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Netherlands: Staff information and consultation on business transfers

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Netherlands

Phase:

Anticipation

Type: **Staff information and consultation on business transfers**

Last modified: 18 June, 2021

Native name:

Wet op de ondernemingsraden; Burgerlijk Wetboek

English name:

Works Council Act; Civil Code

Article

Article 25, 26, 31, 35b, and 35c Dutch Works Council Act; Article 7:665 Civil Code

Description

All major strategic decisions with potential consequences for the employees are covered by article 25 of the Works Council Act. This article covers both restructuring and business transfers (transfer of undertaking), but also major investments, closures and mergers and acquisitions. The works council must be informed and consulted and is entitled to all relevant information and has the right to be consulted on economic, business, organisational, legal and social issues, the reasons for restructuring, possible alternatives, consequences for employees and measures taken to limit the consequences. The works council is entitled to at least one consultation meeting with the employer. In principle, a works council should be installed if there are 50 or more employees.

In case of disagreement, the employer has to postpone the decision for one month, during which the works council may decide to go to court. If the advice is not followed by the employer, the works council can challenge the restructuring decision (and possible implementation measures already undertaken). Jurisprudence over the last 35 years shows that employers that have not taken their information and consultation duties seriously run the risk that the court rules the restructuring operation invalid. However, given sufficient care, the managerial prerogative prevails.

The works council in smaller companies

In smaller companies employing between 10-50 employees, the Works Council Act obliges the employer to consult the mini works council, if it exists (the so-called personeelsvertegenwoordiging, which may be established in firms with 10-50 employees) or the staff on any decision that could lead to job loss or a significant change in the employment, labour conditions or working conditions of at least one-fourth of the persons employed in the company. Contrary to the case of works councils, decisions cannot be challenged in court.

According to article 7:665a of the Civil Code, if there is no works council or mini-works council, the employer has to inform the employees in due time about the transfer, the reasons, the timing, the consequences for the employees and possible measures to deal with these consequences.

Comments

The main act for informing and consulting employees is the Works Councils Act. Compared to most other EU countries, works council rights are strong in the Netherlands.

The obligation to consult the works council is a generally uncontested aspect of collective dismissal (if an employer intends to dismiss/dismisses at least 20 employees in one or more locations of the same company within one and the same region of the public employment service within 3 months due to reorganisation for economic reasons), as is the waiting period of 1 month if the council disagrees with the decision to dismiss. Employer organisations do stress the importance of a simple and speedy process of collective dismissal in order for small and medium enterprises to continue their business, even in poor economic conditions. The regulation is of limited relevance for business transfers as the combination with collective dismissals is rare.

In addition to legal rules, the Social Economic Council (unions, employer organisations, independent members) reached an agreement called Merger Behaviour Rules (fusiegedragsregels), which was last updated in 2015.

The Merger Behaviour Rules protect the interests of companies active in a proposed merger. They aim to ensure that when considering a merger, attention is paid to the interests of employees active in the company. The Merger Behaviour Rules apply to proposed mergers and acquisitions in business. Mergers (some cases) and acquisitions (always) are both relevant in the context of transfers. Importantly, the term 'business life' is explained broadly, so that the merger rules also apply to government, non-profit and free trade.

Notification of proposed merger to unions and public announcement

The core of the Merger Behaviour Rules is that the merger parties inform the unions in good time, provide information and give the opportunity to judge from the point of view of the company's employees. 'Timely' refers to before a merger agreement is reached. The merger parties should implement this in such a way that the unions' opinion can actually influence the merger or modification of the merger and its modalities. The merger parties ensure that the relevant works councils have the opportunity to take note of the unions' judgement, so that it may be taken into account in the advice according to article 25 of the Works Council Act. In addition, the merger parties must inform the trade unions about their content before submitting a public notice on the preparation or merger of the merger.

Notification of proposed merger at the SER (Social Economic Council) Secretariat

At the time the trade unions are informed of the proposed merger, merger parties must notify the SER Secretariat of the merger being in preparation. The parties can easily do this notification by means of the notification form.

Disputes Committee Merger Rules and conciliation

If trade unions or merger parties have a complaint about non-compliance or limited compliance with the Merger Behaviour Rules, they can file this complaint with the Disputes Committee on Merger Behaviour. The parties may also choose to use the possibility of mediation.

Merger notifications for the period 2016-2020 are as follows:

Year	Notifications
2020	633
2019	701
2018	655
2017	588
2016	523

Cost covered by

Not applicable

Involved actors other than national government

Employer organisation
Trade union
Works council

Thresholds

Company size by number of employees:
10

Sources

-  [Works Council Act \(Wet op de ondernemingsraden\)](#)
-  [Article 7:665a Civil Code](#)
-  [Merger Behaviour Rules \(in Dutch\)](#)
-  [SER \(2019\) Merger Notifications](#)

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