

# NETHERLANDS

## Based on the legal analysis by the European Center for Not-for-Profit Law (ECNL)

### Summary:

*The revised Draft Act on Transparency of Civil Society Organizations remain concerning for CSOs. According to the European Center for Not-for-Profit Law (ECNL), while there are several improvements in the text, such as no discrimination based on origin donor and clear possible follow-up actions and judicial oversight, concerning elements persist in the draft bill. The law provides for far-reaching powers for the Mayor for demanding information from CSOs about their donations and donors when it deems a (potential) threat to the democratic order without parliamentary oversight. There are no clear criteria on what may constitute an indication of risk or disruption of 'public order' that can trigger these powers of the Mayor, giving room for discriminatory application of the Act. CSOs do not have clear legal remedies to contest the decision of the authorities, resulting in a practice contrary to the rule of law principles. Because the draft Act does not provide clear criteria that will guide the authorities to decide whether or not to demand information on donations and donors, a wide group of CSOs will still be potentially affected. Additionally, according the current revised bill, the Mayor would be able to process personal data which may show religious or philosophical believes.*

### The regulatory environment for and implementation of civic freedoms

In December 2018, the Ministry for Legal Protection started working on a draft Act on Transparency of Civil Society Organizations<sup>1</sup> (CSOs), that has been heavily debated since its initial draft would require all CSOs to publish overviews of donations that amount to or exceed 15,000 euro a year. Civil society pointed out the Act was not in line with European and international standards<sup>2</sup>. Thus, the

Ministry of Justice and Security published a revised draft for a second round of public consultation<sup>3</sup> in June 2021.

The European Center for Not-for-Profit Law (ECNL) analysed the main changes proposed in the third draft from June 2021 compared to the previous version from November 2020, to assess to what extent these have improved the standards and what the remaining concerns are. The result was a written contribution<sup>4</sup>, produced with other Dutch CSOs at the end of June 2021, which feeded into the

<sup>1</sup> <https://ecnl.org/news/according-new-dutch-draft-act-csos-would-be-obliged-publish-personal-information-certain>

<sup>2</sup> <https://ecnl.org/news/overview-key-issues-new-dutch-transparency-act>

<sup>3</sup> <https://www.internetconsultatie.nl/nwwwtmo/reactie/b836f12d-e9e7-42c4-b878-a5ba666b4a76>

<sup>4</sup> <https://ecnl.org/news/new-proposed-changes-dutch-transparency-act>

public consultation and is still waiting for a follow-up from the Dutch government.

**Relevant changes that improve the previous version of the draft Act:**

- No discrimination based on origin donor: 'Potentially unwanted donations' now also include those from the Netherlands and within the EU/EEA (previously, only donations from outside the EU/EEA were deemed as potentially suspicious);
- Clear possible follow-up actions and judicial oversight: the Public Prosecutor can request the Court to order one or more measures, if it is plausible that a CSO receives donations and carries activities that undermine, or are aimed at undermining, the democratic rule of law;
- Assessment framework for the Court: introduction of criteria related to what constitutes 'undermining of the democratic rule of law' and which (type of) activities could fall under this, embedding some constitutional guarantees, such as judicial overview at a later stage.

**Remaining concerns:**

- Lack of oversight for far-reaching powers for the Mayor: there is no parliamentary oversight on these powers for demanding information from CSOs about their donations and donors when it deems a (potential) threat to the democratic order. In this regard, the draft Act is still not in line with rule of law principles;

- Legal uncertainty: there are no clear criteria on what may constitute an indication of risk or disruption of 'public order' that can trigger these powers of the Mayor, giving room for discriminatory application of the Act;
- Lack of a clear remedy: CSOs do not have clear legal remedies to contest the decision of the authorities, resulting in a practice contrary to the rule of law principles;
- Violation of the right to privacy: the draft Act requests all intermediaries to obtain private information in advance about the donors of CSOs (name, private residency/seat, country), regardless if there is justified reason for further scrutiny by the Mayor and other authorities;
- A wide group of CSOs will still be potentially affected: the draft Act does not provide clear criteria that will guide the authorities to decide whether or not to demand information on donations and donors;
- Disproportionate infringement on freedom of religion and belief: the Mayor is still enabled to process personal data which may show religious or philosophical beliefs (article 3(2)). It is not explained why it is necessary to gather this particular data to determine whether or not an organisation is a threat to public order and/or democratic rule of law.