

Modification of the size criteria of INPAs and of the rules governing the filing of their annual accounts

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What criteria are used to ascertain whether an international non-profit association (hereinafter: “INPA”) qualifies as a small, large, or very large INPA? What are the accounting obligations of a small, large, and very large INPA? Where must an INPA file its annual accounts? The purpose of this article is to briefly answer these questions in light of the royal decree of August 25, 2012¹ (hereinafter: “Royal Decree”) which modified the size criteria for INPAs and in light of the law of January 14, 2013² which recently modified the filing obligation of INPAs’ annual accounts³.

I. Size criteria for INPAs

A. Very large INPA

According to Article 53, § 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 INPA qualifies as a very large INPA 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

¹ 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.

² Law of January 14, 2013 containing various provisions related to the reduction of the workload within the justice sector, published in the annexes of the Belgian Official Gazette on March 1, 2013.

³ The law of January 14, 2013 also introduced some minor modifications to the Law in order to allow the filing of INPAs’ deeds (e.g. appointment and resignation of directors, amendments of articles of association, etc.) via electronic means, but this issue is not discussed in the present article.

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.

B. Large INPA

According to Article 53, § 3, of the Law, as amended by the Royal Decree (changes are underlined below), an INPA qualifies as a large INPA 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 INPA

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

II. Accounting obligations of INPAs in a nutshell

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

A. Very large INPA

A very large INPA must hold 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, 2003⁴⁵ (which takes into account the specific nature and legal status of INPAs). A very large INPA must use the “full” standard annual accounts format as determined by the National Bank of Belgium for associations and foundations.

⁴ 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.

⁵ 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 INPA 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 der 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 INPA

A large INPA must comply with the accounting obligations applicable to very large INPAs with the exception that it is not required to appoint a statutory auditor. A large INPA 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 INPAs 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. *E.g.* 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 directional body (*i.e.* the general assembly).

C. Small INPA

A small INPA 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, 2003⁶.

D. All INPAs

Any INPA 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 INPAs 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 INPAs and INPAs 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

As opposed to large and very large non-profit associations, large and very large INPAs currently do not have to file their approved annual accounts with the National Bank of Belgium. According to the current regime, large and very large INPAs 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 INPA is located. Unlike the filing with the National Bank of Belgium, the filing with the clerk’s office of the Commercial Court is free of charge. This regime will however be modified as of September 1, 2013. The new regime is explained in greater detail below.

⁶ 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.

A. Very large INPAs

As of September 1, 2013, very large INPAs will have to file their approved annual accounts with the National Bank of Belgium within 30 days of their approval by the general directional body (*i.e.* the general assembly). Moreover, additional documents will have to 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.

B. Large INPAs

The new regime applicable for large INPAs as of September 1, 2013 will be identical to the new regime described above applicable to very large INPAs. 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 INPA voluntarily appoints a statutory auditor (see above item II. B).

C. Small INPAs

For small INPAs, the current regime will remain unchanged. In other words, their approved annual accounts will continue to be filed with the clerk's office of the Commercial Court of the judicial district in which the registered office of the INPA 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 INPAs is of importance for all INPAs that in the past were a very large or large INPA and have become, respectively, a large or small INPA as a consequence of its entry into force. Indeed, for such INPAs, this could result in less burdensome accounting obligations.

The law of January 14, 2013 will enter into force on September 1, 2013. It is important to keep in mind that, as of this date, large and very large INPAs will have to file their approved annual accounts with the National Bank of Belgium.