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→ The impact of the information and consultation directive on industrial relations — The Netherlands

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This comparative report provides a general overview of the steps taken in the Netherlands to implement the 2002 Directive on informing and consulting employees. Only every minor changes were required, as Dutch legislation already conformed with the Directive, and indeed exceeded its requirements. The Directive has therefore had virtually no impact.

Question 1: National implementation of the Directive

Has the information and consultation Directive been implemented in your country?

If so, did this require:

Yes, the Directive has been implemented.

(i) extensive reform or major new legislation? (ii) an extension or relatively minor adaptation of pre-existing provisions (e.g. on national works councils or similar bodies)?

or

(iii) no new measures?

Only two minor revisions of Dutch existing legislation were considered necessary to implement the Directive:

- The Law on works councils (the main item of legislation on information and consultation) gave firms the possibility to ask the Social and Economic Council to grant them an exemption from this law's provisions. Since 1971, there have been very few (less than 10) cases where this exemption has been granted. Due to the implementation of the directive, the law has now been amended to lay down minimum standards (on information and consultation) for granting an exemption.
- The Law on works councils contains a duty on works council members to keep confidential information secret, both when secrecy is demanded by the employer and when it is obvious that secrecy is important. There was no explicit possibility in the law to challenge the duty of secrecy in court. Due to implementation of the Directive, this has been changed.

There already existed a direct/automatic right to information and consultation for employee representatives. On top of this, works councils have the right to ask for extra information (and they are entitled to this information if they reasonably need it to fulfil their tasks). Moreover, the law allows for agreement-based extra information and consultation rights for works councils.

Since 1998, the Dutch law on works councils has obliged employers to establish a works council in undertakings with 50 employees or more. The employer may install a 'mini-works council' in undertakings with less than 50 employees. In undertakings with 10-50 employees, the employer is obliged to instal such a mini-works council when this is demanded by a majority of employees.

Since 1998, agreement-based information and consultation agreements are allowed, but these may not differ from the law to the disadvantage of employees.

Question 2: Infringement proceedings

If yours is one of the countries against which the European Commission instituted infringement proceedings for non-compliance with the Directive (see above), on what grounds was this done? What accounts for the government's inaction or delay? How has the government reacted to the infringement proceedings? And has the matter now been resolved?

About this document

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Not applicable

Question 3: Views of the social partners

(a) How did national employers' groups and trade unions react to the Directive when it was adopted and what were their views on how it should be implemented in your country? If there was debate and controversy, on which aspects of the Directive did it focus? How and to what extent were the social partners involved in the implementation process and to what extent did they influence your government's response to the Directive?(b) What are the social partners' views on the measures finally adopted (if any) to implement the Directive in your country?

The Directive never has been an issue in the Netherlands, because the existing provisions of the Law on works councils go much further than the Directive.

Question 4: Impact of the Directive on industrial relations practice

What impacts on industrial relations practice has the implementation of the Directive had in your country?

No impact at all.

Question 5: Interface with other national information and consultation provisions

Please comment on the relationship between national provisions implementing Directive 2002/14/EC (general framework) and those implementing Directives 98/59/EC (collective redundancies), 2001/23/EC (business transfers) and 94/45/EC (European Works Councils).

The Law on works councils is by far the most important law on information and consultation. The Law on European works councils is a separate law. The directives on business transfers and collective redundancies are, with regard to information and consultation, implemented by the Law on works councils. There is one related provision in the Law on collective redundancies, which states that the authorities will not start the procedure for granting a permit for a collective redundancy (which is required) if the works council has not been informed and consulted. There is also a separate provision in the law implementing Directive 2001/23/EC for undertakings without a works council or 'personnel representation' (a kind of mini-works council).

In the Dutch legal literature there is some criticism of the implementation of Directive 2001/23/EC with regard to SMEs (firms with less than 50 employees). Compared to larger enterprises, there is some restriction of information and consultation rights, which seem to violate the directive to some extent (See Saskia Peters, *Verdond sociaal recht*, Nijmegen 2006, p. 491)

As has been traditional for a long time, all information and consultation rights are attributed to works councils (or, in undertakings with less than 50 employees, to mini works councils or individual employees).

Every interested party (employer, employees, works councils, mini-works councils and unions) can go to court to enforce the relevant provisions. In some cases there are fines (max. of € 16,750).

Question 6: Commentary by the national centres

No comments. As stated, the Law on works councils already provided for extensive information and consultation rights in the Netherlands, so the directive was a non-issue.

Robbert van het Kaar, HSI