The Netherlands

Expert: Prof. Dr. Wino J.M. van Veen
Institutional Affiliation: VU University Amsterdam/ Baker & McKenzie Amsterdam
With contributions from staff at the Indiana University Lilly Family School of Philanthropy

QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Cooperative, Limited Liability Company,

Limited liability companies are rarely used. Religious organizations can opt for an association or foundation but also for a legal form known as the ‘kerkgenootschap,’ which is a legal form of its own.

Five main social issues addressed by these organizations: Primary and High School Education, Health and Medical Research, Housing and Economic Development, International Causes, Other(s): Sports and Recreation

Average time established by law to register a philanthropic organization: 0-30 days

Registration is normally completed within one day.

Average cost for registering a philanthropic organization: EUR €53 (US $62)

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

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<tr>
<td>2018</td>
<td>5.0</td>
<td>4.5</td>
<td>5.0</td>
<td>4.5</td>
<td>5.0</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 5.0

The formation of POs is free from governmental involvement and is considered to be an act of civil law. Registration with the Trade register is compulsory only for POs if they are incorporated by notarial deed. POs that are not formed by means of a notarial deed (informal associations) are not obliged to register, but they can choose to do so. The registration is not related to obtaining legal personality; however, board members of non-registered POs are jointly and severally liable for the debts of the PO that originated prior to its registration.

POs can take part in social and economic life prior to incorporation or registration. Individuals that have acted in the name of a PO that is not (yet) incorporated are personally liable for the obligations entered into. The PO can take on such obligations after its incorporation by ratification.

Registration occurs in the trade register held by the Chamber of Commerce, which is an apolitical, semi-public institution. The Chamber of Commerce provides guidance and operates in accordance with clear standard procedures and forms that are available on its website. Registration is usually implemented within a day after the application. When the PO is incorporated by means of notarial deed, the notary usually takes care of registration. The registration fee is EUR €50 (US $58.5).

There are no prohibitions related to nationality, residency, or age with respect to the eligibility to found or join a PO or to be a member of the board. Minors can found and join an association and serve on its board. When the PO runs a business, however, prior court approval is required for a minor to serve on the board. There is no minimum capital/endowment requirement for establishing an association or foundation. An association should have at least one member at all times.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

POs are required to have a management board that is charged with managing the PO and it representation. Associations have a membership body that is authorized to resolve issues, such as membership, annual accounts, appointments, dismissal of directors, amendment of the articles of association, mergers, demergers, and dissolution. The law allows for deviation from the provisions in the law, within certain boundaries to guarantee that a certain level of checks and balances is maintained. Other corporate bodies can be created in the articles of association, such as a supervisory board, audit committees, and advisory boards.
There are no other restrictions with respect to the objects and activities other than that it is prohibited to have objects or activities that are against the public order. In order to be eligible for tax benefits for the PO and/or its donors, the objects and activities have to be of public benefit (ANBI-status) or of social benefit (SBBI-status). See the responses to questions 4 and 5 for more information.

There are no restrictions concerning the use of social media or other media with respect to communications with the membership, the broader public or other POs with the Netherlands or abroad. Meetings of the board of directors or of the membership can be held real time by means of electronic communication systems.

POs are not subject to reporting requirements. Exceptions apply to POs that provide public services funded by public means (hospitals, etc.) and recognized public benefit organizations (Algemeen nut beogende instellingen or 'ANBIs') that enjoy a favorable tax status.

ANBIs are required to make certain information available via the Internet. They may do so via their own website or via a website of another organization, such as an umbrella organization. The specifics of the information to be made public are available on the website of the Dutch tax service (also in English).

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 5.0

With respect to associations and cooperatives, the members' meeting is authorized to resolve to dissolution. There is no judicial review of this process, unless the resolution is contested in court by a member or director. General provisions concerning liquidation of legal persons are provided for by law. With respect to foundations, the board of directors is authorized to resolve on the dissolution, but the articles may provide otherwise. As with associations, there is no judicial involvement or general provisions concerning the liquidation of legal persons.

Involuntary dissolution may take place by the Chamber of Commerce, but only with respect to empty shell POs and following a certain procedure involving an attempt to find the board members. This dissolution is subject to court review.

Involuntary dissolution in other cases can only take place by means of a court order, on request of the public prosecutor, or a party with a justified interest. Dissolution can be ordered if: (i) there are defects in the incorporation; (ii) the articles are not compliant with the law; (iii) the PO is not in conformity with the legal characteristics of its chosen form; or (iv) its activities are violating the public order. A foundation can also be dissolved by court order if it lacks the financial means to achieve its objectives and there is no reasonable prospect that it will be able to raise such means within a foreseeable time, or when the objects of the foundation are achieved or can no longer be achieved and an amendment of the objects is not an option.
II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

For a charitable donation (in cash and/or in kind) to be deductible, the relevant organization has to be recognized as a public benefit organization ('ANBI'), and registered as such with the tax authorities. Such donations are automatically accepted as being tax deductible.

Periodial donations, covering at least five years and comprising at least one donation a year, are deductible without limitation. This applies also to associations that are not recognized as an ANBI. Other donations are deductible up to a maximum of 10 percent of the taxable income (disregarding personal deductions), which can be increased for ANBIs with cultural objects to a maximum of 25 percent or EUR €1,250 (US $1,463).

With respect to corporate income taxes, donations are deductible up to a maximum of (the lower of) 50 percent of the annual profit or EUR €100,000 (US $117,080), which can be increased for ANBIs with cultural objects to a maximum of 5 percent or EUR €2,500 (US $2,927). Quid pro quo contributions, such as sponsoring payments, are deductible without limitations.

Other than this, tax deductions are allowed for time dedicated as a volunteer to an ANBI and for costs incurred as a volunteer for an ANBI.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

All POs are eligible for support from private donors. See the response to question 4. In order to qualify as an ANBI, a PO has to be recognized as such. A list of ANBIs is available on the website of the Dutch internal revenue service ('DIRS'). The procedure, criteria, and conditions for obtaining and maintaining ANBI status are clearly described and available on the website of the DIRS. In my experience, the criteria are consistently and objectively applied and rulings are issued timely. There is no closed list of objectives or types of activities that are eligible for ANBI status. There is also no requirement that the activities or part of them should take place in The Netherlands.

Types of organizations that qualify as ANBI include inter alia schools, universities, scientific institutions, religious institutions, sports federations, development aid organizations, environmental organizations, animal welfare organizations, housing, elderly care, health care, and political parties. Another type of tax classification for POs is the SBBI (Social Interest Organization (social belang beogende instelling)), which enjoys the same tax treatment as ANBIs with respect to receiving donations and legacies. However, an SBBI cannot make tax-free donations unless they are made to another ANBI or SBBI. SBBIs include choirs, sports clubs, music societies, etc. Donations to SBBIs,
however, are not tax deductible, with the exception of donations to ‘support SBBIs’. “A ‘support SBBIs’ is a type of SBBI that is set up to support the celebration of an anniversary of another SBBI in the field of sports or music” (IPF 2015). A support SBBI, however, has to be listed as such with the tax authorities. The procedure, criteria, and conditions are clearly described and available via the website of the DIRS. POs that are neither an ANBI nor an SBBI can receive neither donations/legacies nor inheritances free of gift tax/inheritance tax up to EUR €2,012 (US $2,356) per donation/legacy.

POs are not subject to corporate income tax, unless they run a business that is competing with regular businesses.

ANBIs and SBBIs are eligible for a 50 percent refund of energy tax paid by them.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 5.0

There are no taxes or similar costs related to cross border donations in cash or in kind. There is no governmental involvement in regard to making donations abroad or any other procedure pertaining thereto. Donations to foreign public benefit organizations are deductible on the same footing as donations to domestic ANBIs and (from Dutch perspective) free from gift tax. In order to be deductible, the foreign PO has to be recognized by the Dutch tax authorities as an ANBI.

Charitable organizations can apply for a refund of Value Added Tax (VAT) when exporting goods. This is relevant with respect to donations in-kind to support an initiative abroad in pursuit of the objectives of the organization. VAT administration is, however, a burden. Organizations that export goods on a regular basis (Médecins Sans Frontières for example) can make special arrangements with Customs to facilitate the process.

There is a requirement to report information to the Central Bureau of Statistics regarding the aforementioned VAT refunds (because it falls within the ambit of ‘foreign trading’) for statistical purposes concerning foreign trading by for-profits and not-for-profits.

With respect to foreign donations, national legislation based on the Financial Action Task Force’s commitments prohibits support to terrorist organizations and movements. Such support would also be considered against the public order and, therefore, could result in dissolution of the organization.
Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 5.0

There is no governmental involvement with the acceptance of donations by ANBIs, nor any other procedure pertaining thereto. This is also true for donations from abroad, be it in cash or in-kind. Donations to ANBIs and SBBIs are free from gift taxes, including when they are received from abroad. ANBIs can make donations to a destination abroad. Provided that these donations occur in pursuit of its objectives, these donations are not taxed from a Dutch perspective. There is no prior governmental involvement with making donations abroad. Donations to foreign public benefit organizations are deductible on the same footing as donations to domestic ANBIs and (from Dutch perspective) are free from gift taxes. In order to be deductible, the foreign PO has to be recognized by the Dutch tax authorities as an ANBI.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 5.0

There is a long standing tradition in the Netherlands where public services, such as health care, education, housing, are provided by the nonprofit sector. The Netherlands is famous for its 'polder model,' which stands for a society in which government, the for-profit sector, and the nonprofit sector cooperate to further social interests.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 4.0

See answers to Q8. The capacity of DIRS has increased. Information on funding opportunities (subsidies or grants) is well publicized.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 5.0

There certainly is a tradition of philanthropic activity in The Netherlands. Important facilities, such as schools, hospitals, elderly care, treatment of people with mental illness, etc., are primarily provided
by POs that receive government funding. Most scholars explain the positive relationship between the State and the nonprofit sector through the fact that The Netherlands in the past did not have a strong, dominant central government – not even during the feudal era – and that public safety could only be successful thanks to joint efforts by the government and the citizenry/landowners. Thus, a sense of mutual trust developed between the government and civil society. Introductory reading on this subject would be “Rethinking the balance, Government and nongovernmental organizations in the Netherlands,” Van der Ploeg/Sap, VU University Press 1995).

CSOs are involved in developing public policy at both a national and local level through consultation procedures or on their own initiative. Now that government funding is reduced, the government has strongly promoted private initiative as a matter of good citizenship.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

Research by the Sociaal Cultureel Planbureau (Verenigd in Vergadering, 2014) indicates that the large institutionalized nonprofit sector has managed to consolidate their membership base, although it also reports that the sector experiences competition both from informal and institutionalized POs. The institutionalized POs are generally professionalized and supported by robust umbrella organizations. Umbrella organizations collaborate and in various sectors, e.g. sports, collaborate in institutionalized form.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The economic crisis; and
- In certain fields, subsidizing institutions that provide services has been changed to provide a budget to eligible individuals to enable them to 'buy' the service they require. This has opened new opportunities for for-profit services providers.

Future development trends in the philanthropic landscape

- Individuals seem to be less-inclined to engage in a long term membership or other form of organizational commitment;
- New forms of fundraising requiring personal commitment with respect to short term projects (a bicycle tour, helping out, etc.), and
- Decrease in membership of institutionalized religious organization.