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Netherlands: Staff information and consultation on restructuring plans

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Netherlands

Phase:

Anticipation

Type: **Staff information and consultation on restructuring plans**

Last modified: 10 February, 2021

Native name:	Wet op de ondernemingsraden (WOR); Wet Melding Collectief Ontslag (WMCO)
English name:	Works council act; Collective Redundancy Notification Act

Article

Articles 25, 26, 31, 35b, and 35c of Dutch Works council act; Articles 3 and 4 of Collective Redundancy Notification Act

Description

Obligation to consult the works council and receive advice

The employer has the obligation to inform a works council (*Ondernemingsraad*) and give it the opportunity to express its advice regarding the employer's intention to restructure, at such a moment in time that the works council's advice can still have a substantial effect on the employer's decision. The Works council act distinguishes the following types of restructuring:

- transfer of control over the company or a part thereof;
- establishing, or taking over or disposing of control over another undertaking as well as entering into, making a significant change in or terminating sustainable cooperation with another enterprise, including entering into it, to a significant extent modify or discontinue an important financial participation due to or for such an enterprise;
- termination of the company's business or an important part thereof;
- significant reduction, expansion or other change in the company's activities;
- significant change in the organisation of the company or in the division of decision-making power within the company;
- change of place where the company carries out its activities;
- group-wise recruitment or lending of labour.

The employer's request must include information on proposals for reorganisation and redundancies, reasons for these, 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.

Timeliness, completeness and correctness of the information provided to the works council is particularly relevant in cases of collective dismissals: at least 20 dismissals in one or more plants of the same company, within one and the same region of the public employment service (6 regions in the Netherlands), and within a period of 3 months.

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 consideration to the advice, 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) or the staff meeting 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.

If restructuring results in 20 or more dismissals, the Collective Redundancy Notification Act applies. This act stimulates the information and consultation (both with the works council and the unions) procedure because the necessary dismissal permit will not be granted by the public authorities if the information and consultation provisions are violated.

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 employer's obligation to notify the trade union and works council if a collective dismissal is about to take place and in other cases of restructuring is commonly accepted by the social partners. When the measure was introduced in 2012, however, some concerns were expressed by employer organisations about possible legal uncertainty for employers in cases of collective dismissal. The terms and conditions that pertain to whether a permit for collective dismissal is granted by the public employment service are usually a more contested topic than the actual obligation to notify.

The Collective Redundancy Notification Act can partly be seen as a leverage instrument to stimulate information and consultation of works councils in the case of collective dismissals: the public authorities will not issue the necessary permits if information and consultation with the unions and/or the works council have been violated.

See also '[Staff information and consultation on business transfers](#)' for conditions of a specific agreement between unions and employer organisations.

Cost covered by

Not applicable





Involved actors other than national government

Public employment service
Trade union
Works council

Thresholds

Company size by number of employees:
10

Sources

-  [Works Council Act \(Wet op de ondernemingsraden\)](#)
-  [Wet Melding Collectief Ontslag](#)
-  [Werknemer en ontslag](#)
-  [Employers are not happy with tightening up collective redundancy rules \(2012\)](#)
-  [Ius Laboris \(2009\), Collective Redundancies Guide, Brussels](#)

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