

Collective agreements in the Netherlands and Germany

*Impressions of the workshop of the two HSIs
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This workshop of the Hugo Sinzheimer Institutes in Frankfurt and Amsterdam focused on certain aspects of collective agreements in the Netherlands and Germany.

In both countries (as in many others) the unionisation rate has been declining over the past decades and in particular in Germany this has significantly affected the coverage of collective agreements. In the Netherlands the coverage has remained relatively stable, thanks to the constantly high rate of organisation of employers. Both countries are also confronted with the effects of new trade unions entering the collective bargaining arena. In the Netherlands the organisation pattern has always been scattered, but for a long time a restricted and stable group of recognised unions has dominated the negotiation scene. Over the past decades new unions have been knocking at the doors of the negotiation rooms and outsiders (employers as well as workers) are challenging the system. Against this background we addressed questions concerning representativeness and independence of unions and concerning the concurrence of various agreements within one company. Furthermore our discussions focused on a comparison of the legal rules and practices in both countries with regard to the position of non-unionised employees, deviation from statutory norms, after-effect and retroactive effect of collective agreements.

It appears that the German way of dealing with these problems in legislation, jurisdiction and theory can be characterised as more precise and consistent than the Dutch approach. For example the extensive catalogue of requirements which German trade unions must fulfill to qualify as a negotiating party for the conclusion of collective agreements has no counterpart in Dutch labour law, which is increasingly perceived to constitute a serious problem in the Netherlands. Another example is the German statutory regulation of the after-effect of collective agreements. Dutch law has another lacuna in this respect, which has yielded complications related to extended (*allgemeinverbindlich erklärte*) collective agreements and in the context of the transfer of an undertaking which the case-law of the Hoge Raad has not been able to solve. Also the clear and precise rules which the Bundesarbeitsgericht has been applying when dealing with colliding provisions of different collective agreements, thereby distinguishing between individual norms and company norms (*Betriebsnormen*), could very well be given consideration in a Dutch context. However, the situation has become more complicated since the Bundesarbeitsgericht has recently abandoned the requirement of uniformity of individual employment conditions in one company (*Tarifeinheit*).

The Dutch system also shows some attractive features, the most eye-catching being the widespread use of extension of collective agreements, which appears to explain why certain problems hardly occur in the Netherlands whereas they play a predominant role in Germany. For example, the complications caused by concurring collective agreements, and by reference clauses (to collective agreements) in individual employment contracts appear to play a marginal role in the Netherlands as compared to Germany, thanks to the fact that most collective agreements are declared generally binding (*allgemeinverbindlich*) in the Netherlands.

I have the impression that our discussions in this workshop have deepened our insight in the two systems of collective labour law, thanks to the comparative perspective, the combination of theoretical and practical knowledge, and the opportunity to confront one another with conjectures and follow-up questions in response to the presentations of our national experiences and analyses.

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