

WHY INVEST IN HOLLAND?

Labor Relations



Introduction

Netherlands Foreign Investment Agency (NFIA)

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Labor Relations

Industrial disputes in the Netherlands have traditionally been rare occurrences, and when they do occur they are handled fast and pragmatically. This is the result of a well-entrenched philosophy of consensus and the conviction by unions and management that prolonged tension is in no one's interest.

Unions

Trade unions in the Netherlands are moderate in character and tend to operate on a philosophy of consensus. Furthermore, the trade union density in the Netherlands is only 25%, which is low compared to European standards. Union membership is dominated by the three confederations: the Federation of Netherlands Trade Unions (FNV), the Federation of Christian National Workers' Unions (CNV), De Unie and the Council for Medium and Higher Employees (MHP).

Employers' organizations

Employers often join an employers' organization. There are three main employers' organizations in the Netherlands:

- The VNO-NCW association represents large trade and industrial associations.
- Small- and medium-sized enterprises are united in MKB Netherlands.
- Agricultural organizations are united in LTO Netherlands.

Cooperation between employers and employees

The collective bargaining economy in the Netherlands is reflected in - amongst others - the variety of institutions through which employers and employees (and sometimes the government) cooperate with each other, such as:

- Regulatory Industrial Organization
- Social and Economic Council (SER)
- Dutch works councils
- European works councils

The Joint Industrial Council and the Social and Economic Council consult with the Dutch government on, respectively, labor agreements, and more general social and economic issues. The aim of the directive regarding European Works Councils is to improve the rights and access of employees to information and consultation concerning cross-border issues.

Collective labor agreements are yet another form of cooperation between employers and employees in the Netherlands.

Trade Unions

Trade unions in the Netherlands are grouped together in three confederations:

- the Roman Catholic and non-denominational unions are affiliated with the Federation of Netherlands Trade Unions (FNV)
- Protestant unions are affiliated with the Federation of Christian National Workers' Unions (CNV)
- White-collar unions are affiliated with the Council for Medium and Higher Employees (MHP)

In addition to these three confederations there are a small number of independent unions for specific occupational categories like airplane pilots.

Trade unions	Members (x 1,000)	Percentage of organized labor force
FNV	1,197	64%
CNV	340	18%
MHP	130	7%
Others	207	11%

Source: Statistics Netherlands (CBS) 2012

Union membership for workers is not compulsory in the Netherlands. The number of workers that is member of a union is relatively low compared to the rest of the EU. The Dutch unionization rate is around 20%

Trade union density in %	Country
70,0	Finland
68,8	Denmark
68,4	Sweden
54,4	Norway
52,0	Belgium
37,3	Luxembourg
35,1	Italy
33,7	Ireland
26,5	UK
24,0	Greece
19,4	Netherlands
18,6	Germany
7,6	France

Source: OECD 2012

Unions in the Netherlands are organized according to sectors of industry, not by individual craft. The Dutch trade union leaders have a constructive attitude towards the economic challenges that the country is facing, and they believe that it is to the benefit of the workers to consider national aims like employment in their deliberations.

Some sectors in the Netherlands have a high rate of unionization (for instance construction workers (41%) and transport (56%)), while others have a low rate (IT (6%), retail (12%) and banking (18%). Unionization is particularly low among employees in the new professions, part-time employees, the flexible labor force, young employees, working women and migrant workers.

Employers' Organizations

Employers often join the association representing their branch of trade or industry. Most branch associations promote the economic, technical and commercial interests of their members. A few, e.g. the General Employers' Association, specialize in social and socio-economic affairs.

Central organizations

There are three central employers' organizations in the Netherlands which work together in the Council of Central Employers' Organizations (RCO):

- VNO-NCW
- MKB the Netherlands
- LTO the Netherlands

As most large companies negotiate and represent themselves, the mentioned organizations are more involved in discussions on more general and broader issues. Together with the trade unions they partake in a consultative body - the Joint Industrial Labor Council - which plays a major role in wage negotiations.

VNO-NCW

In this association, the Federation of Netherlands Industry ("Vereniging van Nederlandse Ondernemingen" or VNO) and the Netherlands Christian Federation of Employers ("Nederlands Christelijk Werkgevers Verbond" or NCW) have joined forces. This association represents large trade and industrial organizations and some large Dutch multinationals that negotiate their own collective labor agreements (CAO).

In all, the [VNO-NCW](#) has 150 branch associations, representing more than 90,000 companies, as members. Almost all large companies and those operating internationally are direct members of VNO-NCW. The most important of the branch associations affiliated with VNO-NCW are the Metal Working and Electrical Engineering Industry Federation ([FME](#)) and the General Employers' Association.

MKB the Netherlands

There is one central organization for medium-sized and small enterprises; [MKB Nederland](#) that renders services to new companies. MKB can provide information and advice. If necessary, help from specialists is available.

LTO the Netherlands

Agricultural organizations are united in [LTO the Netherlands](#).

Collective Labor Agreements

In a given industry or within a company, negotiations can take place between employers or employers' organizations on the one hand, and trade unions on the other hand. Normally, the results of these negotiations are laid down in a so-called Collective Labor Agreement ('Collectieve Arbeidsovereenkomst'), hereinafter referred to as 'CAO'. A CAO can be industry-wide or company specific. Most CAOs are applicable across vertical industry. Union members have the possibility to set up a company union if they think this will result in more influence on the employer.

CAO provisions

CAO provisions can be made with respect to - amongst others - salary scales, holiday entitlement, overtime pay, travel allowance, working hours, early retirement schemes, pension schemes, leave, training, and additional allowances in the event of incapacity for work or unemployment.

Binding character

A CAO is an agreement between two or more parties. Therefore, in any event, these parties will be bound by the agreement. A company CAO binds the employer that is party to this CAO. The employer will be bound by an industry-wide CAO, if he is a member of one of the employers' organization(s) that are party to the CAO. The employee is bound by the CAO if he or she is a member of one of the trade union(s) that are party to the CAO.

The provisions of an industry-wide CAO can be declared generally binding ('algemeen verbindend verklaard') by the Minister of Social Affairs. The employer who belongs to that vertical industry is then, in principle, bound by the provisions of that CAO, whether or not it is a member of one of the employers' organization(s) that are party to the CAO.

Industry-wide agreements

The employer who is party to a company CAO or who is - in case of an industry-wide CAO - a member of an employers' organization, is obliged to apply the CAO in respect to all his employees who are members of a trade union that is party to the CAO. Please note that the employer must - , in principle, during the term of the CAO, also apply the CAO to the employment contracts of employees who are not members of a trade union that is party to the CAO.

CAOs and compulsory law

A CAO may not deviate from mandatory law, unless the law allows a CAO to do so. Deviation from a so-called 'minimum rule' in the CAO by means of an individual employment contract is only allowed when the deviation is in favor of the employee. However, in the case that the particular provision of the CAO concerns a so-called 'standard or maximum rule', a deviation in the individual employment contract is not allowed.

Employee Participation

In the Netherlands there are various forms of employee participation that depend on the number of employees working in the company.

1. Dutch works council companies with 50 employees or more;
2. Employee participation in companies with 10 to 50 employees;
3. Employee participation in companies with less than 10 employees;
4. European works council.

Dutch works council

Under the Dutch Works Councils Act ('Wet op de Ondernemingsraden'), enterprises with 50 or more employees must establish a Works Council. The function of the Dutch Works Councils Act is to promote consultation between management and employees with regard to the business and policies of the company.

Employee participation in companies with 10 to 50 employees

Enterprises with at least 10 but fewer than 50 employees do not have to have a Works Council in principle, but are required to set up a "personnel representation" if the majority of the personnel so requests. Management must consult with the personnel representation on a number of subjects, such as proposed decisions that may result in job losses or in major changes in the working conditions of at least a quarter of the employees.

The personnel representation has - amongst others - the following rights:

- Right of approval regarding regulations on working hours, working conditions, sick leave and/or reintegration policies;
- Advisory right under certain circumstances on certain (intended) decisions which may have important consequences for the employees;
- Right to information.

The employer is obliged to inform the body in time and to supply the correct details.

If an enterprise with at least 10 but fewer than 50 employees has neither a personnel representation nor a Works Council, it is obliged to give its employees the opportunity to meet with management in a personnel meeting twice every calendar year, or each time when at least 25 % of the employees ask for it. The Dutch Works Councils Act also provides the personnel meeting with certain advisory powers.

The personnel meeting has an advisory right under certain circumstances, on certain intended decisions which may have important consequences for the employees, as far as these matters are not regulated by a Collective Labor Agreement. The employer is not obliged to follow the advice given in the staff meeting.

Employee participation in companies with less than 10 employees

Small enterprises with fewer than 10 employees may also set up a personnel representation on a voluntary basis. It has the same facilities at its disposal as a personnel representation in an enterprise with 10 to 50 employees; however, its powers are more restrictive.

European Works Council

A European Works Council is a council that transmits information from management to employees to ensure that decisions made in one participating state which affect the employees in another participating state will be communicated to all workers. The European Works Councils are established to inform and consult with employees regarding business decisions which affect the workforce and impact on employees' interests.

Works Councils

Under the Dutch Works Councils Act ('Wet op de Ondernemingsraden'), enterprises with 50 or more employees must establish a Works Council. The function of the Dutch Works Councils Act is to promote consultation between management and employees with regard to the business and policies of the company.

The members of the Works Council are chosen directly by the employees from among their own ranks. The number varies from 3 to 25, depending on the number of employees in the company. One of the members is appointed chairperson. A Managing Director cannot be a member of the Works Council. The Works Council has no executive power and, in general, may only advise management in connection with the company's business.

The management of the company and the Works Council meet at least twice a year. During those meetings, discussions are held about subjects concerning the company that either management or the Works Council believes merit deliberation. The management has an obligation to provide the Works Council with the necessary data and documentation (such as financial results and the legal structure of the company) and to inform it about the results and the prospects of the company.

Works Council's right to information

The Works Council is entitled to ask the company for information and data that it can reasonably claim it requires to perform its duties, which is known as the "active information right."

Furthermore, the company must provide the Works Council with detailed information on the company's financial and economic policy at least twice a year, and with information on the company's social policy at least once a year.

As of September 1, 2006, the Works Council also has a right to be informed about the scale and content of the terms and conditions of employment with respect to different groups of employees, income variances between different group of employees in the company, and the progress of all of the above in relation to the previous year. The management has an obligation to provide the Works Council with this information.

Finally, the Works Council has other specific rights to information within the framework of its advisory powers and its power of approval.

Advisory powers

Certain decisions to be taken by the company require prior advice from the Works Council. The advice must be requested from the Works Council within a time frame that will allow it to have a significant impact on the decision to be made.

1. Transfer of control of the company or a part thereof;
2. Establishment, take-over or relinquishment of control of another company, or entering into or making a major modification to, or severing a permanent co-operative venture with another company, including entering into or effecting major changes of, or severing of an important financial participation on the account of or for the benefit of another company;
3. Termination of the operations of a company or a major part thereof;
4. Major reductions or expansions or other changes to the company;
5. Major changes in the organisational structure of the company or in the division of powers within the company;
6. Changes in the location where the company conducts its business;
7. Recruitment or borrowing of personnel on a group basis;
8. Making major investments on behalf of the company;
9. Taking out a significant loan for the company;
10. Granting important loans and providing security for major debts of the entrepreneur;
11. Implementing or changing important technological facilities;
12. Implementing important measures with regard to environmental matters;
13. Making provisions under the Dutch Disablement Insurance Act; and,
14. Commissioning an outside expert to provide recommendations on one of the matters referred to above, and formulating his or her terms of reference.

The request for advice must be in writing and include a summary of the reasons for the decision, its expected consequences for the employees, and the measures proposed in response.

If the employer does not follow the advice, an explanation must be given. The Works Council has the right to appeal to the Enterprise Section of the Amsterdam Court of Appeal (Ondernemingskamer) within one month of being notified of the decision. The court will investigate whether or not the decision is unreasonable.

The Works Council may not give its advice until after the matter has been discussed during at least one consultative meeting. If, after the advice has been given, the company decides to go through with the planned decision, it must inform the Works Council in writing.

Should the decision deviate from the advice given by the Works Council, the company will have to give a full account of the reasons. The company is also obliged to postpone executing the decision for one month, unless the Works Council expresses its willingness to waive that. Although there is no financial penalty if this one-month stay is not observed, the company should not ignore this obligation, as the Works Council can start summary proceedings to force the company to observe the one-month stay.

Power of approval

In a number of cases, the works council has been given the right to cooperate in decisions, particularly decisions to adopt, amend, or withdraw:

1. Pension insurance schemes, profit-sharing schemes, or saving schemes;
2. Arrangements on working hours or holidays;
3. Remuneration of job assessment schemes;
4. Regulations in the field of health, safety, and welfare;
5. Regulations in the field of appointment, dismissal, or promotion policy;
6. Regulations in the field of staff training;
7. Regulations in the field of staff assessment;
8. Regulations in the field of industrial social work;
9. Regulations in the field of job consultations;
10. Regulations in the field of handling complaints;
11. Regulations in the field of registration and protection of personal data of employees; and,
12. Regulations with regard to the supervision and monitoring of employees.

The right of approval is not required if the substance of the matter has already been regulated in a collective bargaining agreement that applies to the company or when a public body sets out regulations.

Works Council's financial and educational rights

The Works Council has a duty to safeguard the supervision of working conditions, to promote the equal treatment of men and women, and to promote environmental care.

The employer must also afford members of the Works Council and the committees a certain number of paid working hours per year (determined in mutual consultation between the employer and the works council) to consult and meet, to deal with affairs that are inherent in the performance of their duties, and to assess the working conditions within the business.

The employer is also obliged to afford members of the Works Council a certain number of paid working days per year (determined in mutual consultation between the employer and the works council) to follow such training courses as the members may deem appropriate for the performance of their duties.

European Works Council

The European Union Directive on "the establishment of a European Works Council or a procedure in community-scale enterprises and community-scale groups of enterprises for the purpose of informing and consulting employees" -- which was adopted on 22 September 1994 - was implemented on 23 January 1997 in Dutch law as the European Works Councils Act.

The Directive and the European Works Councils Act apply to an enterprise that has at least 1000 employees on average and at least 150 employees on average in each of at least two member states during the previous two years, unless it is part of a community-scale enterprise.

A European Works Council is a council that transmits information from management to employees to ensure that decisions made in one participating state which affect the employees in another participating state will be communicated to all workers. The European Works Councils are established to inform and consult with employees regarding business decisions which affect the workforce and impact on employees' interests.

European Works Councils must be established and funded by the central management of the "community-scale enterprise" or a "community-scale group of enterprises". The European Works Councils Act states that a community-scale enterprise as an enterprise with a least 1,000 employees within the member states, and with at least 150 employees on average in each of two or more member states during the previous two years. A group of enterprises applies to larger entities, which have at least 1,000 employees within the member states during the previous two years, at least two "group enterprises" defined as a controlling enterprise and its controlled enterprises, in different member states, and at least one group enterprises with at least 150 employees in another member state during the previous two years.

In the European Works Councils Act the "controlling enterprise" means the enterprise within a community-scale group which can directly or indirectly exercise a dominant influence over another enterprise and over which no other enterprise exercises a dominant influence directly or indirectly. Unless otherwise shown to be the case, an enterprise shall be presumed to be the controlling enterprise if it:

- can appoint more than half of the members of the company's administrative, management or supervisory body, or
- can exercise over half of the voting rights at the general meeting of that other company, or
- furnishes over 50% of the other company's subscribed capital.

Chapter 2 of the European Works Councils Act applies to community-scale and controlling enterprises with their domicile or headquarters in the Netherlands. Points of interest are the following:

- The central management may set up a special negotiating body for the purpose of entering into negotiations with it concerning an agreement on establishing a European Works Council.
- Negotiations shall be held between central management and a specially appointed body concerning the practical realization of such a works council or consultation procedure. For instance, the scope, composition and functions of the European Works Council or consultation procedure will be agreed on in this way.
- The European Works Council has the right to meet with central management at least once a year to be informed and consulted on the progress of the business of the community-scale enterprises or group and its prospects. Such information and consultation shall relate in particular to the structure of the community-scale enterprise or group, its economic and financial situation, the probable development of activities and of production and sales, investments, substantial changes in its organization, the introduction of new working methods or production processes, environmental care, mergers, relocations, cutbacks or closures of enterprises, establishments or major parts thereof, the employment situation and trends, and collective redundancies.

If the community-scale enterprise or group of enterprises does not take the first step towards convening a special negotiating body, it may be compelled by the employees to do so. A written request will have to be submitted by at least 100 employees (or their representatives) in at least two different member states.

A European Works Council can have several advantages for European companies:

- Top management at transnational (European) level gets more insight about the activities on the shop floor, through direct contacts with employees at lower layers of the company in various countries.
- Through these contacts, top management also gets information on how their cross-border decisions are working out in the different countries.
- Employees have more understanding of cross-border decisions, which stimulates the cooperative behavior of employees.

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