

TRANSFER

Until 1989, MSF Belgium's logistical supply chain was incorporated within the association. In March 1989, in order to avoid paying Value Added Tax and to attract non-MSF customers, the Board of Directors decided to create an external structure, named Transfer, for the logistical supply chain. It took the form of a cooperative association, which remained under MSF control via the members of the General Assembly and Board, who were all MSF Belgium members.



Minutes of MSF Belgium Board of Directors minutes, 22 March 1989 (in French)

Extract:

1). MSF's control over the "satellite" operation of the logistics function:

Three-member cooperative:

- a) 3 MSF representatives (president, vice-president, treasurer)
- b) Possibly, the other MSF vice-president (or another person)
- c) Possibly, the MSF secretary (or another person)

These five individuals will form the General Assembly. The shares held by b) and c) are, respectively, one share each, with the MSF cooperative holding the remaining shares.

The Board of Directors of the Cooperative shall be elected by the General Assembly and will include three individuals from MSF: the director, the president and the logistics operations manager. This Board will delegate power to the executive (a director).

Conclusion: MSF's control and power operates thus at two levels: General Assembly and Board of Directors

2. Cost of the operation for MSF:

Initial investment, bearing in mind that MSF will benefit from lower administrative costs and so growth without an overburden; that the profit from the cooperative will be fully returned directly to MSF (no earnings for the cooperative); and that the service, to be offered at a later stage to other organisations, will generate profits that will be paid to MSF.

The discussion between the administrators regards financial problems (wages, potential finance gap, cashflow problems, bankruptcy, etc.) and ethical problems (MSF's moral position regarding the commercial development of a competitive company).

In conclusion, the administrators ask that a comprehensive and quantified document be drawn up detailing the pros and cons and the evaluation criteria of the logistics cooperative.

The administrators unanimously voted to establish the logistics cooperative.



Minutes from the MSF Belgium Board meeting, 6 June 1989 (in French)

Extract:

3. Logistical cooperative status

3.1 Approval of the GA [General Assembly] of the cooperative

Details to be provided: agreement to be drawn up between J[acques] de Milliano [General Director of MSF Holland and VP of MSF Belgium], J[ean]-M[arie] Kindermans [VP and Treasurer of MSF Belgium] and MSF regarding the automatic transfer of cooperative shares to the incoming VP and Treasurer of MSF [Belgium].

3.2. Amount of capital: 20 million Belgian francs¹.

Details to be provided on the fair distribution of the agreed capital (cash, shares, other assets) to factor in the interests of each party (MSF, Cooperative), everyone (MSF + cooperative) and the credibility of the cooperative vis à vis suppliers. Recommendation: 80% cash, 20% shares.

3.3. Value of shares: 1,000 Belgian francs.

3.4. Proposed release:

10 million Belgian francs quickly, but in accordance with specific details from the Executive Committee regarding the details of the forecast cash position. At the same time, payment of invoices by MSF to TRANSFER 30 days from the end of the month during first few months of operation.

3.5. Name and logo: The administrators approved the name TRANSFER, and the logo, with the removal of 'MSF' from the name. (Transfer, Logistical Agency.)

The Board has asked for all specific details to be presented by the Executive Committee at the next Board meeting to subject point 3 to a general vote.



The main reason Transfer was set up was to claim back the VAT. What you need to remember is that at that time MSF Belgium was an association that was looking to grow but which considered itself extremely poor because it didn't have much in the way of its own financial resources, what we used to call 'good money' that allowed us to do what we wanted. In 1995, in Chantilly, MSF Belgium was ridiculed for being an organisation that worked only for the European Union and was ultimately at the EU's beck and call. They were obsessed with economic matters, how they might save money.

So to try and save as much as possible, the idea was to claim back the VAT. We therefore set up a cooperative company, Transfer, primarily to reclaim the VAT and secondly to expand our client base. Because MSF had specialist knowledge in the supply area, we would impart it to others, which would boost Transfer's revenue and thus generate 'good money' for MSF's coffers.

Well none of this happened in the end, but it was no big deal. When attempting to diversify our clientele, very quickly we came up against the problem of delivery of service. When you have multiple clients, it's more complicated because clients don't want the same items and secondly there is an order of priority between clients and the supply work for MSF is so specific and demands a great deal of energy. The people at MSF thought at times that the service offered by Transfer was too long not adapted and that one of the reasons was that Transfer tried to generate revenue through other clients.

Dr Jean-Marie Kindermans, MSF Belgium- Board member, 1988-1995; MSF International Secretary General, 1995-2000
(in French)

In March 1996, the Belgian General Administration for Cooperation and Development (GACD) began an enquiry into MSF Belgium.

The case focused on the relationship between MSF Belgium and Transfer, wrongly suspecting a conflict of interest between the two entities and the non-compliance of MSF Belgium with the tender process imposed on associations who were granted funds by the GACD.

As it was feared that the case could damage MSF's image in terms of institutional and private donors, it was decided to change Transfer's legal status from a cooperative to a social purpose company², a legal status recently created in Belgian Law.

The enquiry was shelved after a few months.



Minutes from the MSF Belgium Board meeting, 12 July 1996 (in French)

Extract:

The president explained that an audit had been on-going since March by the anti-fraud unit of the AGCD [Belgian General Administration for Cooperation and Development]. The General Director was interviewed for six hours straight, mainly about Transfer, but also on several points concerning operations (Grozny and Kenya). The case is now closed and has been passed over to the parliamentary committee. We don't have full details of the case, but we do know there is a danger of it being shared with the press. MSF has not committed fraud, but there is a genuine risk of a scandal motivated by a specific political aim which would be to tarnish the image of Réginald Moreels³. Which could have serious media repercussions on us.



Minutes from the MSF Belgium Board meeting, 9 August 1996 (in French)

Extract:

6. Future status of Transfer (guests: Alain Peeters, Director of Transfer, Gerda Bossier: Communications Director [MSF Belgium], Mario Goethals, Operations Director [MSF Belgium], and Alex Parisel, Deputy General Director [MSF Belgium], and in charge of overseeing the OSI⁴ case, and Gorik Ooms, consulting lawyer)

The president gave a recap of the events regarding the OSI case and primarily the fact that, according to the press, the case was handed to the Senior Crown Prosecutor, which means that the OSI unit believes the case contains elements that raise the suspicion that a criminal offence has been committed. Moreover, she shared a press campaign containing several defamatory articles.

The lawyer explained the criticism we might receive and the possible responses:

- To receive funding from the AGCD [Belgian General Administration for Cooperation and Development], an NGO cannot have a conflict of interest with a commercial company. So we might imagine that one of the counts against us might be a suspicion of a conflict of interest between MSF and Transfer.

Response: the purpose of Transfer is not commercial but humanitarian.

- In the emergency aid contracts funded by the AGCD, an NGO cannot compute personnel or administrative expenses. However, Transfer adds a percentage to sales.

Response: the two entities (Transfer and MSF) are distinct companies, Transfer is therefore entitled to calculate its expenses, which are, more importantly, real.

- NGOs are supposed to put out three tenders for subcontracting contracts.

This is legislated by a royal decree issued on 1 September 1995 that includes the following exceptions: emergency cases, cases whereby the specific nature of the product means three competitors do not exist, and cases where a producer has developed specific products for a particular demand.

The lawyer highlighted a contradiction between the last two criticisms: regarding the tender, MSF and Transfer are considered as two distinct entities, while for the allocation of admin and personnel expenses, Transfer is assimilated with MSF.

The lawyer and Michael [Van Vlasselaer, Treasurer of MSF Belgium] also reminded everyone that the case can be closed with no further action if the Senior Crown Prosecutor believes that there is no need to pursue the case, which happens eight out of 10 times.

The Communications Director gave an update on communications:

In terms of fundraising, since April, we believe donations to be 30 million lower than forecast, out of an annual total of 570. Extrapolating, we might unfortunately be looking at an annual loss of 100 to 150 million, even 250 million if MSF doesn't receive the authorisation to issue a tax certificate (in which case the donors will have to be refunded).

Gerda said that, in fact, the ratification of MSF as an NGO legally authorised to issue tax certificates has not yet been done for 1996. She added that all ratifications are, however, delayed.

Regarding MSF's image, the matter was quite well contained by the press conference, but the journalists do not seem convinced, which might maintain the public's mistrust. The media barely mention MSF, Réginald Moreels has become their number one target. MSF's role as the 'accused' in the media has been replaced by Réginald Moreels. It's therefore difficult to defend ourselves, especially given that the Senior Royal Prosecutor has not yet come to a judgement and we do not know the content of the transcript of the proceedings. We don't have all the information to define our strategy.

Not to mention the fact that the subject is very technical, it's hard to come up with a slogan. It's therefore very difficult to be convincing on such a complex matter with so little information at our disposal.

The donors have received an email explaining the importance of Transfer, including an invitation to get in touch to ask any questions they like. Some might be wondering why we are not doing more.

Alain Peeters explained to us the processes involved in changing the status of Transfer:

For some time now Transfer has been looking into the possibility of changing status in order to change from the status of cooperative to the recently created (July 1996) status of société à finalité sociale or 'enterprise with a social purpose'. It might be a good idea to move to this new status, which is more suited

2. A company with a social purpose is obliged to invest its profits in the corporate purpose stipulated in its articles of association.

3. Former president of MSF Belgium.

4. Ontwikkelingssamenwerking Inspectie, Flemish acronym of the AGCD anti-fraud unit.

to Transfer. However, this change will not solve all the current problems, including the accusation of paying double administrative costs. Alain wanted to explain that these fees are accepted by all the other donors.

Transfer's Board will convene an extraordinary general meeting to propose this change of status to a société à finalité sociale. [...]

The case is being coordinated by the General Director. The director's deputy is continuing to closely monitor the case. Any decision on the matter will come from the management committee. The Board will be informed of decisions by the president. Janek has asked that the Board be closely involved in this decision.



Minutes from the MSF Belgium Board meeting, 11 October 1996 (in French)

Extract:

5. Transfer: status of *Coopérative à Finalité Sociale*.

Marleen Boelaert [President of MSF Belgium] informed the Board that she has been invited by Maître De Backer to give more information on the OSI case on 23 October 1996.

Wim Van Damme [member of the MSF Belgium Board] explained to us about the possibility of changing status as presented at Transfer's Board meeting, on 9 October 1996. MSF has always said that Transfer was a *Société Coopérative à Finalité Sociale* before the category existed and they would change as soon as possible. The legal documentation has been taken and analysed by specialists for Transfer. They concluded that the change of status would not solve the problems raised by the OSI investigation. Furthermore, a dozen NGOs have similar set-ups to Transfer. Réginald Moreels' office⁵ is going to try and settle the matter. It's therefore important that we keep an open mind regarding any further changes.

Eric [Goemaere, MSF Belgium General Director] stressed, however, the importance of showing our intention of moving towards a situation that is clearer from a legal perspective.

Conclusion: Transfer presented a dossier analysing any change of Transfer's status to a *Société Coopérative à Finalité Sociale* (SCFS). The dossier is currently being studied at Transfer while MSF's Board waits for a recommendation from Transfer's Board.



The prices set by Transfer for MSF were more or less the cost price plus 10% to cover Transfer's expenses. But they'd round it up to have an overall amount, because they didn't make the same profit on every product. Which ECHO and the AGCD might have taken to mean that MSF didn't put out to tender, Transfer overvalued the costs and the profit went to MSF, which would represent more money for MSF paid by donors.

Dr Jean-Marie Kindermans, MSF Belgium-Board member, 1988-1995; MSF International – General Secretary, 1995-2000
(translated from French)



I was with Gorik Ooms [Legal advisor to MSF Belgium] and Eric Goemaere [MSF Belgium General Director] to answer questions from a parliamentary committee which was closed with no further action.

The donors questioned the margin Transfer was making and it became a problem for a number of years. They had to justify that this margin was fair compensation for the services provided to MSF and not double funding. Among the measures adopted was changing the status of the organisation to a 'société à finalité sociale', to reassure the donors that the margin was used as working capital and not shared out among shareholders.

Pierre Poivre, Transfer – General Director, 1996-2003
(in French)

5. In 1996, Réginald Moreels, former President of MSF Belgium was State Secretary for Cooperation and Development on Belgium.