



CONSULTA ONLINE

PERIODICO TELEMATICO ISSN 1971-9892



2018 FASC. I

(ESTRATTO)

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**THE NEW ITALIAN CODE OF THE THIRD SECTOR: TOWARDS
A NEW MODEL OF WELFARE**

29 MARZO 2018

IDEATORE E DIRETTORE RESPONSABILE: PROF. PASQUALE COSTANZO

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The New Italian Code of the Third Sector: towards a New Model of Welfare**

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ABSTRACT

The paper explores the links between the new rules of the Italian Legislative Decree no. 117 of July 3, 2017, know as *Code of the Third Sector*, and a specific theoretical consideration on the Italian Welfare system regarding the safeguarding of social rights and what is connected to them. In particular the paper shows how the types of cooperation between Third Sector entities and public bodies, are able to guarantee a process of putting into a legal area a particular type of goods, that we have called relational goods.

1. *The enforcement of Legislative Decree no. 117 of July 3, 2017, know as Code of the Third Sector.*

Following Legislative Decree No. 117 of July 3, 2017, issued in accordance with Article 1 of Law no. 106 of June 6, 2016, concerning Delegation to the Government of Reform of the Third Sector, of Social Companies, and of the Universal Civil Service Sector, the new Code of the Third Sector went into effect in Italy¹.

With the Third Sector Code, the Italian Welfare System leans toward a phase of renewal and transformation, which passes through the valorization of the traditional figures included in the non-profit category².

In particular, the construction of a new government based on legal instruments of a partnership between non-profit, for-profit and public entities, is probably the most significant element of the legislative decree n. 117/2017³.

According to Article 1, the Code aims for the reorganization and organic review of the regulations in the field of third sector entities, «in order to support the autonomous initiative of citizens who contribute, even in an associated form, to pursuing the common good, to raising the levels of active

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** This is last version of a paper presented during Eighth Polish Conference regarding public procurement 'New public procurement law. Directions of modernization', Cracow University of Economic, Krakow, 21 September 2016, under the title 'Buying social in the new public procurement law'. It has been updated on March 1st, 2018

¹ As for the first comments on the news introduced by Legislative Decree no. 117/2017, see A. MAZZULLO, *Il nuovo Codice del Terzo settore*, Giappichelli, Torino, 2017; R. DABORMIDA, *La riforma del Terzo settore*, Giuffrè, Milano, 2017; M.N. IANNACONE, *Prime considerazioni sul Codice del Terzo Settore*, in *Cooperative ed enti non profit*, 2017-10, 7 ss. Among the main new provisions, there are: the forecast of the new category of third sector entities, in accordance with article 4; the introduction of a simplified procedure for the acquisition of legal personality by associations and third sector entities foundations, in accordance with article 22; enlargement sectors of activity of general interest in which the third sector entities can operate, in accordance with article 5; the birth of the associative networks, in accordance with article 41; the establishment of the new National Single Register of the Third Sector, in accordance with articles 45-54; the reform of service centers for volunteering, in accordance with articles 61-66; the provision of a specific fund for support the initiatives and activities of the associative bodies of the Third Sector, in accordance with article 72; the establishment of the Council the Third Sector, in accordance with articles 58-60; the reform tax assessment of the third sector entities, in accordance with articles 79 to 89; the introduction of a social bonus for the exploitation of public buildings for the third sector entities and the introduction of the titles of solidarity, in accordance with article 77; the provision of tax benefits for the activities of the Third sector. See also G. PONZANELLI, *Terzo settore: la legge delega di riforma*, in *Nuova giur. civ. comm.*, 2017, 726 ss.

² G. ARENA, *Amministrazione e Società. Il nuovo cittadino*, in *Riv. trim. dir. pubbl.*, 2017, 42 ss.

³ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017: per una nuova governance della solidarietà*, in *federalismi.it*, 31 gennaio 2018, 1 ss. For more general and previous considerations on the same field, F. MANGANARO, *Le amministrazioni pubbliche in forma privatistica: fondazioni, associazioni e organizzazioni civiche*, in *Dir. amm.*, 2014, 45 ss.

citizenship, cohesion and protection social, to encouraging participation, inclusion and fullness development of the person, to enhance the potential for growth and growth employment, in implementation of Articles 2, 3, 4, 9, 18 and 118, fourth paragraph of the Constitution».

In fact, in theoretical reference to the new Code, it can be considered the branch of the so-called civil economy; an idea of society as a multi-centered and multi-dimensional reality. In this society dynamics are not focused any longer on the figure of a functional man, that would have given – according to Böckenförde's criticism - all the models of sociality, that do not obey to self-interests, a kind of non-influential background. On the contrary, based on more recent studies, in the society, there would live human beings that consider each other reciprocally responsible and in turn make an effort in mutual and public-spirited supporting relations⁴.

In this regard, the new Code extracts previous references within the administrative law in the sphere of organization and management of welfare, leaning toward the satisfaction of social rights. This model of welfare guaranteed a process of putting into a legal area particular types of goods, being related to the ratio of proximity between the bodies of the Third sector (voluntary work, non-governmental organizations, social enterprises, cooperative companies, social cooperatives etc..) and the users of the services, which we have called relational goods⁵.

According to this theoretical reconstruction, goods whose usefulness for the consumers depends, beyond the intrinsic and objective characteristics of the same goods, and also from the method of communication and mutual interaction among the people that produce these goods and those that use them, are a remedy to social needs.

Within the category of goods in the legal sense, it is important to note the very precise identification of some immaterial entities, other than corporeal things, although considered subject to rights.

With regard to these kinds of goods, the ways of enjoyment can be oriented in a direction no longer exclusive, but plural and/or supportive. The charge of conflict, which, in the traditional approach surrounds the interest for the good and results in an individualistic structure of enjoyment, is tempered by the renewal of the same interest in head to a series or plurality of subjects, each of which has, with regard to the same good, a non-rival relationship regarding the other, as the enjoyment of one is not a limitation to the others.

It is important to add, with reference to this issue, that the same public doctrine has proved useful to access (among many) to the famous distinction between exclusive goods and inclusive goods.

⁴ J.T. GOUBOUT, *Il linguaggio del dono*, ed. it., Torino, 1998; L. BRUNI, *The Value of Sociality: Economics and Relationality in the Light of the Economy of Communion*, in *Revista portuguesa de Filosofia*, 2014, 64 ss.

⁵ See V. BERLINGÒ, *Beni relazionali. L'apporto dei fatti di sentimento all'organizzazione dei servizi sociali*, Milano, 2010; ID., *La rilevanza dei fatti di sentimento nel diritto amministrativo: i fattori relazionali nella tutela dei diritti sociali*, in *Diritto amministrativo*, 2012. The scholars of administrative law cannot but continue a comparison of more opinions, equal to those of other disciplines, some of which intend to contribute furthermore to the task of analyzing the social dynamics of contemporaneity, in which they are reflected, in the alignment to an immanent uncertainty and of a fragmentary and liquid state, the typical features of society, perhaps prisoner of the myth of reason and so little inclined to valorize the pushes that come from the emotions and passions, useful instruments to deepen the imminent advancing of complexity and of risks to it linked. In such a scenery, the theme of Welfare System – as known specifically predestined to the safeguard of rights of those who live in condition (and/or exposed to risks) of extreme poverty, infective illnesses, lack of primary education, environmental unsustainability, disappearance of genre, compared to the *Millenium Development Goals 2030* are still far from their achievement – it offers interesting and relevant hints for a deep reflection, history showing that exacting in coincidence to particular situation of crisis the acknowledgement of social rights has contributed to ensure an always increasing demonstration of interior dimension in individuals, scanning the transformation in a person from an abstract man put at the centre of the seventeen hundred declaration of rights. From no legal disciplines, useful suggestions arise that invite to go beyond the residual conditioning that goes back to an enlightening vision, from which a thought 'amputate' of human being was inherited, as reason to the small relevance accorded to the emotive sphere compared to the rational sphere. In this sense, we can say that the appeal to a multi o inter disciplinary prospective to the use of each recent paradigm typical of neuro-science, psychology, sociology and also economics, that take steps from an updated representation, inclusive and multi-experienced of the human nature, seems to have profitable results for the converging of new contributions in safeguarding social rights.

If then there is such a good where, not only conflicting relationships exist, but there is a web or network of relationships of solidarity among the people able to trigger off a fruitful and successful circuit of reciprocity, the phenomenon is likely to lead to a sort of autonomous or additive social utility. It is to be framed in a category to itself of the amplest class of the inclusive goods, that valorize the potentialities of the mutual interaction among the people and can assume the denomination of relational goods.

Such goods cannot be identified in the ‘cold’ delivery of a financial benefit for so to say ‘*capitaria*’ (i.e. for individuals) from the State, because they cannot be produced, consumed or acquired by the subject *uti singuli*⁶.

Given their narrow connection with profiles of reciprocity and sharing, the relational goods become co-essential to the services while settling in material dimensions (such as a canteen, home care, the management of a housing community for minors or an educational daytime center for disabled), as rendered by particular subjects, and the entities of the Third Sector. This allows the recipient (or the user) with whom they are interacting, to redeem himself from a merely passive, anonymous and impersonal condition, on the edge of legal bounds, to participate actively.

Innovating welfare means, then, building a new governance capable of developing innovative projects and products, strengthening relations between different subjects, creating models of coordination that are inspired by the principles of participation and reciprocity⁷.

In this perspective Article 2 of Legislative Decree n. 117/2017 recognizes the value and the social function of the Third Sector as an expression of participation, solidarity, and pluralism. Article 2 arranges for development and the original contribution to the pursuit of civic, solidarity and social utility purposes «also through forms of collaboration with the State, the Regions, the Autonomous Provinces and local authorities»⁸.

2. The legal notion of Third Sector Entities

The Code first consecrates the expression ‘Third Sector’, which takes the place of the previous fiscal qualification of non-profit organizations of social utility (ONLUS). At the same time, the Code «dissolves the crux of its conceptual definition, making the transfer of the notion of Third Sector from the field of economics and sociology to the legal field»⁹.

The concept of the Third Sector becomes legal notion from the title of the provision; respect that it is necessary to check if one of his own nominal positivization also corresponds to a legalization of content¹⁰.

In this regard, the Article 4 of the Code in the implementation of the provisions pursuant to Article 1, paragraph 1, of the Delegated Law n. 106/2016, provides that Third Sector entities are the bodies that fall within specific organizational forms already typified by the Code or by another decree implementing the Delegated Law (i.e. voluntary organizations; promotion associations social; philanthropic institutions; social enterprises, including social cooperatives; the associative networks and the mutual associations). In addition to these, the same article mentioned the so called ‘atypical’ entities, structured as ‘generic’ recognized associations or unrecognized, foundations or other bodies of law private companies other than companies.

⁶ A. SUPLOT, *Les deux visages de la contractualisation : déconstruction du Droit et renaissance féodale*, in S. CHASSAGNARD-PINET - D. HIEZ, *Approche critique de la contractualisation*, LGDJ, Paris, 2007, 19 ss.; nonché ID., *Homo Juridicus. Saggio sulla funzione antropologica del diritto*, Mondadori, Milano, 2006, 27 ss.

⁷ On the main relevance of the administrative law for the forecast of the new the law governing the third sector, see M. VITA DE GIORGI, *Terzo settore. Il tempo della riforma*, in *Studium Iuris*, 2018, 139 ss.

⁸ L. BOZZI, *Terzo Settore: osservazioni a “prima lettura” su una riforma culturale prima che giuridica*, in *Contratto e impresa*, 2017, 1253 ss.

⁹ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

¹⁰ M. CEOLIN, *Il c.d. codice del terzo settore (D. Lgs. 3 luglio 2017, n. 117): un’occasione mancata?*, in *Nuove leggi civ. comm.*, 2018, 1 ss.

A second important condition is that all the typical or atypical bodies indicated above deemed to be Third Sector entities, must pursue civic, solidarity purposes or of social utility through the development of one or more activities of general interest in the form of voluntary action and free donation of money, goods or services, or mutuality or production or exchange of goods or services. According to the formulation of the article, there is a qualifying element in the negative, that is to say, the lack of profit. Unlike the previous provisions, the principle of non-distribution constraint joins and no longer replaces those finalities (civic, solidarity and social utility)¹¹.

The activities of general interest are typified in the full list of the Article 5 of the Code. The latter provides a list of twenty-six typological activities – some with referrals to other special laws - which by legislative choice are considered of general interest; the provision, therefore, leaves no space for any further value judgment for these activities which, if carried out in accordance with the sectoral legislation, automatically fall within the activities of interest¹². The Article 5 adds that they may be periodically updated by decree of the President of the Ministers Council.

¹¹ M. CEOLIN, *Il c.d. codice del terzo settore (D. Lgs. 3 luglio 2017, n. 117)*, cit.

¹² According to Article 5, paragraph 1, of Legislative Decree n. 117/2017: «Third sector entities, other than social enterprises including social cooperatives, they exercise exclusively or main one or more activities of general interest for the pursuit, of non-profit, civic, solidarity and social utility. The activities of interest general, if carried out in accordance with the particular rules that regulate the exercise, are considered the following about: a) social interventions and services pursuant to article 1, paragraphs 1 and 2 of the Law of November 8, 2000, n. 328, and subsequent modifications, and interventions and services pursuant to law February 5, 1992, n. 104, and to the law of June 22, 2016, n. 112, and following modifications; b) interventions and health services; c) social and health services in accordance with the President's decree of the Council of Ministers of 14 February 2001; d) education, education and vocational training, pursuant to of the law of 28 March 2003, n. 53, and subsequent modifications, as well as the cultural activity of social interest with educational purposes; e) interventions and services aimed at safeguarding and improving the conditions of the environment and the prudent and rational use of natural resources, with the exclusion of the habitual activity of collecting and recycling urban, special and dangerous waste; f) interventions for the protection and enhancement of cultural heritage and of the landscape, according to the legislative decree January 22, 2004, n. 42, and subsequent modifications; g) university and post-graduate education; h) scientific research of particular social interest; i) organization and management of cultural, artistic or recreational activities of social interest, including activities, also editorials, promotion and dissemination of the culture and practice of the voluntary work and activities of general interest referred to in present article; j) community sound broadcasting pursuant to of the article 16, paragraph 5, of the law August 6, 1990, n. 223, and further modifications; k) organization and management of tourist activities of social, cultural or religious interest; l) extra-school training, aimed at prevention of early school leaving and scholastic and educational success, the prevention of bullying and the fight against poverty education; m) instrumental services to Third sector entities rendered by bodies composed not less than seventy percent by entities of the Third sector; n) development cooperation, pursuant to the law of August 11, 2014, n. 125, and subsequent modifications; o) commercial, productive, and educational information, promotion and representation activities, concession in license of certification marks, carried out within or in favor of fair trade chains, to be understood as a relationship commercial with a manufacturer operating in an economic area disadvantaged, usually located in a developing country, on the basis of a long-term agreement to promote the access of the producer to the market and providing for the payment of a fair price, development measures in favor of the producer and the obligation of the manufacturer to guarantee safe working conditions, in compliance of national and international regulations, in order to allow the workers to lead a free and dignified existence, and of respect trade union rights, as well as to commit to the contrast of child labor; p) services for insertion or reintegration into labor market for workers and persons referred to in Article 2, paragraph 4, of the legislative decree revising the rules on social enterprise, as referred to in Article 1, comma 2, letter c), of the law June 6, 2016, n. 106; q) social housing, pursuant to the decree of the Ministry of Infrastructure of April 22, 2008, as amended, as well as each other activity of temporary residential character directed to social meeting, health, cultural and training needs or working; r) humanitarian reception and social integration of migrants; s) social agriculture, in accordance with article 2 of the law August 18, 2015, n. 141, and subsequent modifications; t) organization and management of sports activities amateur; u) charity, distance support, free assignment of foods or products referred to in the law of August 19, 2016, n. 166, and subsequent modifications, or provision of money, goods or services to support disadvantaged persons or activities of general interest pursuant to this article; v) promotion of the culture of legality, peace among peoples, nonviolence and unarmed defense; w) promotion and protection of human, civil, social and political rights, as well as the rights of consumers and users of the general interest activities referred to in this article, promotion of equal opportunities and mutual aid initiatives, including banks of the times referred to in Article 27 of the Law of March 8, 2000, n. 53, and the joint purchasing groups referred to in Article 1, paragraph 266, of the Law of December 24, 2007, n. 244; x) care of procedures for international adoption pursuant to the law of May 4, 1983, n. 184; y) civil protection according to the law of February 24, 1992, n. 225, and subsequent modifications; z) requalification of unused public goods or assets confiscated from organized crime».

A third important factor is that they are to be considered only Third Sector entities included in the Single National Register of the Third Sector referred to Article 45, in addition to being typical or atypical, and pursue one or more of the activities of general interest pursuant to Article 5 of the Code¹³.

3. The relationship between the Third Sector and Public Bodies, according to Title VII of the Code.

The Code deals with the relationship between the Third Sector and Public Bodies into Title VII¹⁴.

Paragraph 1 of Article 55, prescribes that the public bodies in the exercise of their functions of planning and organization at the territorial level, concerning the activities of general interest contemplated in the Article 5, must involve the Third Sector entities in an active way.

A multiplicity of principles should guide administrative action. Among these principles, the article mentioned: subsidiarity, cooperation, effectiveness, efficiency and economy, homogeneity, financial and equity coverage, responsibility and uniqueness of the administration, organizational and regulatory autonomy. In this regard, it has been noted that these are the same principles that govern the planning and organization of the Integrated System of Social Interventions and Services, pursuant to Article 1, paragraph 3, of the Law no. 328 of 2000¹⁵.

The approach in which they move is to direct the administrative activity in a functional way to the objectives that public bodies intend to achieve, encouraging and guiding forms of aggregation between institutions in order to obtain optimal levels of service delivery and savings of expense.

In particular, the Article 55 identifies three tools through which to develop the partnership: co-planning, co-programming and accreditation¹⁶. The Article 56 regulates the conventions. Ultimately, the Article 57 contemplates the specific case of agreements concerning emergency and urgent medical transport service.

3.1. Co-programming

The co-programming, pursuant to paragraph 2 of the Article 55, is aimed at identifying the needs to be met and on the basis of these, the necessary interventions, the ways to achieve them and the resources available.

The co-programming, to which paragraph 2 is dedicated, is understood as a form of involvement of the entities of the Third sector in terms not co-decision makers, but more exquisitely participatory, in order to help the Public Bodies¹⁷.

This case, then, refers to the theme of participation in making procedures of the so-called ‘general’ measures, limited by the Article 13 of the Administrative Procedure Act Law August 7, 1990, n. 241¹⁸, as well as of the rules that govern specific procedures and in particular those related to the social planning zone. So, it is a different aspect than the direct delivery of services and therefore than the areas of active co-operation of the Third Sector.

¹³ L. GILI, *Il Codice del Terzo settore ed i rapporti collaborativi con la P.A.*, in *Urb. e app.*, 2018, 16 s. Until the new system is not operational, the subscription to one of the registers currently provided for by the regulations of sector is necessary. For a comment to Labor and Social Policy Ministry Note, December 29, 2017, *Codice del Terzo settore. Questioni di diritto transitorio. Prime indicazioni*, see P. A. PESTICCIO, *Codice del Terzo Settore: prime questioni di diritto transitorio*, in *Cooperative e Enti non profit*, 2018-2, 7 ss.

¹⁴ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

¹⁵ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

¹⁶ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

¹⁷ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

¹⁸ L. GILI, *Il Codice del Terzo settore ed i rapporti collaborativi con la P.A.*, in *Urb. e app.*, 2018, 16 s. For more general considerations on value of participation, see, recently, B. GAGLIARDI, *Intervento nel procedimento amministrativo, giusto procedimento e tutela del contraddittorio*, in *Dir. amm.*, 2017, 373 ss.

According to the doctrine, «the public administration can practice co-programming respecting the criterion of impartiality and transparency, only upon the outcome of a public notice that allows ‘sit down at the table’ to interested parties, in possession of the requirements set by the public body. In fact, with the Third Sector Code, the aforementioned institutions are cleared through specific areas such as traditionally that of social services and present themselves now as collaborative forms operating for all activities of general relevance provided by article 5 of the Code. On the other hand, it is doubtful whether there is a true one obligation of public administrations to start co-programming procedures for all activities indicated, even if this would seem reasonable and desirable, since co-programming is not anything but the recognition of the possibility of procedural participation in general and programmatic acts and that this form of participation is positive, because it should result in greater ‘quality’ preliminary investigation of the final decision that is called to take on the public body»¹⁹.

3.2. Co-planning.

The co-planning, governed by paragraph 3 of Article 55, is an operational tool aimed at delivery services. In fact, it is intended to define and possibly implement specific service or intervention projects to meet the needs defined in the light of the planning act referred to in paragraph 2.

The model to which the delegated legislator referred is the one indicated in the Resolution of the National Anti-Corruption Authority (ANAC) n. 32 of January 26, 2016, concerning the *Guidelines for the Assignment of Services to Third Sector Entities and Social Cooperatives*. The resolution identifies a procedure that is divided into two main phases. The first one is dedicated to the choice of the subject with which to share the activities, while the second one is represented by the phase in which the co-design activity is carried out.

Co-planning, especially this integrated plan, is closer to the market and its hybridizations with the Third sector and can give rise to different qualifications.

On the one hand, following the jurisprudence which, dealing with the co-design of social services based on forecasts of the mentioned Law no. 328/2000 and regional legislation of reference, has qualified the institute in terms of a contract, the Third sector can also compare with public administration through the Market rules and also in competition with ‘inhomogeneous’ operators²⁰.

¹⁹ D. CARDIOLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

²⁰ It's known that the contribution offered by certain European documents, especially of soft law, allows to locate a policy of promoting the c.d. *Buying Social*, within which Member States are urged to introduce, in the tender procedure, rules that give relevance to c.d. ‘*Social clauses*’. A guide, adopted by the European Commission on October 2010, employs, in fact, the expression ‘Buying social’ to indicate the possibility for governments to come «to procurement operations that take into account one or more of the following social considerations: employment opportunities, decent work, compliance with social and labor rights, social inclusion (including persons with disabilities), equal opportunities, accessibility design for all, taking account of sustainability criteria, including ethical trade issues and wider voluntary compliance with corporate social responsibility (CSR), while observing the principles enshrined in the Treaty for the European Union (TFEU) and the Procurement Directives». The generic term ‘social aspects’, referring to the matter of public contracts firstly by the case law of the Court of Justice of the European Union, and subsequently developed first with some communications of the European Commission in 2001²⁰ and then with the Directives 2004/17/EC and 2004/18/EC, has over time acquired an increasingly important legal meaning, so as to enable public administrations to contribute indirectly to the promotion of social development. The most recent evolution of European law in this matter, to which Directive 24/2014 is the last step, transcends, therefore, the original perspective, purely mercantile of Union Europe, to access a more balanced approach, emphasizing requirements that work to give, in an equal measure, sustainable economic and social development. The Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC – which waits to find implementation in the Member States, that make up Europe, including Italy, whose legislation is found in new Code of public contracts (Legislative Decree 18 April 2016, n. 50) – has completed a thorough review of the European rules on public contracts, also on the opportunities offered for public authorities to take into account social considerations in their public procurement.

However, it is necessary to stress that there are also possible hybridizations²¹, i.e. that certain contracts are reserved only for social enterprises or structures similar organizations, as in the case of Article 143 Legislative Decree no. 50/2016, concerning Code of Public Contracts, or even that analytic application of the market rules, normally operating for public contracts, be mitigated against a greater recognition of the discretion of the institutions public, which is the case of the ‘lightened regime’ operating for social services and others, now regulated by Article 142 of the same Code of Public Contracts²².

On the other hand, a different qualification proposal in light of recent forecasts of the Third Sector Code is one offered by the ANAC, with the mentioned 2016 Guidelines. In fact, the Authority already envisaged the qualification co-designing not in terms of contract public but of ‘procedural agreement of collaboration’, which is a sort of partnership collaborative private public. According to the doctrine, this agreement would be distinguished from a contract or a concession of services compared to the fact that the partner private participates actively in the co-planning, providing additional resources, such as equipment, human resources, the capacity of the candidate subject to obtain contributions and/or financial resources by non-public bodies²³.

3.3. Accreditation.

Paragraph 4 of the Article 55 takes into consideration the «forms of accreditation», as instruments through which public entities can identify the Third Sector bodies with which to activate the partnership for the purposes of co-planning.

In particular, accreditation is used to regulate the entry into the Market of parties wishing to provide services on behalf of the public. In this case, the accreditation serves to access the selection procedures operated by the administration. In other cases, accreditation is used to promote and improve the quality of services. Operators are required to guarantee predetermined structural and organizational levels and, through accreditation, the lenders are selected, then monitoring and performance verification. In the national panorama, there is therefore no single model of accreditation and this justifies the indication contained in paragraph 4 of the article 55, which generically refers to the “forms of accreditation²⁴.”

The well-known model of accreditation is one introduced in the health sector by Legislative Decree no. 502/1992, as a tool for verifying and guaranteeing the quality and safety of assistance, in a context where the technical-professional, organizational and structural requirements and expected behaviors are defined at a regional level; and then extended to the social-assistance area, by the Law no.

²¹ M. MATTALIA, *Gli operatori economici nella disciplina sugli appalti e concessioni tra concorrenza e solidarietà*, in *Dir. amm.*, 2016, 465 ss.

²² L. MAZZEO, *Gli appalti (e le concessioni) nei servizi sociali: un regime - non troppo - “alleggerito” frutto di una “complicata semplificazione”*, in *Urb. e app.*, 2016, 1001 ss.; P. MICHARA, *La attività altruistiche ad alta intensità di manodopera e i “regimi particolari” nel d.lgs. 50/2016*, in C. MARZUOLI - S. TORRICELLI (a cura di), *La dimensione sociale della contrattazione pubblica*, Napoli, 2017, 221 ss. The new goals are developed in specific provisions of the Directive, such as the article 20 (Reserved contracts); the 76° having regard; the 114° having regard. Then the Title III takes care of particular procurement regimes, particularly for Social and other specific services. The article 74 foresees a ‘light system’ for the award of these services (with particular rules on publication of notices in article 75 and specific principles of awarding contracts in article 76). The discipline is completed in next article 77. For a comment of previous rules, see V. BERLINGÒ, *Partecipazione a pubbliche gare ed appalti riservati*, in F. SAITTA (a cura di), *Appalti e contratti pubblici. Commentario sistematico*, Padova, Cedam, 2016, cap. XXIV; ID., *Buying Social in the new Public Procurement Law. The European and Italian systems*, in *Prawo zamówień publicznych*, 2015- 3, 12 ss.; and also P. MICHARA, *Contrattazione e servizi “relazionali” ai sensi delle Direttive Comunitarie 2014/23/UE e 2014/24/UE. Spunti per un inquadramento*, in *Riv. It. dir. pubbl. com.*, 2016, 461 ss.

²³ L. GILI, *Il Codice del Terzo settore ed i rapporti collaborativi con la P.A.*, cit.

²⁴ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit.

382/2000, which configures accreditation as a necessary condition for all residential and semi-residential services and facilities, regardless of whether they are public or private operators²⁵.

The Regions have also regulated the accreditation differently and have extended its application, attributing different purposes to it.

The provision states that regardless of whether or not accreditation or other instruments are used, the principles of transparency, impartiality, participation and equal treatment must be respected, and that the administration must first define the general and specific objectives of the intervention, the duration and essential characteristics of the same, as well as the criteria and modalities for the identification of partner institutions.

3.4. *Convention.*

The legislative decree no. 117/2017, in the Article 56, also takes into consideration the traditional partnership model, i.e. the convention. On the other hand, the convention is envisaged as an exceptional instrument with respect to co-planning. In fact, these agreements can only be signed with voluntary organizations and social promotion associations, exclusively for the performance of third-party activities and social services of general interest and on condition that the use of the market is less favorable and not no consideration is paid, but only the reimbursement of the expenses actually incurred. For the identification of the contracting party, the administration is required to establish a comparative procedure reserved for voluntary organizations and social promotion associations, with the observance of «the principles of impartiality, publicity, transparency, participation, and equal treatment». In addition, the requirements to be presented by the candidates are detailed in paragraph 3: in addition to the general requirements of professional morality, there are those pertaining to the organizational structure and activity. The legislator delegated then provided in paragraph 4 of the Article 56, in a very precise manner, the elements that the conventions must contain, in particular as regards control over the implementation of the agreement, in the dual perspective of continuity of services and respect for «rights and dignity of users»²⁶.

3.5. *Agreements concerning emergency and urgent medical transport service.*

Title VII dedicated to relations with third sector entities closes with Article 57, where a special rule for the assignment of the emergency and emergency medical transport service is regulated. The model is that of the convention governed by paragraphs 2, 3 and 4 of the Article 56, however, the assignment is reserved to voluntary associations, registered for at least six months in the National Register of the Third Sector, members of a national association network referred to in Article 41, paragraph 2, and accredited pursuant to regional legislation in matter, where it exists. It is also necessary that through the direct assignment the service of general interest is guaranteed «in a system of effective contribution to a social purpose and to pursuing the objectives of solidarity, in conditions of economic efficiency and adequacy»²⁷.

²⁵ See, *ex multis*, M. RENNA, Art. 11, in E. BALBONI–B. BARONI–A. MATTIONI–G. PASTORI (a cura di), *Il sistema integrato ai servizi sociali. Commento alla legge n.328 del 2000 e ai provvedimenti attuativi dopo la riforma del Titolo V della Costituzione*, Giuffrè, Milano, 2007, 300 ss.; and also V. MOLASCHI – R. MORZENTI PELLEGRINI, *Manuale di legislazione dei servizi sociali*, Giappichelli, Torino, 2012.

²⁶ D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit., 1 ss.

²⁷ See, again, D. CARDIROLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit., 1 ss. It's well to recall that, ultimately, the European Court of Justice, Section V, asked to rule on the compatibility of an Italian regional law with the provisions of EU law on public procurement and with the competition rules of the Treaty, by the judgment of 11 December 2014, Case C-113/13, does save the law in so far as the same provides that the supply of healthcare transport services of urgency and emergency should be primarily charged with direct delivery, in the absence of any advertising, to voluntary associations affiliated, provided the legal and conventional framework, where the activities of the associations in question take place, contributes effectively to social purpose and to the objectives of solidarity and efficiency of budget, on which that regulation is based. See CARANTA R., *Affidamento dei servizi di ambulanza al no-*

4. The role of the Third Sector for a new model of Welfare

In the frame marked by Articles 55-57, the Third Sector and public bodies find themselves having to rethink their mutual roles within a stable regulatory, administrative, and methodological framework.

In fact, it is not a matter of simple cooperation tools, but rather of the typing of a method for building public policies, involving different resources and points of view, coming from the public subject and the Third sector, of a model/system of sharing ownership of the public function and related responsibilities, in order to implement activities and interventions.

With this in mind, observance of the principles of adequacy and economy, as prescribed by art. 55, paragraph 1, imply that collaboration with the Third sector must respect the identifying characteristics of the different organizations, so as to involve subjects that, by structure and vocation, are as coherent as possible with respect to the needs taken into consideration by the public administration. The examined types of cooperation push the Third sector organizations to activate aggregation networks, to create a system of different professional skills and to organize tasks and responsibilities in a unified way, thus building a unique interlocutor with public administration²⁸.

In order to reach a more concrete development of the perspective of the Third Sector into the matter of Welfare, we must proceed to re-read different sources, national and (especially) supranational in force until now, which, according to personalism, is an interpretive key based on an integrated view of the principles of solidarity²⁹.

Only in this way, the profiles of individual freedom can be easily joined by profiles of dutifulness, able, in turn, to extend the same definition of human dignity beyond which to each his own. The concept of dignity, often evoked by the Italian Constitutional Court, cannot only include the *hard core* of social rights; having to also encompass the human dimension, modeled to the duties of solidarity, makes the subject share in community life and transcends the concept of 'quality of life'.

According to this sense, we can understand immediately how and why an act motivated by the feeling-value of close solidarity is justifiably seen in the choice of whom intentionally directs its actions in terms of services for building up the social consortium and, in this direction, for the structures of the c.d. Third sector.

profit, in *Urbanistica e appalti*, 2015, 512; COLELLI C., *Corte di Giustizia e affidamento diretto del trasporto sanitario alle associazioni di volontariato*, in *Urbanistica e appalti*, 2015, 377.

²⁸ D. CARDIOLA, *Stato, mercato e Terzo settore nel decreto legislativo n. 117/2017*, cit., 1 ss.

²⁹ Social policy is today the result, in fact, the interaction of a plurality from national, supranational, and international sources. The presence of provisions based on the legal systems characterized by partially differing objectives, in highlighting the need to identify mechanisms of coordination and harmonization to ensure coherence in national systems, it has led to the introduction of limits imposed by the rules of international law and European Union law in the field of social rights towards the power of States to adopt c.d. regressive measures, after identification of a minimum set of obligations that the States are required to comply in all circumstances, they cannot, therefore, usefully rely on the reduction of resources available to justify any exceptions. On this last point, see D. RUSSO, *L'armonizzazione della politica sociale attraverso prescrizioni minime internazionali ed europee*, in *Riv. dir. intern.*, 2012, 762 ss. In turn, the safeguard clauses of the competence of national systems in the field of social policies does not only limit the intervention of conventional or European protection mechanism, to cases in which the same national systems prove inadequate to ensure the minimum protection, but they lend themselves to power upon the occurrence of conflicts between legal systems in the face of a co-existence of minimum requirements for conventional and supranational level, and the assumption of obligations incompatible by the Member States. It follows that the Strasbourg Court - whose jurisdiction is based on Article no. 154, paragraph 4 TFEU, which requires the compatibility of a *higher* national treatment with the Treaty, even when it, as now said, could interfere with the conventional law - seeks to devise a *hard core* around protection to fundamental rights, with the recognition of a minimum level of services; and even when it pushes to recognize the new social rights, thus regarding a kind of abstract man, and still in a dualistic vertical type of vision, which leads the Court with a clear separation between state and civil society, proposing a model of guarantying administrative law. In this regard, see COSTAMAGNA F., *Riduzione delle risorse disponibili e abbassamento dei livelli di tutela dei diritti sociali: il rispetto del nucleo minimo quale limite all'adozione di misure regressive*, in *Dir. um. e dir. intern.*, 2014, 371 ss.

The subjective cases in which the most mature phase of the institutional and social pluralism is expressed, that of the principle of horizontal subsidiary, recovers in the emotional component a specific element of improvement and legal relevance³⁰.

In the constitutive acts of these subjective figures the intellectual-voluntary structure - still necessary to intervene in the legal realm - is, moreover, used as a simple vehicle to express and realize, from an already programmatic point of view, a particular emotional tension/ reaction (feeling of solidarity, closeness, empathy etc.), which unites, inspires and animates the authors of the action, and characterizes and qualifies them last in comparison to other initiatives, targeted to the same practical purpose (production of a particular service), but with different motivation and animus.

If we want to go beyond the protection of the subject-person, individually considered, for his/her interests to the use or enjoyment of goods, object of the services pertaining to the social rights, it is essential to emphasize a legal perspective that values also the production of new types of goods or utilities, the result of feelings of empathy and reciprocity between providers and users of services involving the circulation of relational goods.

In this perspective, the legal relevance of the social (emotional) aspects is considered closely connected to the theme of sustainable economic and social development, reaching a breaking of the link that ties (*rectius* sacrifices) social needs and services for them disbursed, to the programs of austerity, just considering the fact that social rights, as expensive, should be necessarily subject, to their practical implementation, a principle of gradualness³¹.

In fact, if it is assumed that they can be satisfied only through an organization providing services, object of those rights, it would be to such an indispensable tax intervention of the State or the public authorities generally, with the risk of altering the delicate balance between freedom and equality, and with an excessive sacrifice of competition and market rules.

In this regard, it should be noted that the risk of this alteration can be by no doubt reckoned only with reference to the implementation of social rights for which it is necessary to resort to basic public services and the use of inclusive goods (such as health networks and forms of public transport, generalist and universalist), albeit antithetical to exclusive goods due to initiatives of private and to objects of dominical rights (for example: insurance against illness, ownership of motor vehicles, etc.).

Minor, or straight void, should be considered the risk above feared in the case of protection of social rights related to relational goods, largely due to the free and spontaneous initiatives of solidarity of citizens and only minimally to the authoritative interventions.

Among other things, the costs of these last interventions would largely be covered by social utilities and the benefits and additives advantages, the result of the synergies of reciprocity induced by the special relationships that develop between providers of services and their users.

5. Brief conclusions.

In a legal system, informed to the synthesis of values generated by certain principles, such as those contained in Articles 2 and 3 of the Italian Charter, it can be found in the same fundamental texts, such as the Italian Constitution and the different transnational Charters, with it virtuously coordinated, sufficient material to draw upon for ensuring the most intense (and not the minimum) taking into account of social considerations.

³⁰ To better define the relationships between solidarity and subsidiary, it can be added, as already correctly sustained, that the principle of horizontal subsidiary - now that the same results expressly recalled by the fourth paragraph of the updated article no. 118 of Italian fundamental Charter - acts (should act) as an factor of 'rationalization of the solidarity'. The latter would be by itself brought, to reason towards the emotional root from which it branches, not recognizing any limits, while the subsidiary brings back (must bring back) within reasonable legal boundaries the liberal activities of assistance, specifying in what form and by what measure they can take action in the context of the system of the autonomy authorities, how far and in what way it can push the cooperation of the privacies in the carrying out of the activities of general interest and what instead the areas are, in which the public powers have to directly bear the needs of the citizens.

³¹ See M. BLYTH, *Austerity. The End of a Dangerous Idea*, Oxford University Press, Oxford, 2013.

In this perspective, the relief offered to the production of relational goods, the fruit of vitality and free civil society initiatives, can offer valuable support, also to a theoretical level, to the argument that the value of solidarity can (should) be found in the social buying.

The valorization of the virtuous synergies of a parallel subsidiary with solidarity into the Italian welfare system cannot be neglected for the goals to use the purchasing power of public authorities to opt for goods and services that also deliver good social outcomes in the direction of a sustainable economic and social development.