

MEMO



TO Municipality of Beesel

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OUR REFERENCE 1013228

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SUBJECT Cultural Route - Saint George and the Dragon

Dear Mr. Van den Broek,

1 INTRODUCTION

- 1.1 The Dutch municipality of Beesel (hereinafter: **“Beesel”**) has asked AKD to provide legal advice regarding the following matter.
- 1.2 On August 10, 2023 Beesel signed a Letter of Intent together with four other European municipalities, namely the municipalities of Furth im Wald (de), Grez-Doiceau (be), Monção (pt) and Montblanc (es). The municipalities hereby declared their intention to cooperate on the topic of Saint George and the Dragon. More specifically, their goal is to apply for certification as ‘Cultural Route of the Council of Europe’. This certification is awarded by the Council of Europe to legally constituted networks focusing on a European theme and implementing activities in at least three Council of Europe member States.
- 1.3 The rules for the award of the certification are defined in a resolution of the Committee of Ministers of the Council of Europe (CM/RES(2013)67). These criteria entail (amongst others) that project initiators must form multidisciplinary networks. Such networks must have legal status.
- 1.4 Beesel has asked AKD to advise on how to best constitute the legal status of the network regarding the theme of Saint George and the Dragon. Below, we will first address the relevant legal framework as laid down by the Council of Europe. Consequently we will address the question on how the relevant criteria can be applied according to Dutch law.

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2 LEGAL STATUS: ASSOCIATION

2.1 Legal framework: establishment of an ‘association’

- 2.1.1 As mentioned above, the rules for the award of the ‘Cultural Route of the Council of Europe’ certification are laid down in Resolution CM/Res(2013)67. The rules include a list of criteria for networks (Paragraph III of the Resolution). This list contains the following provision:

“Project initiators shall form multidisciplinary networks located in several Council of Europe Member States. Such networks must: [...]

- have a legal status, either in the form of an association or a federation of associations;”

- 2.1.2 In the French version, the provision reads: *“s’être doté d’une structure juridique, soit sous forme d’association, soit sous forme de fédération d’associations”*.

- 2.1.3 Based on this provision we conclude that in order for networks to be awarded the Cultural Route-certification, they must establish either an association, or a federation of such associations. The establishment of legal entities is – of course – regulated by the national corporate law of the member States of the Council of Europe. In this regard, we understand that the word ‘association’ (in both the English and French language version of the Resolution) refers to legal entities such as the ‘vereniging’ under Dutch and Belgian law, the ‘verein’ under German and Belgian law, the ‘association’ under French and Belgian law, the ‘associação’ under Portuguese law and the ‘fundación’ under Spanish law.

- 2.1.4 In short, we conclude that in order for the initiating municipalities to apply for the award of the Cultural Route-certification with the theme Saint Georges and the Dragon, they can either (1) establish one association in one of the member States, or (2) each establish an association in their own member State and consequently establish a federation of these associations.

- 2.1.5 Below, we will shortly set out some relevant aspects regarding the establishment of an association (‘vereniging’) under Dutch law.

2.2 Members of an association

- 2.2.1 Under Dutch law, an association is established by notarial deed. A Dutch association needs to have members (otherwise there is no association). Everyone (either a natural person or a legal entity), including a foreign municipality, can be a member of a Dutch association. Neither literature nor jurisprudence contain any restriction regarding to whom can be a member of an association. The association itself can however decide to create such restrictions, for example by providing that only municipalities can be a member of said association.

2.3 Dutch municipalities

- 2.3.1 Furthermore, we've addressed the question whether a Dutch municipality can – as far as Dutch law is concerned – become a member of a foreign association. In that regard we note that Dutch municipalities can't join every legal entity. Dutch law implies a preference for public legal entities when both public and private legal entities can be used to achieve the purpose set. In other words: in case a Dutch municipality can achieve its purpose through the setting up of a public legal entity, it should do so instead of setting up a private legal entity. In this situation however, the municipalities can argue that due to the rules and criteria laid down by the Council of Europe, only the setting up of an association (or a federation of associations) will suffice in order to be eligible for the award of the Cultural Route-certification.
- 2.3.2 Furthermore, Dutch law provides that in order for a municipality to become a member of a foreign association, this needs to be in the public interest. In this regard however municipalities have discretionary powers. In this situation, the association is needed to constitute the required legal status regarding the cooperation under the theme of Saint George and the dragon. Given the purpose of this cooperation and the public value of the possible Cultural Route-certification, it can be demonstrated that joining such association would be in the public interest. Furthermore, the town council of Beesel will have to be consulted before a decision has been made.¹
- 2.3.3 Furthermore, it should be mentioned that the municipalities own rules have not been taken into account formulating this advice.

3 CONCLUSION

- 3.1.1 In conclusion, we note that in order to be eligible for the award of the Cultural Route-certification, the municipalities will have to (amongst other requirements) set up an association or federation of associations. This association can be set up in either one of the Member States where the cooperating entities are located.
- 3.1.2 Under Dutch law, it is possible for Beesel to set up an association. The other municipalities can become a member of this association. Also, Beesel can become a member of a foreign association. In either case, Beesel will have to consult the town council before such a decision is taken.
- 3.1.3 This memorandum does not address any questions concerning the application of national law of the other member states where the cooperating municipalities are located.

¹ Article 160 lid 2 Gemeentewet.