"The making of..." A new Working Conditions Act in the Netherlands

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A new Working Conditions Act came into effect in the Netherlands on 1 January 2007. At the start of the debate, the Dutch trade union confederation FNV called for a new public system with specific, enforceable and unambiguous targets set on the basis of clear and scientifically-supported health and safety exposure limits for all categories of risk. The system proposed by the FNV, and later backed by all social partners, is aimed at achieving a Europe-wide "level playing field" in which all employees across Europe enjoy the same level of protection. The new Dutch Act certainly contains such targets, but only those already set by European legislation. So the battle for more of these enforceable targets goes on. Unions in other countries where similar deregulation drives are going on or impending may derive valuable lessons from the processes described in this article.

The Fourth European Working Conditions Survey gave the Netherlands a very clean bill of health. And it is true that many workplaces are of quite a high standard. But the physical workplace is not the only factor involved. Risks like harassment, bullying and violence are rising in the Netherlands, and among the highest in Europe. Stress and pressure at work from reorganisations are also important causative factors in occupational diseases[1]. Lower back pain and RSI (Repetitive Strain Injury) are at epidemic proportions. In short, perfection is still a very elusive goal, even for the Dutch.

The Netherlands has approximately 7.1 million workers, and over 1 million companies (> 98% SMEs). It has 270 operational health and safety inspectors, who handed out 2500 administrative penalties in 2005 under the Working Conditions Act, amounting to 6 972 277 in fines in 2005.

Exposure to chemicals resulted in 1853 premature deaths among workers in the Netherlands last year (see table), while up to 700 workers die prematurely each year from long-term exposure to stress and related burn-out syndrome.

Illness / Diseases	Deaths from exposure to chemicals
Asthma/COPD	568
Mesothelioma, asbestosis	778
Lung cancer	464
Rhinitis and sinusitis	2
Cardiovascular disease	29
Skin cancer	12
Total	**1853**

Source : Dekkers, S., *et al., Belangrijkste beroepsgroepen en stoffen bij het ontstaan van ziektelast door blootstelling aan stoffen op het werk*, RIVM, Bilthoven, November 2006

Up to 25 000 workers "catch" an occupational disease each year, but only 6000 are officially registered. Obviously, not all these diseases prevent these workers from doing their jobs, but they do cause most of them daily health problems. Most company doctors do not report occupational diseases to the official authorities, despite having a statutory duty to do so. Company doctors and occupational health services operate in the private sector, so reporting (too many) occupational diseases may risk losing a contract with the employer.

The main conclusions of the Netherlands Center for Occupational Diseases set out in its Alert report 2005:

- most-frequently reported occupational diseases: RSI (2200 cases), followed by psychological disorders (1600 cases) and deafness (1500);
- 40% of workers over 20 years of age suffer back pain;
- special alerts were given for the rise in violence and intimidation at work, risks related to nanotechnology and fine dust, risks from heavy workloads for pregnant women, and the need for action on preventable needlestick and sharps incidents.

Workers, employers and the cabinet agreed that the National Working Conditions Act gave too little effective protection against health and safety risks. So the "old" Act was reviewed. A long process of lobbying, talks and negotiations between social partners, politicians and the government was set going in 2004, culminating in a new Working Conditions Act which came into force on the first of January 2007.

[1] Spreeuwers, D., *et al., Signaleringsrapport Beroepsziekten 2005*, Netherlands Center for Occupational Diseases – Coronel Institute, Division Clinical Methods and Public Health Academic Medical Center, University of Amsterdam. See: www.occupationaldiseases.nl

Government withdrawal and Expanding social partner responsibility

On 29 October 2004, Deputy Minister for Social Affairs and Employment Henk van Hoof asked the Social and Economic Council (SER) for an opinion on the review of the Working Conditions Act 1998. The role of the SER is to give the government and parliament advice on the broad lines of national and international social and economic policy, and on key pieces of social and economic legislation. Employers, employees and independent experts are equally represented in the SER.

The SER approved its report at its meeting of 17 June 2005[2]. It had been a long drawn-out process.

Deputy Minister van Hoof had sought the Council's advice on four things:

1. A number of proposals for changes in the statutory working conditions system that are designed to encourage employers and employees to assume greater responsibility for ensuring safe and healthy working conditions;
2. The suggestion that the State should focus more specifically on serious risks in the working environment and on reinforcing the active role played by employers and employees in companies, especially SMEs;
3. Reducing the amount of red tape; and
4. Developing further facilities for companies to manage their own working conditions independently.

The Working Conditions Act review got under way in the midst of a media war between the different parties. The unions were against deregulation and less State intervention. It was not a bigger rulebook, they were seeking but more concrete and comprehensive rules & regulations. Even so, the unions were accused by employers of merely wanting more red tape.

The employers' refrain was that the EU (Framework) Directives were more than enough and no specific national rules were needed. They argued that national rules seriously undermined Dutch competitiveness. Good practices and so-called "soft law" (which is no more than voluntary agreements between industry social partners) would do the job.

Deputy Minister van Hoof sided with the employers, arguing for a bonfire of national regulations, since EU directives were sufficient, and low risks required no statutory protection since they could be dealt with by the social partners. He also advocated a "made-to-measure", case-by-case approach instead of the "one-size-fits-all" regulation approach.

Outside the public "war", the social partners worked jointly in the SER on a new Dutch framework for a new Working Conditions Act. The FNV spearheaded a new structure, on the basis of which, the SER came to the following conclusions:

1. The Cabinet wishes to devolve more responsibility for working conditions to employers and employees, and to drastically reduce government involvement;
2. This would be in line with a general trend towards an increase in responsibility borne by employers and employees at company level and by the social partners at sector and central level. A good working conditions policy depends on responsibility being assumed by those most directly concerned;
3. Still, the government should maintain a clear and visible role in this area, especially in setting appropriate levels of protection by defining specific and unambiguous prescribed targets relevant to the level of protection in question, and by ensuring that such prescribed targets are enforced;
4. The SER also emphasises the importance of adopting a case-by-case approach, based on agreements reached between employees and employers at sector or company level;
5. The SER does not consider practicable the Cabinet's suggestion of creating a distinction between low and other (i.e., high) risks nor the suggested withdrawal of government from legislation and enforcement;
6. The Cabinet's proposals presented in the request for advice are not the best way to reform the complex legislation on working conditions. The SER therefore proposes its own model for a new working conditions system.

The social partners' proposal for a new working conditions system

The SER's proposals for a new working conditions system should be seen in the context of a situation to be worked towards in the longer term. The system proposed is based on its wish that a Europe-wide "level playing field" will ultimately be achieved, in which all employees across Europe enjoy the same level of protection.

The purpose of the new system is to help create adequate working conditions such that employees stay both healthy and motivated. As in the present system, the basis of any new system should be that employees receive an adequate level of protection while performing their work. The new system should also help prevent or reduce sickness absence and work incapacity rates, and expand opportunities for employers and employees to take responsibility for their own working conditions policy, thereby considerably reducing red tape and simplifying legislation. As such, the new system can be seen as an intermediate step on the way to a uniform, Europe-wide system of regulation.

At the heart of the new system is a clearer separation of the public and private domains. Only the

[2] Advisory report, SER, Evaluation of the Working Conditions Act 1998.

Working Conditions Act, the Working Conditions Decree and the Working Conditions Regulations should remain in the public domain: the government should remain responsible for monitoring and enforcing these regulations.

The SER deems it to be essential that central employers' and employees' organisations should be involved in extending and filling-in the finer details of the proposed system.

Public domain

In the proposed new system, the public domain contains specific and unambiguous prescribed targets, based on clear and scientifically-supported health and safety exposure limits. These prescribed targets set the level of protection employees should receive while performing their work. The new system will entail a restructuring of public regulation. This is because prescribed targets or process norms currently contained in policy guidelines will (insofar as is necessary) be transferred to the working conditions regulations, while prescribed methods, explanations and non-essential specifications currently in the public domain will be transferred to the private domain. Prescribed methods will thereby lose their official, prescriptive status.

Unenforceable prescribed targets that are in the public domain will, as far as possible, need to be reformulated so that they become enforceable, while any unclear prescribed targets will have to be reformulated into clear, easily accessible regulations.

Situations may arise in which it is not (or not yet) possible to meet one or more prescribed targets. In such cases, a one-off or permanent exemption may be granted, or a reasonableness clause applied. Where enforceable prescribed targets cannot (or not yet) be formulated, process norms should be used (these stipulate that a given risk requires further regulation).

Private domain

In the private domain, employers and employees agree on ways of working that allow prescribed targets to be achieved. At sector or central level, this may be done through agreements between employers' associations and unions. The ways of working established may be recorded in a Working Conditions Catalogue, which contains descriptions of methods recognised by employers and employees, and from which a choice can be made in order to meet the prescribed targets. At company level, employers and employees may agree on ways of working using the plan of action that accompanies the obligatory working conditions risk assessment and evaluation.

The present working conditions policy regulations, information newsletters *(AI-bladen*[3]*)*, NEN[4] standards and working conditions covenants[5] can all play an important part in the creation and development of the Working Conditions Catalogue. All this makes the Working Conditions Catalogue a practical, accessible tool and roadmap by which to deliver the prescribed targets.

Besides descriptions of particular methods, the Working Conditions Catalogue may also include examples of best practices that will also help in meeting prescribed targets. It may also contain documentation on standards, practical manuals and agreements that are binding on parties to a collective agreement (CAO). In the future, the Working Conditions Catalogue may also contain parts of the present covenants on working conditions, most of which will expire around 2007.

The Working Conditions Catalogue is not intended by the SER as an exhaustive list of ways of meeting prescribed targets, which may also be met by other methods.

Enforcement

The SER's proposed new working conditions system implies that the Health and Safety Inspectorate will need to enforce the following: the prescribed targets, the OELs (Occupational Exposure Limits) and the process norms falling within the public domain.

The inspections carried out by the Health and Safety Inspectorate should not be restricted to punitive enforcement. By providing practical suggestions or giving praise where appropriate, the Health and Safety Inspectorate can encourage compliance with the regulations and give itself a more positive image. The proposal to double the maximum fines in the case of serious breaches of working conditions regulations is a new element in the proposed system.

Government misuse of the social partners' report

The SER approved its report at its meeting of 17 June 2005. After their intensive labours, the social partners were convinced that the Cabinet would take up the SER's framework. They were to be disabused. Mr van Hoof, as a representative of the right-wing cabinet, hijacked the SER report for his own agenda.

Only a handful of health-based limits came into the new Dutch Act; specifically, only the actual OELs for noise, radiation and vibrations already laid down in European legislation plus one "home grown" Dutch target formulated by Mr van Hoof – the so called "falling from height" limit.

Mr van Hoof slashed all the specific national rules. For example, the old Working Conditions Act contained rules on temperature, the right to have seating facilities during working hours, the amount of natural and artificial light in the workplace, and a duty to write a report on the progress made by the company

[3] Besides the legal framework, the Government also publishes so called *AI-bladen*; Health & Safety Information Brochures for a number of health & safety risks at work. These brochures contain information on how to deal with the legislation in practice and how to implement the Working Conditions Act. In other words, they are purely informative and not statutory instruments as such.

[4] NEN is the Dutch standardisation institute which develops standards and regulations for interested parties like manufacturers, retailers and public authorities.

[5] These agreements are concluded by the government with the social partners. They are officially promoted – the Dutch government helps to fund them – and have mushroomed in different sectors in recent years. They are non-binding and enforcement is left to the employers' discretion.

in implementing the plan of action that accompanies the obligatory working conditions risk assessment and evaluation. All these specific national rules were cut back. And despite Mr van Hoof's claims to be following SER advice, and the social partners pressing for a concrete health-based upper limit for all health and safety risks, only five made it into the new legislation. The new Working Conditions Act was nodded through parliament. Only one resolution was accepted and must be implemented by cabinet. This requires the government to make a plan to formulate more concrete, health-based, upper limits in the future made by an internationally recognized scientific institute. So, there is a glimmer of hope for the unions…

The FNV will nevertheless continue to work for more concrete health-based and scientifically-proven upper limits (concrete OELs), and to have them enshrined in EU legislation for the most serious risks. Examples might include:

- for the manual handling of loads, the NIOSH-formula could be used to devise limits not just for lifting, but also for pulling and pushing;
- lighting and illumination in the workplace expressed in a LUX limit;
- working in extreme temperatures;
- minimum work space per employee;
- limits for working in seated positions, standing positions, etc.

What is needed is a European scientific institute (like NIOSH or the Health Council of the Netherlands and the Dutch Expert Committee on Occupational Standards) that will provide scientifically-proven health-based OELs for health and safety risks. These OELs (or upper limits in most cases) must be enshrined in EU directives after a reasonable period of time so that employers can work to these new standards. By acting as an independent referee, the Institute would forestall disputes between the social partners over what can and cannot be done. Ultimately, more transparent and enforceable regulations that are clear and the same for all workers and employers will make Europe healthier and a better place to work in. ■