

Statement of the National Contact Point on specific instance raised by FNV Bondgenoten about activities of Plaid Nederland.

Introduction

The Dutch labour union FNV raised the issue with the National Contact Point (NCP¹) of the Netherlands on whether the (process leading up to) petition for bankruptcy by Plaid Nederland was in conformity with chapter IV, paragraph 6 of the OECD Guidelines for Multinational Enterprises (the Guidelines)². According to the labour union Plaid Nederland did not inform the employees and labour unions accurately and in time about the petition for bankruptcy.

Due to difficulties in obtaining the necessary information from the former management of the bankrupt company, the NCP procedure took exceptionally long. The NCP consulted separately with FNV and with Plaid Nederland/ Plaid Enterprises (US) through business law firm Lovells. Since the company no longer existed and the management went elsewhere, neither a tripartite meeting nor a joint statement could be realised. The NCP decided to draw a conclusion, based on the information gathered from the bilateral consultations.

The specific instance

According to the labour union Plaid Nederland did not inform the employees and labour unions accurately and in time about the petition for bankruptcy. This would be incompatible with chapter IV, paragraph 6 of the OECD Guidelines³.

The labour union informed the NCP that:

- Plaid Nederland was part of Plaid Beheer BV, which was part of Plaid Enterprises in the US.
- After the collapse of the consumer markets, Plaid Enterprises decided to stop financing its Dutch affiliates on May 6th, 2002. Plaid Nederland did file petition for

¹ The NCP is the government body that promotes the effectiveness of the Guidelines, i.e. a set of recommendations by governments to multinational enterprises to operate in a socially responsible manner.

² This instance was raised on August 8, 2002.

³ *In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.*

bankruptcy in consultation with Plaid Enterprises. And so did Plaid Germany and Plaid France.

- On 14th May 2002 Plaid Nederland was adjudged bankrupt.
- The labour union instituted proceedings against Plaid Nederland because the company was suspected to have filed petition for bankruptcy to avoid labour right protection of the employees and reduce the costs for reorganisation. The Court of Justice in Rotterdam (May, 2002) ruled in favour of the labour union and nullified the sentence of 14th of May (bankruptcy).
- In appealing to a High Court in The Hague the sentence of the Court in Rotterdam was nullified. According to the High Court the financial situation of Plaid Nederland justified the decision to file petition for bankruptcy. It was clear that Plaid Enterprises (USA) was not willing to finance Plaid Nederland.
- The lawyers of Plaid Nederland did not react to the labour union's request for a social plan. The trustee of Plaid Nederland pointed out that there was no money available for a social plan.
- The labour union's complaint is that Plaid Nederland did not inform their employees and labour unions about the bankruptcy in advance (i.e. what is considered reasonable in the spirit of the Guidelines), before the petition for bankruptcy was filed. According to the labour union, the management in Rotterdam was informed at an early stage about the decision whereas the employees were only informed the day before the petition was filed.

After studying the accompanying documents, the NCP found that:

- In the ruling of the Court of Justice in Rotterdam, mention was made of the relationship between the company and its employees. It was stated that: Plaid Nederland did not inform its employees or unions of the approaching petition for bankruptcy, nor discuss with them either possible measures to prevent bankruptcy or possible creation of a social plan.
- It also stated that already in the beginning of 2002 Plaid Nederland had been speaking with Plaid Enterprises about reform and restructuring. In April of 2002 negotiations took place about selling (part of) the undertakings of Plaid Nederland.
- The ruling of the High Court in The Hague (July 2002) did not refute the section of the earlier ruling on the relationship between company and employees. Under Dutch law, a petition for bankruptcy does not require reference to whether or not employees are informed.

The business law firm Lovells informed the NCP that:

- Plaid Nederland at a certain point had no other option then to file for bankruptcy. Financing from Plaid Enterprises had stopped.
- The management of Plaid Nederland informed its employees every three months about the company (Plaid Nederland B.V.), among others its financial situation.

- Plaid Nederland informed its employees about the possible severe consequences of the worsening financial situation of the company on the last meeting before the petition for bankruptcy. This meeting took place one week before the petition. The employees were informed about the actual petition for bankruptcy on the day before.
- Plaid Nederland is of the opinion that the employees underestimated the messages about the worsening financial situation.
- Plaid Nederland communicated directly to its employees instead of through labour unions; before the worsening financial situation, only a few employees were member of a labour union.
- Plaid Nederland did not have means to finance a social plan.

Conclusion

In the spirit of the Guidelines, a company should provide reasonable notice of an approaching bankruptcy to representatives of employees (preferably before the final decision on the petition for bankruptcy has been taken) and cooperate with them so as to mitigate adverse effects.

The NCP found that, according to Plaid Nederland's lawyer, the company did make an effort to inform its employees about the possible severe consequences of the worsening financial situation of the company one week before the petition of bankruptcy. The company's deteriorating financial situation was also discussed during periodic employer-employee meetings, according to the same lawyer.

The NCP also found that, according to the facts established in the ruling of the Court in Rotterdam, Plaid Nederland had been contemplating and negotiating a restructuring of the company – indicating a worsening financial situation- months before May 6th, the day when Plaid Enterprises stopped financing. The petition for bankruptcy was filed on May 14th, according to the same facts.

The NCP finally found that the Court of Justice in Rotterdam was very clear about Plaid Nederland's lack of transparency towards its employees⁴. The High Court in The Hague did not refute this part of the ruling⁵.

In light of the above, the NCP concluded that Plaid Nederland's efforts of sharing information with its employees about the financial situation of the company were apparently not effective. The NCP would have considered it appropriate if Plaid Nederland had made more explicitly clear to its employees that the worsening financial situation would possibly lead to a petition for bankruptcy, viewing the facts stated by the court ruling that talks about restructuring were taking place months before and leading up to the actual petition and that Plaid Nederland apparently did not share the information it

⁴ *Plaid Nederland did not inform its employees or unions of the approaching petition of bankruptcy, nor discuss with them either possible measures to prevent bankruptcy or possible creation of a social plan.*

⁵ Under Dutch law, a petition for bankruptcy does not require reference to whether or not employees are informed.

received on May 6th about the termination of financing until the day before the petition was filed on May 14th. Viewing the fact that the petition for bankruptcy was later re-approved by the higher court, the financial situation of Plaid Nederland and its dependency on Plaid Enterprises apparently withheld the company from cooperating with its employees to explore other possibilities in order to mitigate adverse effects.