

## Modification of the size criteria of NPAs

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What criteria are used to ascertain whether a non-profit association (hereinafter: “NPA”) qualifies as a small, large, or very large NPA? What are the accounting obligations of a small, large, and very large NPA? Where must an NPA file its annual accounts? The purpose of this article is to briefly answer these questions in light of the royal decree of August 25, 2012<sup>1</sup> (hereinafter: “Royal Decree”) which modified the size criteria for NPAs.

### I. Size criteria for NPAs

#### A. Very large NPA

According to Article 17, § 5, of the law of June 27, 1921 regarding non-profit associations, international non-profit associations and foundations (hereinafter: “Law”), as amended by the Royal Decree (changes are underlined below), an NPA qualifies as a very large NPA if:

- (i) The annual average number of employees expressed in full time equivalents (hereinafter: “FTE”) exceeds 100; or
- (ii) At the end of the financial year it exceeds at least two of the following three criteria:
  - a. An annual average of 50 FTE employees;
  - b. Total revenue of 7,300,000 EUR, excluding value added taxes and exceptional revenue (previously 6,250,000 EUR);
  - c. A balance sheet total of 3,650,000 EUR (previously 3,125,000 EUR).

In 2002, when the Law was amended, the legislator’s goal was to mirror in the Law the criteria provided for by the Companies Code. However, in 2005, the legislator modified the Companies Code without “updating” the criteria stipulated in the Law. The purpose of the Royal Decree was, among other things, to align these criteria. It is important to note that the criteria currently provided in the Companies Code are no longer in line with European legislation. It is thus very likely that the Belgian legislator will alter the Companies Code again in the near future. That time around, the non-profit sector should remain vigilant that the legislator does not forget to update the Law accordingly.

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<sup>1</sup> Royal decree of August 25, 2012 modifying articles 17, 37 and 53 of the law of June 27, 1921 regarding non-profit associations, international non-profit associations and foundations, published in the annexes of the Belgian Official Gazette on September 17, 2012.

### ***B. Large NPA***

According to Article 17, § 3, of the Law, as amended by the Royal Decree (changes are underlined below), an NPA qualifies as a large NPA if at the end of the financial year it attains at least two of the following three thresholds:

- a. An annual average of 5 FTE employees;
- b. Total revenue of 312,500 EUR, excluding value added taxes and exceptional revenue (previously 250,000 EUR);
- c. A balance sheet total of 1,249,500 EUR (previously 1,000,000 EUR).

The Royal Decree has adapted the criteria according to the following formula: the new amount of each criterion is equivalent to the base amount of each criterion multiplied by the new consumer price index (*i.e.* the index of February 2012) and divided by the initial consumer price index (*i.e.* the index of July 2002). The result has been rounded up to the next multiple of 500 EUR.

### ***C. Small NPA***

According to the Law, an NPA qualifies as a small NPA when it does not qualify as a large or very large NPA.

## **II. Accounting obligations of NPAs in a nutshell**

The criteria described above to qualify an NPA as a small, large, or very large NPA are of importance because they determine the accounting obligations of an NPA.

### ***A. Very large NPA***

A very large NPA must carry out full double-entry bookkeeping according to the accrual principle. The rules applicable to bookkeeping and annual accounts are based on those applicable to Belgian companies (*i.e.*, among others, the law of July 17, 1975 and the royal decree of January 30, 2001) but with many amendments provided for by the royal decree of December 19, 2003<sup>23</sup> (which takes into account the specific nature and legal status of NPAs). A very large NPA must use the “full” standard annual accounts format as determined by the National Bank of Belgium for associations and foundations.

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<sup>2</sup> Royal decree of December 19, 2003 relating to accounting obligations and to the publicity of annual accounts of certain non-profit associations, international non-profit associations and foundations, published in the annexes of the Belgian Official Gazette on December 30, 2003.

<sup>3</sup> It is important to note that the royal decree of December 18, 2012 modifying the royal decree of December 19, 2003 introduced important modifications to the royal decree of December 19, 2003.

A very large NPA must appoint a statutory auditor chosen among the members of the Belgian Institute of Auditors (In French: *Institut des Reviseurs d'Entreprises* / in Dutch: *Instituut van de Bedrijfsrevisoren*). The rules and modalities pursuant to which statutory auditors are appointed and must perform their task are as set forth in the Companies Code.

### ***B. Large NPA***

A large NPA must comply with the accounting obligations applicable to very large NPAs with the exception that it is not required to appoint a statutory auditor. A large NPA may use the abbreviated version of the standard annual accounts format as determined by the National Bank of Belgium for associations and foundations. Small and large NPAs may voluntarily appoint a statutory auditor. If they do so, they must also comply with the rules and modalities pursuant to which statutory auditors are appointed and must perform their task as set forth in the Companies Code. Such rules and modalities are, for example, appointment of the statutory auditor for a period of 3 years, appointment of the statutory auditor to be published in the annexes of the Belgian Official Gazette and determination of the remuneration of the statutory auditor by the general assembly.

### ***C. Small NPA***

A small NPA may conduct simplified bookkeeping and prepare simplified annual accounts according to the so-called “cash basis – model” as determined by the royal decree of June 26, 2003<sup>4</sup>.

### ***D. All NPAs***

Any NPA which has an annual average of 20 FTE employees or more must complete and file a so-called “social balance sheet”. For large and very large NPAs the social balance sheet is a specific section of the standard annual accounts format as determined by the National Bank of Belgium for associations and foundations. Small NPAs and NPAs that use a different format from the standard annual accounts formats must still complete and file a specific social balance sheet form as determined by the National Bank of Belgium.

## **III. Filing of the annual accounts**

### ***A. Very large NPAs***

Very large NPAs must file their approved annual accounts with the National Bank of Belgium within 30 days of their approval by the general assembly. Moreover, additional documents must be filed simultaneously. Firstly, a list containing the surnames and first names of the directors must be filed. Secondly, a list mentioning the identity of the statutory auditor(s) and a copy of their report must also be filed.

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<sup>4</sup> Royal decree of June 26, 2003 relating to the simplified bookkeeping of certain non-profit associations, international non-profit associations and foundations, published in the annexes of the Belgian Official Gazette on July 11, 2003.

### ***B. Large NPAs***

The regime applicable for large NPAs is identical to the regime described above applicable to very large NPAs. It should be noted that the obligation to file a list containing the identity of the statutory auditor(s) is only applicable when a large NPA voluntarily appoints a statutory auditor (see above item II. B).

### ***C. Small NPAs***

Small NPAs must file their approved annual accounts with the clerk's office of the Commercial Court of the judicial district in which the registered office of the NPA is located.

## **IV. Entry into force and consequences**

The Royal Decree entered into force on September 27, 2012. The Royal Decree's modification of the size criteria for NPAs is of importance for all NPAs that in the past were a very large or large NPA and have become, respectively, a large or small NPA as a consequence of its entry into force. Indeed, for such NPAs, this could result in less burdensome accounting obligations.