



OECD GUIDELINES
FOR MULTINATIONAL
ENTERPRISES

NATIONAL CONTACT POINT
FOR RESPONSIBLE BUSINESS
CONDUCT THE NETHERLANDS

Initial Assessment

FNV and CNV vs. Plantion and VBN

Date: 22 February 2023

Notification submitted to the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises by the Dutch trade unions FNV and CNV concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by Plantion and VBN.

The purpose of the initial assessment pursuant to the Procedural Guidance for NCPs is to establish whether the issues raised in the notification of the specific instance merit further examination. If so, the NCP offers a procedure, on a voluntary basis, seeking to achieve agreement between the parties in the form of, for instance a dialogue, mediation or reconciliation (thus offering ‘its good offices’), or facilitates access to such a procedure. As these specific instances are not court cases and NCPs are not judicial bodies, NCPs cannot themselves award damages, impose sanctions or compel the parties to take part in a reconciliation or mediation procedure.

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Summary

Notification

On 10 March 2022, the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification of a specific instance from trade unions FNV and CNV concerning an alleged violation of the OECD Guidelines for Multinational Enterprises ('the Guidelines') by the company Plantion (a flower auction based in Ede) and the Association of Flower Auctions in the Netherlands (VBN), which is a trade association.

The issues raised in the notification concern the request by FNV and CNV for a place at the negotiating table at Plantion with a view to concluding a collective labour agreement for the employees of Plantion. Plantion allegedly refused this request and has since concluded a collective labour agreement with Alternatief voor Vakbond (Alternative for Trade Union) (AVV).

The issues raised in this notification relate to the chapters on Human Rights (Chapter IV) and Employment and Industrial Relations (Chapter V), respectively, of the OECD Guidelines.

Timeline in brief

On 27 July 2022 the NCP had a meeting with representatives of FNV and on 22 September 2022 it had a meeting with Plantion and VBN.

The NCP shared the draft version of the initial assessment with the parties on 22 December 2022, after which the parties had 14 days in which to respond. The initial assessment was published on the NCP website on 22 February 2023.

Conclusion

The Dutch NCP concludes that the notification concerning Plantion and VBN does not merit further examination. It has reached this conclusion on the basis of the following criteria.

- The notifiers are parties involved, with a legitimate interest in the issues raised in the notification.
- Furthermore, the alleged issues are material and sufficiently substantiated, which means that they are plausible and relevant to the application of the OECD Guidelines.
- In addition there is a link between the enterprise's activities and the issues raised in the specific instance.
- However, in the NCP's view, consideration of this specific instance would not contribute to achieving the Guidelines' objectives and enhancing their effectiveness.
- This view relates to the NCP's view that the notification lacks an international and/or cross-border dimension and that, moreover, both Plantion and VBN do not sufficiently meet the definition of a multinational enterprise as referred to in the Guidelines.
- The NCP also holds the view that the issues raised in this notification should mainly be investigated and resolved at national level.
- For these reasons, the Dutch NCP does not believe it is the right entity to consider the notification concerning the alleged violation by Plantion and VBN.

The decision not to further examine this specific instance is not based on extensive inquiries or factual investigation, nor does it constitute a conclusion as to whether or not Plantion and/or VBN adhered to the Guidelines.

Key points of the notification

This section contains an overview of the issues raised in the notification concerning Plantion and VBN, the issue of whether, and if so, how the issues concerning Plantion and VBN relate to the Guidelines and the response from Plantion and VBN to the notification.

On 10 March 2022, the Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) received a notification from FNV and CNV of a specific instance concerning an alleged violation of the OECD Guidelines for Multinational Enterprises by the company Plantion, a flower auction based in Ede, and the Association of Flower Auctions in the Netherlands (VBN), a trade association.

The notifiers are the Trade Union Confederation FNV and the National Federation of Christian Trade Unions CNV. FNV, which promotes the interests of employees with regard to employment and income, is the largest trade union in the Netherlands, within almost a million members. CNV is a Dutch employees' organisation based on Christian principles and is the second-largest trade union in the Netherlands, with more than 200,000 members.

The notification discusses the alleged violation by Plantion and VBN of specific articles in Chapters IV (Human Rights) and V (Employment and Industrial Relations) of the OECD Guidelines.

This alleged violation relates to Plantion's refusal, alleged by the notifiers, to give them a place at the negotiating table at Plantion with a view to concluding a collective labour agreement for Plantion's employees. FNV and CNV indicated in the notification that they objected to the working methods of Alternatief voor Vakbond (AVV), the party with which Plantion *does* negotiate, but that they nevertheless would rather take part in the negotiations than be excluded. They also stated that the members of FNV and CNV had indicated that participation by their trade unions in negotiations with Plantion was considered highly desirable. FNV and CNV noted that together they represent 15% of Plantion's employees.

The notifiers also mentioned in their notification that they expect VBN as a trade association to use its influence to prevent infringement of rights in the flower auction chain, to ensure that it does not contribute to any such infringement and to mitigate the effect of any such infringement. According to the notifiers, on those grounds VBN could be expected to address with their members matters concerning the conclusion of collective agreements in the correct manner.

Provisions of the Guidelines which are referred to in the specific instance

In the notification, FNV and CNV alleged that VBN operates contrary to the OECD Guidelines. They referred to articles 1, 2 and 3 in Chapter IV - Human Rights of the Guidelines, which read as follows:

'[...] Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.'

FNV and CNV are further of the opinion that Plantion operates in violation of articles 1a and 1b of Chapter V – Employment and Industrial Relations of the OECD Guidelines, which read as follows:

'Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices and applicable international labour standards:

- 1. a). Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.
- 1. b.) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment.'

Responses from Plantion and VBN

In response to the issues raised in the specific instance, Plantion stated the following, among other things:

- Plantion is not a multinational enterprise within the meaning of the Guidelines. Although it does have members abroad, its business activity comprises being a purchasing centre in Ede for florists. Its business activities are domestic.
- The OECD Guidelines formulate a number of general concepts and principles concerning multinational enterprises. In this case there is no multinational enterprise; all of Plantion's activities take place in the Netherlands.
- The provisions cited by FNV and CNV contain no grounds to suggest that Plantion does not apply good employment practice and that FNV and CNV should have been included in the collective labour agreement negotiations with Plantion.
- AVV, the employees' organisation with which Plantion concluded a new collective labour agreement, falls within the ILO's definition of employee representation: it is an organisation of workers that has as its objective the furthering and defending of the interests of workers. According to Plantion, in so far as it can establish on the basis of the available information, AVV is the most representative union.
- Parties are in principle free to choose with whom they wish to negotiate. In a judgment of 8 June 2007, the Supreme Court noted that a trade union that represents a large number of employees in the sector and is more representative than other trade unions has, in principle, the right to be included in collective labour agreement negotiations.
- AVV is an independent employees' organisation. This is apparent from the collective labour agreement concluded with – only – AVV for the specialised Retail in Flowers and Plants sector, which was declared universally applicable by the Minister of Social Affairs and Employment on 25 June 2020. When declaring a collective labour agreement universally applicable, the Minister must observe the Assessment Framework for Declarations of Universal Application (Provisions of Collective Labour Agreements) (*Toetsingskader algemeenverbindendverklaring cao-bepalingen*). Section 4.1 of that Assessment Framework contains a representativeness requirement and section 4.2 states that employers' or employees' associations must be mutually independent. Plantion deduces from this that the Minister of Social Affairs and Employment considers AVV representative and independent.
- Plantion was allowed to conclude a collective labour agreement with AVV, which to Plantion's knowledge is the most representative union. Plantion followed the legal framework and did

not act unlawfully or contrary to good employment practice by not allowing FNV and CNV to join the collective labour agreement negotiations.

- If the notifiers believe that they should be entitled to be included in the collective labour agreement negotiations, they could request a Dutch court to give judgment on the matter. If the notifiers believe that the Dutch government has not created sufficient safeguards concerning the independence of parties negotiating collective labour agreements, new legislation is needed.

VBN indicated that its objective is (as indeed described in its constitution) promoting the interests of its members, i.e. Royal FloraHolland and Plantion, and promoting the sale of their floristry products. VBN does this by lobbying and by representing its members vis-à-vis government authorities, sector organisations, relevant partnerships etc.

In VBN's view, implementing good employment practice, including the conclusion of collective labour agreements, is the responsibility of VBN's members themselves. Both members are autonomous legal persons, and it is they who are responsible for deciding how they pursue good employment practice. That includes concluding a collective labour agreement for their company. VBN does not have a sector-wide collective labour agreement and therefore this is not an issue for the agenda of VBN's board. VBN does not believe that VBN's mandate and role include expression an opinion on or involving itself in Plantion's collective labour agreement negotiations.

The NCP procedure to date

Since receiving the notification, the NCP has done the following:

On 24 March 2022 the NCP sent an acknowledgement of receipt to the notifiers. On the same day, the NCP informed Plantion and VBN about the notification, and provided both parties with information about the NCP procedure.

On 27 July 2022 there was a meeting with the notifiers. The NCP received further information from the notifiers on 2 August 2022, 21 September 2022, 27 September 2022 and 5 October 2022.

On 22 September 2022 there was a meeting with representatives of Plantion and VBN. On 22 September 2022 and 24 November 2022 the NCP received further information from Plantion and VBN.

On 22 December 2022 the draft version of the initial assessment was sent to both parties, after which the parties had 14 days in which to respond.

The initial assessment was published on 22 February 2023.

Any documents that were provided with the notification were shared with Plantion and VBN in so far as they did not already have access to them.

Initial assessment by the NCP

The NCP decided not to consider the notification further. It made this decision after considering the following criteria, as laid down in paragraph 25 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises.

What is the identity of the party concerned and its interest in the matter?

The notifiers, FNV and CNV, are the largest trade unions in the Netherlands. Their interest in the matter lies in their entitlement – disputed by Plantion – to participate or decline to participate in collective labour agreement negotiations at this specific company, now or in the future. It is important to note that, according to FNV and CNV, together they represent 15% of Plantion's employees.

Given that the specific instance concerns an alleged violation of articles in Chapters IV and V of the Guidelines and is related to relevant articles in the OECD Guidelines, and given that the notifiers are trade unions that act in the wider interests of employees, the Dutch NCP is of the opinion that they in and of themselves have a legitimate interest with regard to the issues raised in the notification.

Are the issues raised by the notifier(s) material and substantiated?

The NCP considers ‘material and substantiated’ to mean that the issues raised are deemed plausible on the basis of the information submitted and relate to the application of the OECD Guidelines.

The notification is material inasmuch as it refers to alleged non-compliance with the provisions of Chapter IV (Human Rights) and alleged violations of Chapter V (Employment and Industrial Relations) of the OECD Guidelines.

The notification and the additional information provided by the notifiers comprises extensive information about the rights of Plantion’s employees to freely join trade unions and other representative organisations that are recognised as competent to conduct collective negotiations. The Dutch NCP is of the opinion that the notification refers to relevant provisions in the OECD Guidelines and the Commentary and is sufficiently substantiated by the documentation provided.

Is there a link between the enterprise’s activities and the issues raised in the specific instance?

The issues raised concern the exclusion, according to the notifiers, by Plantion of FNV and CNV from participation in the collective labour agreement negotiations and are thus related to the aforementioned provisions of the OECD Guidelines. The substance of the notification, together with the positions taken by the parties during the course of the initial assessment by the NCP, point to there being a link between the activities of Plantion and VBN and the issues raised.

In view of the above, the NCP is of the opinion that there is a link between the enterprise and the issues raised.

What is the relevance of applicable law and procedures, including court rulings?

Existing domestic legislation and previous and ongoing procedures, including court judgments, can provide useful guidance for the NCP in assessing the notification.

No legal proceedings are currently under way against Plantion, although such proceedings are being considered by FNV and CNV, as is apparent from communication between the notifiers and the enterprise in question.

Also relevant is applicable legislation and case law concerning the question as to what makes an employees’ organisation independent and representative and, more generally, what criteria it must fulfil in order to be able to conclude a legally valid collective labour agreement. Both the notifiers and Plantion have referred to various domestic court judgments in this context. In particular, a 2007 Supreme Court judgment concerning a collective labour agreement in the childcare sector (Supreme Court 8 June 2007, [ECLI:NL:HR:2007:BA4118 \(ABVAKABO/Bvok\)](#) and a more recent case before The Hague Court of Appeal concerning a collective labour agreement in the travel industry (The Hague Court of Appeal 30 August 2022, [ECLI:NL:GHDHA:2022:1641 \(FNV/TUI\)](#)).

Both cases concern, among other things, the issue of the representativeness of trade unions and the requirements that may be set in that regard. In its judgment of 8 June 2007, the Supreme Court held that *‘a trade union that represents a large number of employees in the sector and is more representative than other trade unions has, in principle, the right to inclusion in collective labour*

agreement negotiations’ and that non-inclusion in consultations concerning amendment of an existing collective labour agreement to which that trade union is not a party ‘may in certain circumstances be unlawful vis-à-vis [that] trade union.’

In the recent TUI judgment, the appeal court held that TUI acted unlawfully vis-à-vis FNV by excluding the latter from consultations and negotiations concerning the collective labour agreement for cabin crew staff, and ordered TUI to recognise and accept FNV as a party in the consultations and negotiations. In this case FNV presented 60% of the cabin crew staff.

The NCP would emphasise in this respect that, in line with the purpose of the initial assessment – to assess whether the issues raised in the specific instance merit further examination – in this phase the NCP refrains from commenting on the accuracy of the parties’ statements or the validity of the information provided by them, or on the possible consequences thereof for the issues raised in the specific instance.

How have similar issues been treated, or how are they being treated, in other domestic or international proceedings?

As stated in paragraph 26 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, parallel domestic or international proceedings that have been conducted or are under way do not, in principle, preclude the NCP’s offering its good offices to the parties with regard to a specific instance. The NCP should evaluate on a case-by-case basis whether an offer of good offices could make a positive contribution to the resolution of the issues raised and would not create serious prejudice for either of the parties involved in these other proceedings.

As indicated above, there are currently no parallel proceedings under way against Plantion.

Would the consideration of the specific issue contribute to the purposes and effectiveness of the Guidelines?

The question as to whether the consideration of the notification would contribute to the purposes and effectiveness of the Guidelines is related to, among other things, the question as to whether Plantion (and/or VBN) is a multinational enterprise within the meaning of the OECD Guidelines and, by extension, whether the Dutch NCP is the right entity to consider the notification submitted by FNV and CNV concerning the alleged violation of the OECD Guidelines by Plantion (and/or VBN). The NCP believes this is not the case.

Whether or not a party is a multinational enterprise is relevant for the assessment of whether an NCP notification is admissible. The OECD’s Guide for National Contact Points on the Initial Assessment of Specific Instances states that consideration of a specific issue ‘[...] should contribute to 1) sustainable development or economic, environmental and social progress (i.e. the chapters of the Guidelines) 2) by multinational enterprises’ and that ‘[c]ases which do not concern multinational enterprises, or issues related to sustainable development [...] may be outside the scope of the mechanism.’ See: OECD 2019, Guide for National Contact Points on Coordination when handling Specific Instances (oecd.org), p. 10). In accordance with the Procedure for submitting notifications of specific instances to the Dutch National Contact Point, in assessing whether to consider a notification, the NCP also considers: i) whether the Dutch NCP is the right entity to handle the notification’; and ii) ‘whether [the enterprise] is a multinational enterprise within the meaning of the Guidelines.’ (See: The procedure for submitting specific instances to the Netherlands NCP | Publication | National Contact Point OECD Guidelines.)

As regards the term 'multinational enterprises', Chapter I, article 4 of the Guidelines states, among other things, that '[a] precise definition of multinational enterprises is not required for the purposes of the Guidelines'. The same article describes multinational enterprises in general terms as '[...] companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways'.

A relevant criterion in determining whether a legal person can be viewed as a multinational enterprise and can therefore be the subject of an NCP notification is the extent to which it has an international or cross-border dimension. In Plantion's case this is true to only a limited extent. Plantion is a relatively small cooperative (approx. 166 employees) that mainly serves florists in the central and eastern regions of the Netherlands and therefore has a mainly regional function. By its own account, Plantion procures only some of the flowers it auctions from abroad and has itself no activities abroad.

As regards VBN, first of all it is questionable whether it is an enterprise within the meaning of the Guidelines, because it lacks a commercial dimension. Relevant considerations in this respect are whether the entity's legal form is that of a commercial enterprise, whether the entity's objective as laid down in its constitution or its mission is commercial in nature, and whether the activities that are the focus of the notification are commercial in nature. In this context the NCP would note that the nature of VBN, given its legal form and objectives according to its constitution, is more that of an interest group than a commercial organisation. This not altered by the fact that the interests of its members are commercial in nature, in the NCP's opinion. It is also relevant that VBN, as a Dutch interest group, is not established in more than one country, but is only active in the Netherlands and can therefore not be considered multinational.

In addition, the issue that is the focus of the notification lacks an international element in the sense that it relates solely to alleged violations of the OECD Guidelines in the Netherlands by Dutch enterprises to the detriment of Dutch employees of those enterprises. This, combined with the fact that Plantion has an international or cross-border dimension to only a very limited extent and VBN lacks a commercial and international or cross-border dimension, has led the NCP to conclude that the consideration of the notification would not, or not sufficiently, contribute to the purposes of the Guidelines. In light of this and on the basis of the aforementioned, interrelated considerations, the NCP does not believe it is the right entity to consider the notification concerning the alleged violation by Plantion and VBN.

The Dutch NCP also believes that the consideration of this notification would not currently contribute to the purposes and effectiveness of the Guidelines, in the sense that it would be better to put the fundamental issues of labour law that are at play in the background to the Dutch court or legislator. Also relevant in this context are the questions the ILO recently put to the Dutch government concerning, among other things, the mechanisms available to guarantee that the will of the most representative workers' organisations is taken into account in the negotiation, conclusion and extension of collective agreements; and the criteria applied in order to assess the independence of a union (see: [Report III\(A\): 2022 Report on the application of international labour standards \(ilo.org\)](#), p. 266 ff.)_According to information received from the Ministry of Social Affairs and Employment, the questions will be answered in 2024, in line with the ILO system (see: [Reporting Obligations \(ilo.org\)](#)).

Conclusion

The NCP is of the opinion that this notification does not merit further examination on the basis of the criteria laid down in paragraph 25 of the Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises.

The conclusions reached by the NCP in this initial assessment are based on information received from both parties. The NCP refrains from commenting on the accuracy of the parties' statements or on the validity of the documents provided by them, or on the possible consequences thereof for the issues raised in this specific instance.

Next steps

In accordance with the procedure for submitting notifications of specific instances to the Dutch NCP, the NCP does not accept this case for further examination and therefore does not offer the parties its good offices. This initial assessment brings the NCP procedure to an end.

The role of National Contact Points (NCPs) is to promote the application of the OECD Guidelines. The Dutch government has established an independent NCP which is responsible for its own procedures and decisions in accordance with the Procedural Guidance section of the Guidelines. The Dutch NCP consists of four independent members, supported by four advisory officials from the most relevant ministries. The NCP Secretariat is hosted by the Ministry of Foreign Affairs. The Minister for Foreign Trade and Development Cooperation bears political responsibility for the functioning of the Dutch NCP. More information on the OECD Guidelines and the NCP can be found on the [NCP website](#).

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