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EUROPEAN WORK COUNCIL DIRECTIVE IN THE NETHERLANDS¹

Summary:

1. Implementation of European Works Council Directive.
2. Definition of transnational activities.
3. Substantive or procedural provisions at variance with the Directive.
4. Judicial recourse.

1. Implementation of European Works Council Directive.

On 5 February 1997, the Dutch European Works Councils Act (*Wet op de Europese Ondernemingsraden* hereafter: WEOR) came into force, thereby extending Dutch co-determination to include a transnational dimension². This law transposed into Dutch law the EU Directive on European Works Councils (EWCs), which aims to increase the right of consultation and information of employees in "Community-scale" companies. It requires every Community-scale company to establish an EWC or an alternative procedure to inform and consult its employees on the company's transnational activities.

After the Recast Directive, it was approved the bill on 1 November 2011, which resulted in the adoption of the Act of 7 November 2011 amending the WEOR to implement European Works Council Directive (2009/38/EC). The Act became

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2 J. Lamers, R. van het Kaar, European and national works councils in the Netherlands in www.eurofound.europa.eu



effective on the date of its publication on 14 November 2011. Following the consultation of social partners, the Minister of Social Affairs and Employment submitted a bill to the Second Chamber of Parliament to amend the Act on the European Works Council. In addition to linguistic changes, such as ‘Member State’ into ‘involved state’ (to indicate that EEA countries are also included as recommended by the Council of State), and formal changes to the numbering of certain provisions, the amending act also includes material changes with regard to the rights and obligations of the EWC: for example, the strengthening of the competence of the EWC; a right to training (which was already included in the WEOR); and information and consultation rights in the situation of a transfer of undertaking, as well as an obligation of the EWC to inform the employees and/or their representatives about what has been discussed.

2. Definition of transnational activities.

Very interesting is the interpretation of the “transnational” definition. As known, EWC directive defines transnational matters which “matters that are of interest for the whole community-scale undertaking or for the whole group of undertakings, or for at least two undertakings or establishments of an undertaking or a group in two different involved states”. For the Netherlands implementation, the word “or” indicates that it can be a matter that affects only one Member State³.

Box n. 1

Contribution to the debate:

- a) the Dutch law have a notion of transnationality wider than art. 1 of the Directive?
- b) The notion of transnational Dutch finds inspiration in the recitals of the Directive?

³ Cfr. http://www.labourlawnetwork.eu/national_labour_law/national_legislation/



3. Substantive or procedural provisions at variance with the Directive.

- Subsidiary requirements: the issue of environmental care.

Art. 2 second paragraph of Annex to the Directive mentions specific issues to be addressed in the meeting between the central management or its appointees and the EWC. Art. 19 par. 2 of the Act adds the issue of environmental care to the list⁴.

- Subsidiary requirements: obligation to inform and consult in time.

This differs from the annex to the Directive in that the Act specifically provides that in the event of exceptional circumstances affecting the interest of employees, a meeting to address such circumstances shall take place at a time when information and consultation can still influence the decision-making process⁵.

4. Judicial recourse.

As known, EWC directive provides that the costs required for the performance of the duties of the one of more experts shall be borne by the Community-scale undertaking or the controlling undertaking.

In the WEOR, it is provided that the obligation to bear the costs extends to the cost of litigation under the condition that the Community-scale undertaking or the controlling undertaking is inform in advance of the cost to be incurred⁶.

Each interested party may request the enterprise chamber of the court of appeal in Amsterdam to determine that the provisions of the act must be

4 F. B. J. Grapperhaus, L. G. Verburg, *Employment Law and Works Councils of the Netherlands*, Kluwer Law International, 2009.

5 F. B. J. Grapperhaus, L. G. Verburg, *Employment Law and Works Councils of the Netherlands*, cit..



enforced with the exception of disputes related to the job security of the Act members of SNB or EWC.

The enterprise chamber of the Court of Appeal of Amsterdam also has jurisdiction over disputes regarding the enforcement of agreed arrangements (an agreed EWC or an agreed procedure).

Box n. 2

Contribution to the debate:

- a) What do you think about the obligation to pay the costs of litigation addressed to the employer provided by the Dutch law?



6 F. B. J. Grapperhaus, L. G. Verburg, *Employment Law and Works Councils of the Netherlands*, cit..