

Draft bill on transparency of civil society organizations: foundations and associations must publish donations and financial data

On December 21, 2018, the Minister for Legal Protection published the draft bill on the Civil Society Organizations Transparency Act. The proposal provides for, on the one hand, insight into cash flows to civil society organizations by publishing information about donors who donate or make gifts of EUR 15,000 or more per year and, on the other hand, the obligation for foundations to disclose certain financial information.

Objective of the bill

According to the Explanatory Notes to the bill, the government hopes to increase the transparency of cash flows to civil society organizations. This should prevent the financing of civil society organizations from being associated with undesirable influence and the abuse of democratic freedoms. It is also intended to stop the misuse of these organizations for financial and economic purposes. Non-compliance with the obligations will be punished.

It is a very broadly worded bill and will potentially affect many foundations (*stichtingen*) and associations (*verenigingen*), for example public benefit organizations (*Algemeen Nut Beogende Instellingen*; ANBIs), sports clubs, churches and possibly also trust office foundations (*stichtingen administratiekantoren*; STAKs). This bill is thus extremely important for directors of foundations and associations.

Proposed measures

The bill focuses on civil society organizations that have the form of a foundation, an association or a church, as well as comparable foreign legal forms that are permanently active in the Netherlands. In principle, all foundations and associations fall under the term 'civil society organization'. This also applies to churches and church organizations and to the aforementioned organizational forms of comparable foreign entities that perform activities in the Netherlands on a permanent basis.

These civil society organizations must disclose all donations with a value of at least EUR 15,000, which the organization received in a financial year. In publishing this information, the organization must disclose details such as the amount of the donation, the date on which it was received and the donor's name and where they reside. All the directors of civil society organizations, as well as the members of a supervisory body insofar as there is one, must sign the donation statements.

The bill also seeks to oblige foundations to disclose their balance sheets and income statements. This applies to all foundations that are not already required to publish their financial statements. To date, foundations were already obliged to prepare balance sheets and income statements. The disclosure of these documents in the Trade Register is a new requirement. It is striking that the disclosure obligation in respect of the Trade Register does not apply to associations, churches or foreign entities comparable to a foundation, church or association.

Exceptions

The bill offers scope to use an Order in Council to exempt civil society organizations from the obligation to disclose the donation statement or the balance sheet and income

statement. This could include, for example, organizations that are already accountable or already fall under some form of external supervision. It is however still unclear which organizations will be exempted. In the Explanatory Notes the government stated that objective criteria on this will follow.

Possible consequences and ambiguities

The first measure that has been proposed means that it will no longer be possible to make anonymous donations to civil society organizations for amounts of EUR 15,000 or more in a financial year. The privacy of the donor is also curtailed by the disclosure of personal data and the donated amount. The argument used to justify this curtailment of the right to privacy is unconvincing. For example, it could suffice if only certain institutions (e.g. the Public Prosecutor's Office, the Dutch tax authorities, banks and notaries) are able to inspect the donations. It is unclear why the public has to be aware of individual - substantial - donations to civil society organizations.

A potential consequence of the proposed threshold of EUR 15,000 is that there will be a decrease in donations of such a size. It is unclear how this legislation will affect regular gifts or donations occurring over a longer period.

The mandatory disclosure of financial documents, in principle, affects all foundations that are not already obliged to disclose documents. It is still unclear whether managing foundations (*beheerstichtingen*) (for example, foundations acting as the general partner of a limited partnership (*commanditaire vennootschap*; CV) or as manager/custodian of a mutual fund (*fonds voor gemene rekening*)) or a trust office foundation will be affected by the bill. It seems illogical to have these types of foundations fall under the legislation, because they do not generally have a 'societal' objective.

The draft bill also does not make clear whether, for example, ANBIs may be eligible for any exemptions from disclosing their balance sheet and income statement. This is because they are already obliged on other grounds to disclose these documents on their website.

Furthermore, non-compliance with the timely disclosure of the donation statement or balance sheet and income statement could lead to directors being held liable on the grounds of mismanagement. In addition, late disclosure may also be an economic offense within the meaning of the Economic Offenses Act (*Wet op de economische delicten*), with possible penalties being a maximum six-month custodial sentence, community service or a pecuniary penalty. At present, we do not know how the Public Prosecutor will deal with this in practice.

Progress

The consultation on the bill closes on February 22, 2019. The government has not yet made any announcements about the date on which the Act is intended to take effect. The bill does however state that donations made before the Act takes effect will not fall under its scope. The bill also states that the disclosure obligation for foundations applies to the balance sheet and income statement for financial years commencing on or after the first day of the sixth month *before* the date on which the Act takes effect.

Meijburg Legal will closely follow developments on this bill and inform you accordingly. We would of course be pleased to answer any questions you may have about how the bill could affect you as donor or as organization.

Meijburg & Co
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