for the European Union. The topic covered in the paper is the legal form of NGOs in some Western, Central European and East European Union countries, such as the Netherlands, Czech and Hungary. These subjects are on legal and tax status, governmental approach to these bodies, contracts, grants and consultation.

Another question will be what makes a NGO to a representative NGO at the level of the European Union? To that purpose there will be looked at the policy of the European Commission carrying out of broad consultations with representative associations and civil society.

The research methodology and design are to compare the laws of the Member States on the subject of public benefit and to analyze the Commission attitude concerning the cooperation of the Commission with European NGOs.


2 COM (91) 273 final-SYN 386 of the Commission of the European Community; Klaus Hopt, c.s. (eds), The European Foundation, a new legal Approach, Verlag Bertelsmann Stiftung, Gütersloh 2006.
The finding key legal and empirical findings are the different attitudes concerning the concept of public benefit in the European Union Member States and the irrational way the European Commission selects non-governmental organizations to cooperate with. The different findings are of importance for the understanding of the concept of participatory democracy in the European Union according to the Lisbon Treaty.

References:


Hopt, Kl. c.s. (2006), The European Foundation, A New Legal Approach, Verlag Bertelsmann Stiftung, Gütersloh.


Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. 2008/C 115/01