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Q&A CNC 26/038	**QUESTIONS / ANSWERS :** LARGE ASSOCIATIONS, ASSOCIATIONS RECOGNISED AS BEING OF PUBLIC UTILITY AND FOUNDATIONS: TARGETED CLARIFICATIONS ON THE NEW ACCOUNTING REGIME INTRODUCED BY THE LAW OF 7 AUGUST 2023

Context :

CNC was recently asked about the accounting regime applicable to not-for-profit associations ("*associations sans but lucratif*") classified as "large associations" ("*grandes associations*") as well as to associations recognised as being of public utility ("*associations reconnues d'utilité publique*") and to foundations ("*fondations*"). The Law of 7 August 2023 on not-for-profit associations and foundations ("the Law of 7 August 2023") refers — for the aforementioned organisations — to the accounting regime applicable to (commercial) undertakings mentioned in article 47 LRCS. In practice, this accounting regime is known as the accounting regime applicable to "medium-sized undertakings."

Furthermore, recurring questions include those regarding the applicable balance sheet and profit and loss account layouts, as well as the issue of the relative inappropriateness of these layouts, which were developed to represent the business model specific to commercial undertakings rather than that of not-for-profit organisations.

The purpose of this Q&A is to provide various clarifications regarding the nature of the new accounting regime applicable to not-for-profit associations classified as "large associations", to associations recognised as being of public utility and to foundations, addressing in particular the issue of the applicable balance sheet and profit and loss account layouts, as well as the option to adapt the standard layouts.

Questions :

1. What are the essential components of the accounting regime applicable to "medium-sized undertakings" that apply to not-for-profit associations classified as "large associations," as well as to associations recognised as being of public utility and to foundations?
2. Does the Standard chart of accounts (PCN) and does the standard data collection via the eCDF platform apply to not-for-profit associations classified as "large associations", as well as to associations recognised as being of public utility and to foundations?
3. What are the applicable balance sheet and profit and loss account layouts applicable to not-for-profit associations classified as "large associations" as well as to associations recognised as being of public utility and to foundations?
4. Do not-for-profit associations classified as "large associations", associations recognised as being of public utility and foundations have the ability to adapt the standard balance sheet and standard profit and loss account layouts applicable to "medium-sized undertakings" — and, if so, what are the nature, scope, and limits of such adjustments?

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Questions / Answers :

1. What are the essential components of the accounting regime applicable to "medium-sized undertakings" that apply to not-for-profit associations classified as "large associations," as well as to associations recognised as being of public utility and to foundations?

First, it should be noted that, pursuant to article 18 paragraph 6, to article 36 paragraph 1 and to article 52 paragraph 3 of the Law of 7 August 2023, not-for-profit associations classified as "large associations," associations recognised as being of public utility and foundations, are required to draw up annual accounting documents consisting at a minimum[1] of annual accounts prepared in accordance with the accounting regime applicable to undertakings referred to in article 47 LRCS. As a reminder, the accounting regime provided for in article 47 LRCS is commonly referred to as the "accounting regime of medium-sized undertakings."

Pursuant to article 26 paragraph 1 LRCS, "[t]*he annual accounts (…) comprise the balance sheet, the profit and loss account and the notes to the accounts: these documents shall constitute a composite whole*".

In summary, the accounting regime applicable to medium-sized undertakings specifically requires the presentation of a non-abridged balance sheet, the presentation of a profit and loss account in an abridged format (although a profit and loss account in a non-abridged format may be presented on a voluntary basis) and the presentation of notes to the accounts containing the disclosures required by article 65 LRCS, subject – where applicable – to the exemptions provided for in article 67 LRCS.

2. Does the Standard chart of accounts (PCN) and does the standard data collection via the eCDF platform apply to not-for-profit associations classified as "large associations", as well as to associations recognised as being of public utility and to foundations?

The answer must be negative.

In fact, no provision of the law of 7 August 2023 requires not-for-profit associations and foundations to comply with the Standard chart of accounts (PCN)[2] or to submit standard financial data via the eCDF platform. This intent of the authors of the draft bill of law No. 6054 on not-for-profit associations and foundations is further confirmed in parliamentary documents and, more specifically, in the governmental amendments of 26 July 2021[3], where it is stated in Chapter IV of Title I, entitled "Bookkeeping and annual accounting documents" applicable to not-for-profit associations (excluding associations recognised as being of public utility referred to in Title II and foundations referred to in Title III) that:

"[I]*n order to avoid placing an excessive administrative burden on associations, particularly the smallest ones, it is proposed that the filing with the RCS should – initially, and regardless of the association's size and status – be carried out in the classic format, that is to say, without going through the electronic financial data collection platform (eCDF)*.

[1] It should be noted that, under article 18 para. 6 sub-para. 3 and article 52 para. 3 of the law of 7 August 2023, "large associations" (including associations recognised as being of public utility) and foundations are required to provide additional information as specified by Grand Ducal Regulation.

[2] Grand-Ducal Regulation of 12 September 2019 laying down the content of the standard chart of accounts referred to in article 12 of the Commercial Code

[3] Parliamentary document 6054-8 – Governmental amendments of 26 July 2021 to the draft bill of law on not-for-profit associations and foundations – p. 13

Similarly, and for the sake of simplicity, it is proposed not to extend the application of the Standard chart of accounts (PCN) applicable to undertakings to associations at this stage".

It should be noted that this exemption from PCN and from transit via the eCDF platform also applies to associations recognised as being of public utility under article 36 paragraph 1 (see: Title II), which provides that:

"*For the purposes of determining the accounting regime applicable to it, an* association recognised as being of public utility *falls within the category of "large organisations" as defined in Article 18*".

Finally, foundations are also exempt from PCN and from the requirement to transit via the eCDF platform, as confirmed in the comments on the amendments relating to Title III, which deals with foundations[4], where it is stated that:

"[I]*n order to avoid placing an excessive administrative burden on foundations, particularly the smallest ones, it is proposed that filing with the RCS should – initially – be carried out in the classic format, that is to say, without going through the electronic financial data collection platform (eCDF).*

Similarly, and for the sake of simplicity, it is proposed not to extend the application of the Standard chart of accounts (PCN) applicable to undertakings to foundations at this stage".

It should be noted that whilst not-for-profit associations classified as "large associations", associations recognised as being of public utility and foundations are exempt from the obligation to file the balance of accounts (the trial balance) listed in the PCN with the RCS via the eCDF platform; however, there is nothing to prevent them from using the PCN on a voluntary basis. It is indeed noted that using the PCN comes with several advantages, one of which is that it provides a mapping table that allows for the easy – or even automated[5] – preparation of the balance sheet and profit and loss account. It should be noted that not-for-profit associations and foundations which voluntarily choose to use the PCN will nevertheless remain exempt from the standard collection of financial data via the eCDF platform and will therefore file their annual accounts in the classic manner (without the trial balance of accounts presented PCN format).

However, in the case of not-for-profit associations classified as "large associations", associations recognised as being of public utility and foundations that choose not to use the PCN, preferring instead to use an internal chart of accounts, these organisations must ensure that they adequately document the correspondence between their internal chart of accounts and the balance sheet and profit and loss account ('*mapping*'). This documentation will be kept at the association's or foundation's registered office and will, in particular, facilitate the audit work carried out by the "*réviseur d'entreprises agréé*" (approved statutory auditor).

[4] Parliamentary document 6054-8 – Governmental amendments of 26 July 2021 relating to the draft bill of law on not-for-profit associations and foundations – p. 41

[5] Based on the features of the accounting software used

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3. What are the applicable balance sheet and profit and loss account layouts applicable to not-for-profit associations classified as "large associations" as well as to associations recognised as being of public utility and to foundations?

With regard to the structure of the balance sheet and to the structure of the profit and loss account as provided for in the accounting regime applicable to "medium-sized undertakings", these are the balance sheet layout set forth in article 34 LRCS and the abridged profit and loss account layout set forth in article 47 LRCS, both of which provide that the form and content of said layouts are determined by Grand Ducal Regulation adopted upon the opinion of the CNC.

Under current legislation, it is the Grand Ducal Regulation of 18 December 2015[6] that determines the form and content of the layouts for the balance sheet and for the profit and loss account in their non-abridged and abridged formats, which are applicable. These standard layouts are available to the public on the electronic financial data collection platform (eCDF platform)[7].

It should be noted that not-for-profit associations classified as "large associations", as well as associations recognised as being of public utility and foundations, are free to use – on a voluntary basis – the non-abridged profit and loss account layout provided for in article 46 of the LRCS.

4. Do not-for-profit associations classified as "large associations", associations recognised as being of public utility and foundations have the ability to adapt the standard balance sheet and standard profit and loss account layouts applicable to "medium-sized undertakings" — and, if so, what are the nature, scope, and limits of such adjustments?

It must be noted that the form and content of the balance sheet and profit and loss account layouts established by the Grand Ducal Regulation of 18 December 2015, reflect a business model designed for commercial undertakings. Consequently, certain concepts are not tailored to the activities and operations of not-for-profit organisations, such as not-for-profit associations and foundations. By way of example, one can cite the concepts of "1. Net turnover" in the profit and loss account (non-abridged layout) or of "A.I. Subscribed capital" in the balance sheet (non-abridged layout).

This raises the question of whether not-for-profit associations classified as "large associations," associations recognised as being of public utility and foundations can adapt the standard balance sheet and the standard profit and loss account layouts.

Once again, the parliamentary document No. 6054-8, in connection with the governmental amendments to the draft bill of law on not-for-profit associations and foundations, states – unequivocally – that:

"*Large associations shall comply with the layouts of balance sheet and profit and loss account adopted pursuant to articles 34 and 47 of the amended law of 19 December 2002, whilst making the necessary adjustments (e.g. the nomenclature of line items / captions) to reflect the nature of their activities*"[8].

6 Grand Ducal Regulation of 18 December 2015 establishing the form and content of the layouts for the balance sheet and profit and loss account and implementing articles 34, 35, 46, and 47 of the amended Law of 19 December 2002 concerning the trade and companies register as well as the bookkeeping and annual accounts of undertakings

7 The standard balance sheet layouts (abridged and non-abridged) and profit and loss account layouts (abridged and non-abridged) are available on the eCDF platform in the "Forms" section at the following URL: https://ecdf.b2g.etat.lu/ecdf/forms

8 Parliamentary document 6054-8 – Governmental amendments of 26 July 2021 relating to the draft bill of law on not-for-profit associations and foundations – p. 16

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It should be noted that the same applies to foundations; the aforementioned governmental amendments[9] state that:

"*The foundations shall comply with the layouts of the balance sheet and profit and loss account adopted pursuant to articles 34 and 47 of the amended law of 19 December 2002, whilst making the necessary adjustments (e.g. the nomenclature of line items / captions) to reflect the nature of their activities*".

It is important to note that the reason why undertakings subject to the PCN and to the standard data collection via the eCDF platform have, since 2012, been prohibited from adapting their balance sheet and profit and loss account layouts is precisely because the standard data collection has required the implementation of electronic forms in a standard and fixed format[10]. However, for undertakings not subject to the PCN and to the standard data collection via the eCDF platform (e.g. undertakings subject to prudential supervision by the CSSF), adjustments to the layouts remain possible under the Grand Ducal Regulation of 15 December 2016[11]. It must be noted that the same applies to not-for-profit associations and to foundations, all of which are exempt from the PCN and from the standard collection of financial data on the eCDF platform, and for which there is therefore no requirement to use electronic forms in a standard and fixed format.

Whilst it is understood that not-for-profit associations and foundations may make "*the necessary adjustments (e.g. nomenclature of line items / captions)*", the question nevertheless arises as to the nature, scope and limits of such adjustments.

In this regard, it should be noted that the accounting directive 2013/34/EU[12] – which does not apply to not-for-profit associations and foundations but which may nevertheless serve as a source of inspiration – explicitly provides, in article 9 paragraphs 2 and 3, for the option to adapt the layouts of the balance sheet and of profit and loss account within certain limits.

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[9] Parliamentary document 6054-8 – Governmental amendments of 26 July 2021 relating to the draft bill of law on not-for-profit associations and foundations – p. 41

[10] Explanatory memorandum included on page 7 of the parliamentary document 6376-0 in connection with draft bill of law No. 6376 on the reform of the Accounting Standards Board (CNC) and with the amendments to various provisions concerning the bookkeeping and annual accounts of undertakings, as well as the consolidated accounts of certain types of companies:

"***A. Changes relating to the implementation of a standard financial data collection***

The implementation of a standard financial data collection (the eCDF project and the Luxembourg Balance Sheet Data Office project) necessitates the removal of certain options relating to the presentation of the balance sheet and the profit and loss account. Consequently, the provisions allowing for the grouping, addition or renaming of line items / captions within the balance sheet or the profit and loss account, as set out in articles 34 and 46, are repealed in order to enable the implementation of standard, fixed-format electronic forms for the collection of the balance sheet and the profit and loss account".

[11] Grand Ducal Regulation of 15 December 2016
1. introducing certain derogations from the standard layouts of balance sheet and profit and loss account pursuant to article 27 of the amended law of 19 December 2002 on the trade and companies register and on the bookkeeping and annual accounts of undertakings, and,
2. repealing the Grand Ducal Regulation of 29 June 1984 laying down the layout in accordance with which financial holding companies must draw up their annual accounts.

[12] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC

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As a reminder:

- Article 9 paragraph 2 of the accounting directive 2013/34/EU provides that, within the balance sheet and the profit and loss account, a more detailed breakdown of line items / captions is permitted and that the addition of subtotals and new line items / captions is authorised provided that their content is not covered by any of the line items / captions set out in the prescribed layouts;
- Article 9 paragraph 3 of the accounting directive 2013/34/EU provides that the structure, nomenclature and terminology of balance sheet and profit and loss account line items / captions preceded by Arabic numerals shall be adapted where the specific nature of the undertaking so requires.

In view of the above, it appears that it can be concluded that not-for-profit associations classified as "large associations", associations recognised as being of public utility and foundations which are required to draw up their balance sheet in accordance with article 34 of the law of 19 December 2002 (non-abridged layout) and their profit and loss account in accordance with articles 46 or 47 of the law of 19 December 2002 (abridged or non-abridged layouts) have the option to adapt these layouts by:

- providing a more detailed breakdown of the line items / captions in the balance sheet and profit and loss account;
- adding subtotals within the balance sheet and profit and loss account layouts;
- adding new line items / captions, provided that their content is not covered by any of the line items / captions set out in the standard layouts;
- adapting the structure, nomenclature and terminology of balance sheet and profit and loss account line items / captions preceded by Arabic numerals where the specific nature of the undertaking so requires.

It should be noted that, in accordance with the principles of consistency in accounting policies and of clarity in the presentation of annual accounts[13], large associations (including associations recognised as being of public utility) and foundations are expected to apply the adjustments made to the layouts of the balance sheet and of the profit and loss account consistently and on an ongoing basis from one financial year to the next.

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Disclaimer

This document – provided as a courtesy – is an unofficial translation of the French original document entitled "*Grandes associations, associations reconnues d'utilité publique et fondations : clarifications ciblées sur le nouveau régime comptable introduit par la loi du 7 août 2023* ". In case of discrepancy in interpretation, the French version shall prevail.

The "questions and answers" published by the "Commission des normes comptables (CNC)" (Accounting Standards Board):

- are of a general nature and do not refer to the specific situation of any natural or legal person;
- are intended to contribute to the development of accounting doctrine in accordance with Article 73(b) of the amended Law of 19 December 2002 on the trade and companies register, as well as on the bookkeeping and annual accounts of undertakings;
- only represent the opinion of the GIE CNC on a number of doctrinal and interpretative issues;
- do not prejudge the tax implications that may arise from the accounting treatments mentioned.

The administrative or management bodies of undertakings, associations or foundations remain responsible in accordance with general law for any decisions taken based on this document.

[13] The principle of consistency in accounting policies (article 51 para. 1 point b) LRCS) as well as the principle of clarity in annual accounts (article 26 para. 2 LRCS) are accounting principles that form an integral part of the accounting regime applicable to medium-sized undertakings referred to in article 47 LRCS and which therefore apply to not-for-profit associations classified as "large associations", to associations recognised as being of public utility and to foundations.