



The bill “Transparency civil society organisations act” was submitted

On 20 November 2020, the bill “Transparency civil society organisations act” (the Bill) was submitted to the Lower House.

The Bill is a sequel to the draft bill of 21 December 2018, which was previously presented for consultation, and will apply to foundations (*stichtingen*), associations (*verenigingen*), church organisations (*kerkelijke organisaties*) and similar organisations that are established under foreign law but have durable activities in the Netherlands (together: **Civil society organisations**). The Bill consists of two parts: 1. an information obligation that will apply to all civil society organisations, and 2. a filing obligation for foundations. Both parts are explained below.

1. Obligation to provide information

Based on the Bill, mayors and a number of government institutions specified by law (including the Public’s Prosecutor’s Office, but also, for example, the Dutch Tax Authorities) are authorised to request information about the geographical origin, purpose and extent of donations (including inheritances and legacies) received (directly or indirectly) from countries outside a member state of the EU or EEA. Background to this obligation to provide information is the prevention of undesirable foreign influence on Civil society organisations as a result of donations received.

Civil society organisations are no longer required to register and disclose donations. The obligation to provide information as laid down in the Bill is therefore not a generic obligation and does not appear to entail any additional administration obligation for Civil society organisations. However, they will be obliged to provide the requested information upon request. Failure to comply with the obligation to provide information is an economic offence. Directors who do not cooperate with the request for information risk a management ban.

If there is evidence of “substantial donations”, personal data of the donor may be requested from the Civil society organisation, but only if this is necessary for the maintenance of public order (whether or not in a preventive sense) or in the context of the performance of legal duties. No clear framework is given when substantial donations are involved.

The explanatory memorandum to the Bill states that both the absolute and the relative components of donations can be considered. It should be noted that mayors and agencies may be 'inspired' by the Money Laundering and Terrorist Financing Prevention Act (*Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft*), where amounts of € 15,000 or more are regarded as an indication of a so-called "unusual transaction".

2. Obligation to deposit

Dutch foundations are currently required to draw up a balance sheet and a statement of income and expenditure every year (within six months of the end of the financial year). In case it concerns a non-commercial foundation, these financial data do not have to be filed with the trade register of the Chamber of Commerce. In the context of combating abuse (such as tax or bankruptcy fraud, terrorism financing or money laundering), the Bill contains the obligation for foundations (which are not already obliged to publish financial statements) to file a balance sheet and a statement of income and expenditure with the trade register. For the sake of completeness, we emphasise that the Bill applies to all foundations that are not yet obliged to file financial information (including, for example, "fiduciary foundations" (*Stichtingen administratiekantoor, STAK*) or general interest organisations (*Algemeen nut beogende instellingen, ANBI*)). The Bill does not impose any additional conditions on the balance sheet and statement of income and expenditure to be filed.

After filing, the financial data of foundations can only be disclosed to specific government bodies (including, for example, the Minister of Justice, the Public Prosecutor's Office, the police and National Investigation Service, the Tax Authorities, the FIOD and the AIVD).

The filing obligation will apply to financial years starting after the Bill enters into force.

Follow-up

The above is based on the Bill and the accompanying explanatory memorandum. Whether the Bill will be adopted, in what form and when is not yet clear.

Contact

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