Oversight of charities

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The regulation of charities and nonprofit organizations is changing rapidly. New rules, stricter audits, and European legislation are making it more important than ever for organizations to stay on top of their compliance obligations.

In this newsletter, we outline the most important developments for you.

ANBI Decree

Charities play an important role in Dutch society. To encourage charitable giving, Public Benefit Organizations (ANBIs) receive tax benefits. The tax advantages associated with ANBI status, and the significant role of these organizations play in Dutch society, have led to increased oversight. Last summer, the Tax Administration announced that it would strengthen its oversight of ANBIs. The Tax Administration's ANBI team has since been expanded.

Since the beginning of this year, the effects of this intensified oversight have become apparent. The Tax Administration is actively verifying whether ANBIs still meet the relevant requirements and the interpretation set forth in the ANBI decree.

For your organization, this means that the Tax Administration will conduct more rigorous – signal based – audits to ensure compliance with the ANBI requirements. For organizations with ANBI status, it is important to:

- Review the articles of incorporation and actual activities against the 90% standard, this means that an ANBI must devote at least 90% of its activities to the public benefit;
- Review the financial position and update the spending policy;
- Re-evaluate and document compensation plans for policymakers;
- Properly separate commercial activities and account for them in the records;
- Strengthen governance and transparency to comply with regulatory oversight.

Failure to meet the conditions and principles set forth in the ANBI Decree may result in the Tax Authority revoking an organization's ANBI status. This may have adverse tax consequences. In extreme cases, the Tax Administration may even revoke the ANBI status with retrospective effect.

Crowdfunding and support for (foreign) charities by the ANBI

The recent ANBI Decree provides greater clarity on crowdfunding and the support of (foreign) charities by ANBIs. In practice, the Tax Administration makes a distinction between four types of organizations.

Firstly, there is the so-called 'front-office organization' in its purest form. This type of organization limits itself to receiving donations that donors have specifically earmarked for a particular beneficiary. The organization acts solely as a conduct and follows the donor's instructions, without itself determining how the funds are used for a public benefit purpose.

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Precisely because this independent assessment is lacking, such organizations do not meet the ANBI requirement that *they* serve the public benefit.

This organization must be distinguished from a support foundation (*sensitizing*). A support foundation does actively raise funds to achieve its own public benefit objective, usually by supporting one or more ANBIs. As the foundation pursues its *own* objective through these ANBIs, it may in principle qualify as an ANBI itself. An important point to note here is that when a Dutch support foundation supports a foreign organization, that foreign organizations must have ANBI status in the Netherlands in order for the Dutch support foundation to qualify as an ANBI.

Where a foundation – in accordance with its own objectives – provides funds to a (foreign) organization without ANBI status, it does not, in principle, qualify as a supporting foundation as referred to in Article 5 section 3 under m of the General Tax Act. In such cases, additional safeguards are required for the organization to qualify as an ANBI.

Foundations that financially support (foreign) non-ANBIs must impose conditions on the use of the funds and actively monitor the funds, to ensure that its own public benefit objective is safeguarded. This includes:

- A clear spending mandate based on a substantiated application that fits within the objective of the Dutch ANBI;
- After the fact monitoring of the use of funds;
- The possibility of recovering funds if they are not used in accordance with the objective; and
- Restricting the recipient's freedom to spend the funds.

Finally, there is a fourth, more nuanced category: organizations that pursue their own public benefit and use crowdfunding as a fundraising tool. Crowd funding is a way of arranging funding whereby the organization acts as an intermediary between the projects and the donors. In this case, the crowd – and not the organization – determines which projects are funded.

It follows from the ANBI Decree that these organizations can be classified as ANBIs subject to certain conditions. Mainly, it should be ensured that they retain sufficient control and independence over the use of their funds. Whether this is the case depends heavily on the specific facts and circumstances.

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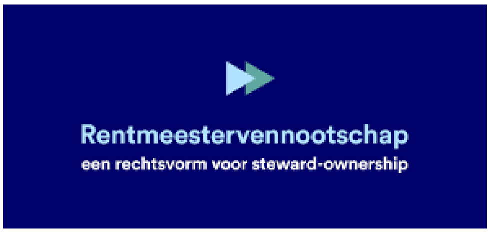
The following facts, amongst others, play a role in this assessment:

- The existence of a clear and specific public benefit objective;
- The application of the objective and strict criteria in the selection of projects or beneficiaries;
- The structure of governance and internal safeguards;
- The use of phased disbursements (tranches), depending on progress;
- Active monitoring and control of the use of funds; and
- Rearward evaluation, including possible recovery of funds if the conditions are not met.

These clarifications underscore that not only the objective, but also the actual implementation and degree of control are decisive factors in determining an organization’s ANBI status.

Social Entrepreneurship

Social entrepreneurship has been gaining momentum in recent years. Social entrepreneurship centers on a social mission (impact first), where profit is only a means to an end rather than the primary goal of the business. Social entrepreneurs address social issues – such as sustainability or an inclusive labor market – through innovative, market-driven products or services. The Dutch government has previously recognized the importance of social entrepreneurs, and in doing so, has also focused on a new form of business: the Stewardship Company (the ‘RV’).



The government’s new coalition agreement includes the Stewardship Company as a new legal form to be introduced. The Stewardship Company would thereby become a special form of private limited company (BV). Based on a list of guiding principles, a preliminary outline of the expected new legal framework can be drawn up.

Firstly, in addition to a purpose, the RV would also need to include a mission in its articles of incorporation. This mission is related to the company’s business model. No specific requirements would apply to the mission, leaving considerable flexibility for the founders.

The mission is a key component of an RV’s character. Furthermore, the shares of the RV would be non-voting and would confer only limited rights to profits. A new body is also being introduced for the RV, alongside the management board, the supervisory board, and the general meeting of shareholders: the board of stewards.

The board of directors and the supervisory board of the RV would be required to report to the board of stewards regarding their policies. The powers of the general meeting of shareholders in a BV, would in a RV be exercised by the board of stewards. These powers include the appointment and dismissal of directors, the allocation of profits, and amendments to the articles of association.

The board of stewards consists of at least one person. The stewards are appointed by the board of stewards (co-optation), unless the articles of association provide otherwise. This also means that the stewards can only be dismissed by the board of stewards.

The potential introduction of the Stewardship Company is an important development to make the Dutch nonprofit landscape more attractive. For example, the RV could serve as a parent entity for various foreign social enterprises or as a vehicle for philanthropic entrepreneurship. Additionally, it offers flexibility to attract investments in charitable causes without giving up all control. It will be interesting to see how this new legal form will be implemented.

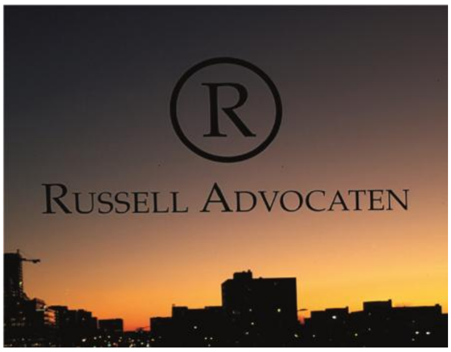
Act on the Oversight of Civil Society Organizations Rejected

Another important bill aimed at strengthening oversight of civil society organizations has been rejected by the Senate. Recently, on March 24, 2026, the Senate rejected the Civil Society Organizations Oversight Act (Wtmo).

The purpose of the Wtmo was to promote transparency regarding the financing of civil society organizations and to prevent undesirable foreign influence or the undermining of the rule of law. This would protect the foundations of Dutch society.

The Wtmo would have provided the Public Prosecution Service (OM) and the mayors with the means to take action in cases where civil society organizations disrupt public order or act in breach of the law of their articles of association. Under the Wtmo, they could have requested information about donations to civil society organizations. Information could be requested regarding donations with a value of EUR 15,000 or more. This included both monetary contributions and gifts of benefits in kind, as well as loans granted on favorable terms. The Wtmo also introduced an obligation for foundations to file their financial reports annually with the Business Register.

The necessity of the Wtmo was called into question after the Public Prosecution Service expressed doubts over its necessity. The powers assigned to the mayors and the Public Prosecution Service were deemed unnecessary. Furthermore, the supervision by the aforementioned supervisory bodies would, in fact, be limited to a handful of cases (< 5 cases). Moreover, the Wtmo would have led to a significant increase in the regulatory burden, which was also considered undesirable.



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AI Regulation

The AI Regulation (Regulation (EU) 2024/1689) establishes a comprehensive legal framework for the use of AI in the EU, with the aim of ensuring reliable, human-centered, and safe AI systems. Within the nonprofit sector, this means that the use of AI personalized marketing and customer interaction is subject to strict rules.

Transparency and Consumer Protection

AI systems that interact directly with consumers, such as chatbots or personalized recommendation systems, must be transparent: consumers/ donors must be clearly informed that they are interacting with an AI system. In addition, there are obligations to protect consumers/ donors against deception, discrimination, and unsafe algorithms. This particularly affects personalized marketing, where profiling and targeting are based on AI.

Risk Assessment and Compliance

The AI Regulation employs a risk-based approach. For high-risk AI applications – such as systems that make decisions regarding creditworthiness or job applications – strict requirements apply regarding risk assessment, documentation, monitoring, and human oversight. For low-risk AI systems, such as many marketing applications, the primary requirement is transparency.

The obligations will be phased in between 2024 and 2027, with transparency and risk assessment requirements taking effect in August 2026.

Enforcement and Sanctions

National regulators will oversee compliance. Violations can result in heavy fines, based on a percentage of global revenue. The regulation requires companies to register and document their AI systems, and to give consumers the right to file a complaint and receive an explanation of automated decisions.

Practical implications for nonprofit organizations

For nonprofit organizations, this means that AI-driven donor interaction, personalization, and marketing must be assessed for transparency, fairness, and security not only from a technical perspective but also from a legal one. This requires an integrated approach to compliance, bringing together legal, technical and ethical aspects. Virtually all AI systems used in HR – including recruitment, selection, performance evaluation, workforce planning, and support for termination – are classified as high-risk systems.

Employers must use these systems in accordance with the provider's instructions, ensure meaningful human oversight, monitor data quality, maintain log files, and inform employees and job applicants about the use and impact of AI. Employees are also entitled to an explanation when AI contributes to decisions with legal or significant consequences.

Employers are advised to start making an inventory of systems, amending contracts, and setting up internal governance structures in a timely manner.

Finally, the organization will need to develop an AI literacy plan. Everyone who works with AI systems within or on behalf of an organization must possess the skills, knowledge, and understanding of the technical functioning of AI systems, as well as their social, ethical, and practical aspects. This must be outlined in a multi-year plan that sets forth the goals, training programs, available budget, and evaluation procedures.

Conclusion

This newsletter was written by Russell Advocaten. Reinier Russell is a member of the Charity Law Association, an international network of specialists in the field of nonprofit law.

Please feel free to contact us if you have any questions:

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