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Establishment of NGOs through Notification Process in Western Europe *By Caroline Newman*

Introduction

The state procedures for NGOs to obtain legal personality in European countries are very diverse. While it is a common practice that for the establishment of foundations an approval by the state authorities is necessary, it is quite common that procedures for the establishment of associations be very simple and do not require any approval from the state authorities.

In some Western European countries such as Sweden or Denmark, the only requirement for an association to become a legal person is for its charter to exist in written form. Some other countries have adopted mechanism that allows the public to be aware of the existence of these associations such as the notification process. Under this process, associations need to make their existence public through a declaration to an organ that will publicize or enter into a public registry the information regarding the association. Such notification process has been adopted in Belgium, Luxembourg, France, the Netherlands and Portugal. Below we will review the necessary requirements for the acquisition of legal personality by associations of these countries through the notification process.

Belgium

A new Belgium Law on Associations and Foundations was adopted on April 18, 2002 and is expected to enter into force in January 2003.

In accordance to this new law, Belgian associations acquire their legal personality at the moment of entry in the register of the first instance tribunal of the charter of the association, information regarding its directors or its legal representatives. The entry into

the register is carried out upon notification to the court. The establishment of the association can be nullified if its charter is not in compliance with the law or if its purpose is illegal or contrary to public order.

France

In order to acquire legal personality, an association must notify the relevant prefecture (territorial sub-division of the Ministry of Interior) of its existence. The declaration must include:

- Application for publication in the official journal
- Name and purpose of the association
- The address of the association
- Name, profession, address and nationality of its legal representatives
- Two copies of the charter.

The prefecture communicates to the official journal the request for publication in the official journal within five days of the notification and is to provide the association, within five days of the notification, a receipt for publication in the official journal.

Within one month of the official journal publishes:

- Date of notification
- Name and purpose of the association
- The legal address of the association.

The association acquires its legal personality on the date of publication in the official journal.

The Ministry of Interior cannot deny the notification, but it may subsequently appeal to a court for dissolution of the association or for its nullification if it believes its objectives or activities are illegal.

Luxembourg

In order to acquire legal personality, the charter of an association must be notarized and a notification in the official journal is necessary. The notification includes the following information: charter of the association, name, profession and address of the directors, the address of the organization. An association acquires legal personality at the moment of publication of its charter in the official journal.

Netherlands

In order to acquire legal personality the charter of an association must be notarized and be entered into the public registry of the chamber of commerce. It is the legal representative of the association that notifies the chamber of commerce of the establishment of the association. The association acquires its legal personality at the moment of entry into the public register.

Portugal

Associations in Portugal acquire their legal personality at the moment of notarization of their charter. The notary then communicates:

- excerpts of the notarized founding documents of the association including the name, address, purposes, and the membership rules of the association are submitted to the local government, and published in the official journal and a local journal.
- A notarized copy of the founding documents is submitted (who submits these documents: notary or founders?) to the Public Ministry by registered mail, within eight days of the notification to the local government.

The Public Ministry can nullify the establishment of the association in case it determines that the charter or the purpose of the association does not comply with the law or the public moral.

Attachments

1. Luxembourg: Excerpts from the Law on Associations and Foundations of April 21, 1928.
2. France: Excerpts from:
 - i. Law on Associations of July 1, 1901
 - ii. Decree for the implementation of the Law on Associations of August 16, 1901
3. Portugal: Excerpts from:
 - i. Civil Code
 - ii. Decree Law of February 25, 1977 amending the decree-law 594/74