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EURO-AMERICAN LAWYERS GROUP

RECENT LEGAL DEVELOPMENTS IN THE NETHERLANDS

*A EURO-AMERICAN LAWYERS GROUP BRIEFING ARTICLE
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LAW PROVIDING RULES ON THE DOCUMENTATION OF COMPANIES, EFFECTIVE 1 JANUARY 2005

The law has provided a legal basis for gathering and providing information on certain corporations, for the purpose of issuing the "declaration of no objection" by the Minister of Justice on the basis of Book 2 of the Netherlands Civil Code. The information can also be used for the prevention and repression of the misuse of companies, including committing crimes and offences that have a financial/economic character, committed by or by means of companies.

The law lays down the purpose for which information is gathered for registration; the acquisition of information from various sources, the contents of the registration, the providing of information registered to regular and occasional users and the custody of the information in the register, and removal of information from the register.

Among other things, the regulation improves the accessibility of the information on bankruptcies and suspensions of payment ordered and debt remission arrangements granted. Personal information from the register is provided only to official entities and persons in a capacity subject to public law. In the past, information about bankruptcy orders and such, were merely



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recorded in the public registers of the separate Courts. This information will from now on also be stored in a central, automated system.

For further details, please contact Jurgen van Berkel (j.vanberkel@devoort.nl); <http://www.devoort.nl>)

AMENDMENT OF THE DUTCH WORKS COUNCIL ACT IN IMPLEMENTATION OF THE EU DIRECTIVE NUMBER 2002/14/EG, EFFECTIVE DATE 22 DECEMBER 2004

The purpose of the Directive is to close the gaps and remedy the shortcomings of the current provisions on a national and community level concerning worker participation. Timely information and participation is a crucial condition for the success of the restructuring and adaptation of the enterprises to new circumstances, which are the result of globalisation of the economy, especially as a result of the development of new forms of workforce participation.

To that end art. 1 of the Directive states that the Directive lays down a general framework of minimum requirements concerning the right of information and consultation of employees of enterprises or subsidiaries. The Dutch Works Council Act ("Wet op de Ondernemingsraden", WOR) does not merely provide rules for the right of information and consultation, but also the right to give recommendations, the right of consent, the right of initiative, the right to consult the entrepreneur, and the right to make arrangements on the basis of a Collective Labour Agreement or arrangements with the entrepreneur on a further extension of the powers of the Works Council ("Ondernemingsraad", OR).

In the Explanatory Memorandum to the amendment of the Works Council Law it is stated that the Works Council Law grants the Works Council many more rights and powers than those mentioned in the Directive. The system of enforcement under civil law also meets the Directive. That is why only a very limited number of modifications of the Works Council Law were needed for the implementation of the Directive.

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SHAREHOLDERS MAY VOTE BY E-MAIL

On 7 March 2005 a Bill for the amendment of Book 2 of the Netherlands Civil Code to promote the use of electronic means of communication in the decision-making process in legal persons was placed before the Dutch Parliament ("Tweede Kamer").



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The proposal seeks to amend Book 2 of the Civil Code in order to promote the use by electronic means of communication in the decision-making process in the general shareholders' meetings of limited companies and limited liability companies, as well as in general meetings of associations, corporations and mutual insurance companies.

The present provisions in Book 2 concerning the general shareholders' meeting may result in obstacles for the use of electronic means of communication, or may lead to uncertainty about the legal validity of the use thereof. Various other countries in the European Union (e.g. France and the United Kingdom) already have regulations that expressly allow the use of electronic means of communication in the general shareholders' meeting. The Bill is submitted in order to keep the Dutch company law sufficiently flexible and up-to-date, in order to allow companies and shareholders to benefit as much as possible from the advantages of the use of electronic means of communication, and in order to keep the Dutch company law attractive.

To which extent the Bill that was submitted will be adopted, remains to be seen.

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***ARRANGEMENTS OF A COLLECTIVE LABOUR AGREEMENT ALSO APPLY TO WORKERS
SECONDED IN THE NETHERLANDS***

The Minister of Social Affairs and Employment has submitted a Bill to the Dutch Parliament on the extension of the scope of the Terms of Employment (Cross-border Work) Act.

Foreign employers will have to pay employees, who they wish to employ in The Netherlands for a certain period of time, in accordance with the Collective Labour Agreement. Other major terms of employment, such as work and rest periods, holidays and health, safety and hygiene in the workplace will have to meet the Collective Labour Agreement, which has been declared universally binding. This should be the consequence of the above-mentioned extension of the scope of application of the Act.

At the moment, the main elements of the Collective Labour Agreement that have been declared universally binding (such as wage rates), only apply to foreign employees who are seconded in the building industry in The Netherlands.

At the moment, foreign employers who are seconding employees in The Netherlands only have to comply with the current minimum terms, such as the legal minimum wage or minimum rest



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hours. Their Dutch competitors however, are limited by the terms of employment as agreed in the Collective Labour Agreement. These usually exceed the legal minimum terms.

With the Bill the Minister wishes to prevent that foreign employees that are seconded in The Netherlands, will push employees of Dutch companies aside on the labour market due to less favourable terms of employment. Also, the Minister considers it important that the employees who are seconded here will receive a good wage in accordance with the Collective Labour Agreement.

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EXTENSION OF EFFECTS DECLARATION OF INDEPENDENT CONTRACTOR STATUS ACT (VAR)

The Extension of Effects VAR has become effective on 1 January 2005. As of 1 January 2005 the declaration of independent contractor status (VAR) given by the Tax Authority protects principals against payment of employee's contributions and wage tax. Independent contractors and other principals can submit an application for a VAR declaration to the Tax Authority. The protection of the principal against payment of contributions and wage tax is valid if the Tax Authority declares that the applicant is an independent contractor (VAR-profit) or director-major shareholder (VAR-dga).

The VAR-declaration is valid for a maximum of one calendar year. The protection is also valid for an order that is continued in the next year, but only if the order was given prior to 1 November of the current year, and if no VAR has been given at that point in time.

With the new VAR independent entrepreneurship must become more attractive. The new VAR gives the principal of the independent contractor the certainty that he will not have to pay tax and contributions afterwards. The independent entrepreneur or director-major shareholder who works on the basis of the declaration, is not entitled to an unemployment (WW) or disablement insurance (WAO) benefit in the event of unemployment or disability.

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NEW ATTACHMENT SYLLABUS

Until 31 December 2004 only the Courts in The Netherlands had an attachment syllabus at their



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disposal, which syllabus was used as a manual for the verification of requests to effect attachments.

From January 2005 the Attachment Syllabus can also be consulted by solicitors, so that one can see in advance which requirements are made by the separate Courts for the requests to effect an attachment. In addition to that, as of 1 January 2005 a new Attachment Syllabus applies, which has been edited under the responsibility of the LOVC (national platform of the civil law sectors of the courts). In so far as various aspects of the Attachment Syllabus could be interpreted as binding court policy, it must be noted however, that this is not the case. The aspects concerned must be regarded "best practices" and it must be taken into consideration that the court for provisional measures ("Voorzieningenrechter"), the court that evaluates the requests to effect an attachment, is always free to decide otherwise in certain cases. In other words: no rights can be derived from the contents of the Attachment Syllabus.

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