

SUMMARY

The purpose of this study is to provide insight into the nature and degree of foundations and associations which are guilty of or involved in different types of criminal activities. Foundations and associations are, just like companies, legal entities which independently take part in judicial matters. Little is known, however, about their activities.

This study consists of an exploration, an analysis and a detailed explanation. For the exploration, literature and public sources were studied and information gathered from registrations. For the analysis, interviews were held with experts and data files were analysed. The detailed explanation consists of targeted analyses and the evaluation of discussions with members of the criminal investigation department.

Exploration

Every foundation and association with full legal rights must be registered at the Chamber of Commerce. Associations with limited legal rights may, but do not have to be registered. The number of foundations and associations in the Netherlands is steadily growing and will exceed 270 thousand in 2007; about 160 thousand foundations and 110 thousand associations. The number of foundations is increasing faster than that of associations and is continuing to rise. Most of the foundations and associations are registered in the trade register in the main categories 'social organisations' and 'culture/sport/recreation'.

Every European country has foundations and associations similar to those in the Netherlands. Of all of the countries in Europe with the exception of Liechtenstein, the Netherlands have the most foundations: almost 1,000 per 100,000 inhabitants. This legal form is used more in the Netherlands than in most of the other countries partly because the criteria for establishing a foundation are broader.

The social activities of foundations and associations cover a wide spectrum. The main categories of activities are as follows: charities; sports and culture; utilities; other social charities; and financial and other management. Foundations and associations can and are allowed to develop commercial activities so long as profits are not paid out to directors. In 2007, some 9% of the foundations and 6% of the associations ran a company. It is not possible to provide a full picture of the total amount of the annual income and expenses of foundations and associations. What is known, however, is that the amount is in the billions of euros.

On average, the management board of a foundation or association consists of five natural persons. Foundations in the financial and business service sectors in particular, such as holdings and accounting offices, often have a small number of board members.

Analysis and detailed explanation

The public control of foundations and associations is limited. There is no point in the life of a foundation or association at which they must justify their actions. In addition, foundations and associations have no statutory reporting requirement. Associations have members who carry out internal control; foundations do not.

The Dutch government is thinking about how legal entities can be controlled. The proposal is to replace the current system of preventive control with a system of permanent monitoring, which would also apply to foundations. The Public Prosecutor is the authority appointed to control foundations. They, however, can only take steps if there are likely grounds to do so. Other authorities that play a controlling role are: Inland revenue; FIOD-ECD; AFM; DNB; FIU-NL; NMa; bankruptcy curators; forensic accountants; and CBF.¹

Crime

Foundations and associations are primarily associated with financial-economic crime and ideologically inspired crime. There are more criminal foundations than associations. Financial-economic crime mainly concerns grant fraud and bankruptcy fraud. Foundations and associations are also used for tax fraud. The role of foundations and associations in the laundering of money is considered to be small. The ways in which foundations and associations are used for fraudulent activities are diverse in their nature and level of complexity. For ideologically inspired crime, a foundation or association can be window dressing for an organisation that collects money and recruits people for illegal activities to achieve a radical goal.

The analysis of a random sample of managers of foundations and associations shows that 5% of the committee members of foundations and 4% of the committee members of associations have committed at least one relevant offence. These percentages concord with findings in earlier research, when committee members of charities were analysed. Besides, out of every seven foundations and associations, one has a committee member with at least one relevant past offence.

¹ Please refer to the list of abbreviations.

Results from the analysis of various data files give the impression that the number of foundations and associations that are linked to criminal activities is relatively low. The possibility that complex networks of legal entities are used to facilitate or conceal illegal activities is considered to be real.

Vulnerability

Insofar as foundations are controlled, the control is not structural and is usually superficial. This makes the foundation vulnerable to misuse. Moreover, according to the experts, limited companies are investigated for criminal offences more frequently than foundations. A reliable estimate of the extent of the forms of misuse cannot be made because usable registration data are not available. Controllers and investigation services do not see this as a priority. The Chamber of Commerce does not have a department to which suspicious registrations and transactions can be reported.

For fund-raising foundations, the large amounts of money that are raised and the lack of control on spending makes them vulnerable for misuse (Van der Stoep et al. 2007). Foundations and associations with a religious character are vulnerable for fraud because of the trust that is often put in the management board.

The following are considered to be risk indicators for the misuse of foundations: the bankruptcy of a foundation with a small management board; the mediation in investments by foundations (with a religious character); the inappropriate use of a foundation's third-party funds (by a lawyer); and the lack of ambition of being ranked as a foundation of public advancement by a qualified institution.

