

SEMINAR OF HIGHER LEARNING

THIRD SECTOR REFORM

GENERAL INTEREST ACTIVITIES AND PRIVATE AUTONOMY

Saturday, February 17, 2018, Prof. Avv. Gregorio Gitti will take part in the Round Table, with Prof. Avv. Giusella Finocchiaro (University of Bologna), Avv. Giuseppe Guzzetti (President of ACRI), Avv. Giorgio Pagliari (University of Parma), Prof. Fabio Roversi Monaco (University of Bologna) and Prof. Stefano Zamagni (University of Bologna), at the Seminar "*Freedom, Private Autonomy and Social Benefit*" that will take place at 9:00 am on Saturday, February 17, 2018, at the Scuola di Specializzazione in Studi sull'Amministrazione Pubblica of the University of Bologna, via Belmeloro, 10, as part of the Seminar of Higher Learning I - Third Sector.

The Round Table will focus on banking foundations as institutions aiming at the achievement of civil liberties by the community, as clearly stated in 2003 by the Constitutional Court.

Banking foundations are organisations, which were introduced by the Italian legislator in 1990 during a reform of Italian public banks. Legislation prescribed that the business of saving banks was contributed into public companies, whose shares were allocated to private foundations arising from the transformation of such former banks. These foundations carried on public and social interest activities (related to arts and culture, scientific research, welfare and the like), but also contributed to the management of banking companies, appointing the boards and addressing business strategies.

In the last 25 years, banking foundations helped the growth of the so called 'third sector' and social economy in Italy, but are still strictly linked to banks, despite other statutes incentivized the sale of their shares in the banking companies. Some problems in the governance of banking foundations arose due to the excessive influence of local politicians and banks.

The Memorandum of Understanding signed in 2015 by the Ministry of Economy and Finances and ACRI (the Association of Foundations and Saving Banks) is an original and innovative attempt to deal with these issues. This is a private agreement between foundations and the public authority, whose nature and contents will be discussed during the Seminar. The foundations agreed to adopt certain resolutions and to amend their by-laws in order to implement the principles stated in the Memorandum, and the Ministry, as supervisor, previously declared that such resolutions and amendments will be positively evaluated.

The principles to be implemented regard both asset management and governance. On the one hand, the integrity of the assets is achieved by adopting policies of risk

limitation and investment diversification. On the other hand, the purpose is to allow the appointment of capable and independent people to the governing bodies of the foundations.

The Memorandum develops some principles which were already set forth by the law, but also adds some other rules, which are typical for private activities of general interest (such as publicity and transparency). The goal is also to make foundations independent from banks and politics, in order to enable them to carry on philanthropic activities more efficiently.

Since banking foundations are regarded by the law as private entities, the true meaning of this Memorandum is the promotion of private autonomy in a dialogical perspective, guiding them in the achievement of public interests and social benefits, according to the principle of subsidiarity. The role given to banking foundations is to identify and respond to the social needs of local communities, in particular those which both State and market are not able to serve properly.

DISCLAIMER

La presente Newsletter ha il solo scopo di fornire informazioni di carattere generale. Di conseguenza, non costituisce un parere legale né può in alcun modo considerarsi come sostitutivo di una consulenza legale specifica.

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice

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