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## **COMPARATIVE REPORT FOR ICNL**

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### ***Legal provisions for Not for profit organisations in Western European countries***

#### **1 Introduction**

The purpose of this report is to give an impression of the legal provisions regarding not for profit organisations in continental Western European countries. The legal systems of the mentioned countries, belong to the (roman) civil law tradition.<sup>1</sup> This implies - a.o. - that a major distinction is made between civil law and public law. Issues in the field of public law regarding not-for-profit-organisations (NFPO's) can be of a constitutional (freedom of religion, assembly, association, education etc.), administrative (the procedures to address the government v.v.) or fiscal nature, each of which issues is addressed in specific laws. Another difference is that in the civil law systems, there is no direct link between the legal form of the organisation and (potential) fiscal facilities, as is the case in common law systems.

The aspects of public law are not included in this report. In this report particular emphasis is laid on the provisions in the field of civil law. First I will discuss the formal aspect of the law concerning NFPO's (associations and foundations), then I will pay attention to the substantial aspects of the law on associations and foundations in general terms.

#### **2 Law on not-for-profit-organisations: formal aspects**

With regard to the formal aspects of the law regarding NFPO's there are theoretically speaking three possible approaches:

- a there is no written law on associations and foundations;
- b there is a specific law on associations and foundations;
- c the law on associations and foundations is incorporated in the Civil Code.

All three systems do exist in contemporary legal systems.

ad a) The 'unwritten' law system to my knowledge only exists in the scandinavian countries concerning only the law on associations.<sup>2</sup> The law on associations is then based on legal

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<sup>1</sup> As opposed to the Anglo-American common law tradition.

<sup>2</sup> The Scandinavian and Icelandic legal systems are often referred to as the Nordic legal system, which to a certain extent is different from both the common law system and the civil law system.

precedents, commonly accepted principles and legal doctrine.  
The law on foundations is found in a specific act.<sup>3</sup>

ad b) The idea of having a law on associations and a law on foundations is from a historic perspective shared by quite a number of countries. In some countries, this system still exists. To my knowlegde this is the case in for instance Belgium<sup>4</sup>, Spain<sup>5</sup> and France.<sup>6</sup>

ad c) In most modern legal systems the law concerning foundations and associations is incorporated in the Civil Code.<sup>7</sup> This does not necessarily mean that there are no other specific laws that affect the establishment and/or functioning of foundations or associations.

### **3 Law on NFPO's: substance**

With regard to the provisions that are incorporated in the law on NFPO's the following are - with differences of elaboration -generally included:

#### **a. What organizational forms are discerned.**

*Without exception there are two forms*

- the association a membership based organization (vereniging/association/verein/etc) and
- the foundation a nonmembership organization (property based) (foundation/stichting/stiftung/etc)

*The trust as a property based organizational form is not known in the continental European legal systems.*

*With this distinction comes a difference in organisational powers/governance and often registration requirements and governmental control.*

*What both forms have in common is the restriction that*

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<sup>3</sup> Only the Swedish Stiftelse Lag 1994:1220 is not yet in force but be will so from 1 januari 1996.

<sup>4</sup> Wet van 27 juni 1921 waarbij aan de vereniging zonder winstgevend doel (associations) en aan de instellingen van openbaar nut (foundations) rechtspersoonlijkheid wordt verleend. There is a separate law on foreign associations (law of 25 october 1919)

<sup>5</sup> With regard to the law on associations (Law of 24 december 1964). The law on foundations has its basis in the civil code.

<sup>6</sup> Law of 1 july 1901, Relative au contrat d'association, declaring the law on contract and obligations (included in the Civil code), applicable regarding its valadity.

<sup>7</sup> F.i. Germany, Greece, Italy, Netherlands, Portugal and Switzerland.

they may not have as their purpose to distribute profits among their founders, members or officials.

**b. Establishment and legal competence**

requirements for establishment, government control/supervision<sup>8</sup>, moment of existence, faults in establishment, legal status (legal personality or not?) and competence (with regard to obligations, property etc.).

**c. registration**

Which register, where is it held, which information, consequences etc.

**d. Statutes**

Competence and content: How are they constituted, when and how can they be altered (with special attention for the purpose of organization), which organ is competent to do so, what should be the minimum content (i.g. name of the association/foundation, purpose, seat etc.)

Validity: on which issues is deviation from the law allowed and which regulations in the law are mandatory.

**e. Membership (for associations)**

Procedures for obtaining membership, dismissal, obligations of the members and how these obligations can be imposed etc.

**f. Representation**

**g. Governance**

- competence of the board, duties (bookkeeping, annual account etc.) and liability of boardmembers. For associations competence of the general assembly of members (modification of the statutes, final authority concerning admission and exclusion of members, appointment/dismissal of boardmembers, approbation of the annual account, dissolution etc.)

- appointment and dismissal of boardmembers

- procedures for decisionmaking (rules for calling the general assembly, counting and validity of votes, majority systems, quorum requirements [esp. for modification of the statutes and dissolution] etc.)

**h. Dissolution and destination of the remaining assets.**

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<sup>8</sup> Especially with regard to the establishment of foundations See prof. Tymen J. van der Ploeg, Supervisory powers relating to foundations, a comparative analysis of foundation law, *Voluntas* (1995), 6:3, p. 255-274.