

FACTSHEET



Financial and non-financial information practices and reporting as tools for workers' involvement in the company's decisions.

The Netherlands¹

Introduction. Financial and Non-financial information in multinational companies.

- The **Directive 2014/95/EU** is covered in several 'Decrees', such as the **Decrees of 22nd of December 2016**, as regards the disclosure of non-financial information (Diversity Policy Disclosure Decree), the **Decree** on the content of the management report of **29th of August 2017**, the **Decree** on the disclosure of non-financial information of **the 14th of March 2017** and the **Decree** on the content of the management report of **1 January 2018**. Directive 2014/95/EU has, in addition, amended **Directive 2013/34/EU** on annual financial statements, consolidated financial statements and sustainability reports, which was introduced to promote the convergence of accounting standards globally and ensure consistent and comparable financial reporting across the EU.

FINANCIAL INFORMATION

Data contained in annual or consolidated financial statements and in management reports on the basis of which the financial statements are prepared. The purpose of Directive 2013/34/EU (so-called *Accounting Directive*) is to harmonise national requirements on the presentation and content of annual or consolidated financial statements, their audit and publication, and management's responsibility for what is stated.

NON-FINANCIAL INFORMATION

Information about the company's policies on working conditions, gender equality, social dialogue, health and safety, board diversity, corruption and anti-corruption, environmental protection and respect for human rights, and social responsibility. Companies subject to the *Non-Financial Reporting (NFR) Directive* must provide a fair and comprehensive report of their policies on these issues and results.

Financial and non-financial reporting is an important opportunity for workers' representatives and trade unions to initiate or reinforce **social dialogue** and obtain key information on management policies adopted by the company that is useful for **information and consultation** processes. Prior information and consultation are essential to the involvement of workers and their representatives in company's decisions before they are taken. European legislation states that workers must be sufficiently informed and consulted upstream of the company's decision-making process.

¹ Edited by SBI FORMAAT.

Overview of reporting practices and of the different Dutch cultural and economic background

The Dutch social and economic model is based on a model of ‘soft state’ intervention in business matters, preferring non-binding guidelines, codes or covenants that are agreed between the ‘social partners’. Typical is the involvement of the SER in labour relations and CSR. The SER is a tripartite advisory council to the Government and plays an important role in the regulation of industrial relations and other social, economic and environmental issues. However, there is also some interaction between legislation and the ‘voluntary’ agreements.

In 2004, the legislator designated the **Dutch Corporate Governance Code**, , that started as a voluntary code, as the Code of conduct to which listed companies should refer to in their annual report. They should indicate to what extent they have complied with the principles and best practice provisions (the ‘apply or explain principle’).

The **Dutch Works Council Act** gives Works Council’s extensive information rights. In addition, there is also an extensive **Decree on the provision of financial information to works councils (1985)**. In principle, all information a Works Council thinks is needed to fulfil its role, should be provided by the employer. However, if a Works Council does not know what it does not know, it is of course difficult to ask for specific information. In this respect, the EU-directives may provide for improvement, especially in the application of the Due diligence elements.

The **NFR Directive** came into force for all EU Member States in 2018.

It applies to large groups, such as listed companies, banks and insurance companies, with more than 500 employees, a minimum balance sheet of 20M euros and an annual net turnover of at least 40M euros.

It requires certain information to be made public on how social and environmental challenges are managed.



Implementation of Non-financial reporting Directive in **The Netherlands**

The **March 2017 Decree** applies to companies with over 500 employees and obliges them to disclose amongst others their policy as well as the results of this policy, with regard to: environmental, social and personnel matters; respect for human rights; and fighting corruption and bribery (including the due diligence procedures). The aim is to provide integrated and complementary information to the annual report, which is necessary to understand the activities carried out and the results achieved. By requiring transparency of social and environmental information, it allows stakeholders to assess the non-financial performance of companies and to identify sustainability risks, thus encouraging companies to develop a responsible approach.

Some further elaboration of these requirements is found in the **Dutch Corporate Governance Code** (DCGC, as made mandatory for public companies by the 2004 and August 2017 Decrees). The DCGC contains principles and best practices on the relationship between the executive board, the supervisory board and the shareholders. However, on the content, the DCGC is not binding law. It is up to the shareholders to call the executive board and the supervisory board to account for their compliance with the Code.

The NFI directive 2014/95 addresses companies that are both 'large' and publicly listed. Note that companies that fall under the NFI directive will fall both under the **Civil Code** regime and the **Act on Financial Supervision**, because they will be both 'large' and listed.



Reporting practices of non-financial information at national level

A common phenomenon in **Dutch multinational companies** (MNCs) is the separation between the corporate holding and the daughter companies. By the application of this construction, the corporate strategy, including investments and financing but also CSR, is beyond the reach of the **Works Council**, which only has the right to be informed and consulted when this strategy leads to decisions that affect the workplace/enterprise for which the Works Council is installed.

In some Dutch MNC's however, this gap is partly repaired by a covenant granting the (Central) Works Council additional rights towards corporate management.

However, the consultation rights of the Works Council in the Netherlands are limited to matters within the Dutch territory. Since CSR does not stop at the border, there is some tension between the Works Council's involvement in CSR and the rights based on the **Works Council Act**.

Analysis of the procedures and **social dialogue** practices

Environmental, social and governance information are important for workers' representatives and trade unions as key stakeholders to initiate or stimulate social dialogue, and, above all, to learn about key issues on which management will have to take decisions that will inevitably affect all workers.

European Works Councils (EWCs), as European bodies representing workers in multinational companies, are entitled to **information and consultation rights on strategic, economic and social issues** interesting them.

Therefore, not only relevant information on the implementation of ILO Conventions, diversity and equal opportunity issues, employment issues, working conditions, labour relations and the exercise of trade union rights, career management and employability, the remuneration system, training, health and safety at work, but also purely economic and financial information enabling workers' representatives to find out about company trends, profits and losses, investments, and to know about restructuring, reorganisation and major structural changes. The subjects of the exercise of information and consultation rights must be negotiated when setting up or renewing the EWC and indicated in the negotiated agreements.

What is important in the context of social dialogue is the employees' representatives degree of knowledge and skills at all levels to interpret and understand technical documents and complex information. Knowledge and skills that put them in a position to be adequately informed and able to effectively express their positions within the negotiations.

By the interviews conducted with EWC representatives and company's representatives within the framework of the **POWER** research, it emerged that in order for EWC representatives to understand the relevant financial and non-financial information submitted to them, **regular training** on shared topics and/or the support of **experts** for the EWC's members are necessary.



Best practises of workers' involvement in MNCs: procedures and tools pertaining to **information and consultation rights**

All the EWCs that were interviewed within the framework of the European **POWER** project, have at least the information rights granted to them by the Directive. However, most EWCs **find it hard to deal with financial information**.

The interviewees stressed the difference between regular standard information and the information provided in special Information and Consultation processes on, for example, restructuring or new projects.

In **XYZ*** for example, they always have more than the foreseen 4 Select Committee meetings per year. Of especial importance are the information and consultation processes on 'extraordinary issues', projects like United Europe Programme and the Fixed Costs Project. The EWC's members are **timely informed and consulted** by corporate management; more difficulties occur when other management levels takes the decision.

In **YYY**, a Dutch multinational company, during the consultation on an important restructuring proposal, the EWC wanted to analyse the rationale behind the proposal. Since the Dutch Works Council has a committee for Economic-Financial Risk Matters, this was able to make a risk analysis and advised the EWC.

In **ABC**, the EWC requested to the CEO in 2007 to sign on to the 10 principles of **UN Global Compact**. Then, **ABC** started the required annual reporting under Global Compact. A Corporate Responsibility Team was formed and an EWC representative became part of this team. An other EWC of the companies analyzed receives updates on projects relating to CSR issues and is involved in new such projects. **Health and safety** are important topics too, including Work Life balance.

XXX EWC can discuss broader CSR issues

outside Europe. In several companies, the EWC is also active as an **ambassador for good labour relations**. In **XYZ**, the EWC is involved in preparing employee representation outside Europe. An employee representative from Brazil is invited to the EWC meeting as an observer. The EWC received a request for support from the Belarus trade union in the industry because of the difficult situation there and the EWC tried to support them.

On **confidentiality**, all interviewed EWC members agreed to the fact that if the EWC is to be informed at an early stage, it is sometimes needed to keep the information confidential for some time. Confidentiality clauses are in place in all EWC's. One EWC interviewed (**XXX**) has an elaborated process in place to deal with confidential matters that distinguishes four levels of confidentiality: Select Committee, European Works Council, National Employee Representatives and the employees. However, in all interviewed cases, both management and employee representatives agreed that the most important element is a basic **trust** that must exist between both sides. This can only be developed in time by working together. This becomes more difficult when from both sides many new people get involved in the EWC and due the Covid crisis, you cannot meet face to face. Although most companies publish extensive CSR reports, including human and labour rights issues, for most EWCs these reports have not been picked up as an element of there regular work. Involvement in CSR or Environmental, social, and governance (ESG) related matters, is triggered by other things. Non-financial issues have become very important in the banking sector.

*the names of the companies have been anonymized