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The Legislative Framework for Working Conditions in the Dutch Ready-Made Garment Sector

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Abstract

This article sets out the legislative framework with regard to labour law provisions concerning working conditions that apply to Dutch employers and employees operating and working in the ready-made garment (RMG) sector in the Netherlands and discusses the challenges that employees potentially face in the sector. More specifically, this article focuses on the challenges and law applicable to the retail phase and recycling phase in the supply chain of a pair of jeans and a white T-shirt. In this respect, an overview of the labour law provisions is presented that protect a safe working environment for employees working in the sector. Dutch law contains many provisions concerning the protection of employees against poor working conditions. Among others, employers are obliged to maintain a safe working environment and reasonable working hours for their employees. Dutch labour legislation only applies to employees working in the Netherlands and therefore is of little relevance to the manufacturing phase of the RMG supply chain, which takes place abroad. However, several public and private initiatives were taken to stimulate Dutch clothing brands to exert an influence on the working conditions in the RMG producing countries. Two of these initiatives are discussed in this article. Furthermore, this article presents which social challenges employees may face in the Dutch RMG sector, which comprise gender inequality, including equal pay and equal opportunities to occupy top management positions and co-determination rights.

Keywords: Labour Law; Working Conditions; The Netherlands.

Introduction

This article sets out the legislative framework with regard to labour law provisions concerning working conditions that apply to Dutch employers and employees operating and working in the ready-made garment (RMG) sector in the Netherlands and discusses the challenges that employees potentially face in the

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sector. The Netherlands has a lot of legislation in place to protect employees, for instance by safeguarding a clean and safe working environment and by protecting employees from working excessive hours. These provisions do not only apply to employees working in the RMG sector, but to all employees, independent of the sector they work in. Besides the general provisions concerning working conditions, more specific requirements can be found in collective labour agreements (CLAs) for employers and employees operating and working in the RMG sector.

This article focuses specifically on the labour law provisions and the challenges applicable to the retail and recycling of a pair of jeans and a white T-shirt produced by a Dutch garment brand. These garments were chosen for a case study as part of the European study “Sustainable Market Actors for Responsible Trade”, also known by the acronym SMART.¹ This article furthermore has a specific focus on the retail and recycling phases of the chosen garments. There are several phases in the RMG supply chain, from the raw materials phase (phase 1) to the recycling or waste phase (phase 6) of the garment (see the editorial of this special issue for the several phases: Lambooy, Jansen & Bosman, ‘When Mother Earth Begged for Research’).² In the specific case study regarding the supply chain of a pair of jeans and a white T-shirt, the retail phase (phase 4), the consumer use phase (phase 5) and the recycling or waste phase (phase 6) mainly take place in the Netherlands. The other production phases, *i.e.*, the raw materials phase, the fabric production phase, and the RMG manufacturing phase (phase 1-3) take place abroad.³ In this article, I focus on the retail phase and the recycling or waste phase, because these phases take place in the Netherlands and, in contrast to the consumer use phase, the working conditions in these phases can be studied.

¹ More information about the project can be found in the editorial of this special issue and via: ‘SMART: Sustainable Market Actors for Responsible Trade (*SMART*)’ <<https://www.smart.uio.no/>> accessed 24 July 2018.

² T. Lambooy, [*et., al*] ‘End-to-End Analysis of Sustainability Hot Spots in the Ready-Made Garment Industry Interim Report of Findings in Work Package 3’ (*Sustainable Market Actors for Responsible Trade (SMART)*, 2017) <<https://www.smart.uio.no/resources/reports/reports/d3.1.-revised-hotspots-analysis-wp3.pdf>> accessed 24 July 2018.

³ *ibid.*[28-30]

Legislation concerning working conditions is important in order to safeguard the rights of employees working in the RMG sector. Employees have a pivotal role in the RMG sector, especially in the first three manufacturing phases.⁴ Today, most of the garment manufacturing takes place outside of the Netherlands and Europe,⁵ viz. in low-wage countries such as India, Bangladesh, China, and Turkey.⁶ The Netherlands used to produce many garments in the Netherlands. This changed during the sixties of the previous century when the wages of manufacturers increased to compensate for the years of World War II, when their salaries remained relatively low. In order to compete with other countries and because there was a demand for cheap(er) garment production, Dutch producers decided to outsource the manufacturing of their clothes abroad. First to other countries in Europe, where wages were lower than in the Netherlands and later on to low-wage countries outside of Europe.⁷ Dutch labour law provisions concerning the protection of employees for a safe working environment and humane working conditions only apply to employees in the Netherlands, not to employees in other countries. Currently, as other articles in this special issue of Yuridika demonstrate, severe working conditions in the RMG supply chain are found in the raw material and the manufacturing phases (phases 1-3).⁸ They concern, for instance: excessive working hours, a salary below a living wage and a minimum wage, child labour, and health and safety issues.⁹ In the retail phase (phase 4) and the recycling or waste phase (phase 6), which take place in the

⁴ KM Faridul Hasan, [et., al.] 'Role of Textile and Clothing Industries in the Growth and Development of Trade & Business Strategies of Bangladesh in the Global Economy' (2016) 5 International Journal of Textile Science. [39].

⁵ IRBC Agreements, 'About the Dutch Garment and Textile Sector' (*IRBC Agreements*) <https://www.imvoconvenanten.nl/garments-textile/agreement/about?sc_lang=en> accessed 22 June 2018.

⁶ CBS, 'EU Countries Buying More Clothing from Asia' (CBS, 2016) <<https://www.cbs.nl/en-gb/news/2016/49/eu-countries-buying-more-clothing-from-asia>> accessed 22 June 2018.

⁷ Melika Levelt, *Global Trade & the Dutch Hub: Understanding Variegated Forms of Embeddedness of International Trade in the Netherlands: Clothing, Flowers, and High-Tech Products* (Uitgeverij BOXPress 2010). [109-111 and 113-114].; IRBC Agreements (n 5).; Schone Kleren Campagne, 'Kledingindustrie' (*Schone Kleren Campagne*) <<https://schonekleren.nl/informatie/de-kledingindustrie/kledingindustrie>> accessed 15 March 2018.

⁸ T. Lambooy, [et., al.] (n 2). [8, 48 and 50].

⁹ *ibid.* [35-36 and 44-45].

Netherlands, no severe sustainability challenges regarding working conditions were found in the SMART study.¹⁰ Nonetheless, Dutch brands aim to ensure that their garments, that are produced abroad, are produced under decent and fair conditions. They can, therefore, exert influence on their supply chain partners to ensure decent and fair working conditions. They can do this in several ways; one of them is by participating in international initiatives aimed at enhancing the RMG sector in Bangladesh, such as the Bangladesh Accord.

The aim of this article is twofold: (1) to provide a legislative overview of the labour law provisions concerning the working conditions in the Netherlands applicable to the retail and recycling or waste phase of a pair of jeans and a white T-shirt and (2) to describe the challenges for employees in this particular sector in the Netherlands. The research question of this article, therefore, is: which labour law provisions are applicable to employers and employees operating and working in the retail and recycling or waste phase in the supply chain of a pair of jeans and a white T-shirt and which social challenges can be identified for employees working in the Dutch RMG sector?

The article is structured as follows. Section 2 describes the legislative framework with regard to the working conditions of employees in the RMG sector in the Netherlands. Section 3 discusses how Dutch clothing brands can exert influence on the working conditions in the international RMG supply chain. In section 4 the social challenges in the Dutch RMG sector will be presented. The contribution will end with a conclusion.

Legislative Framework in the Netherlands

The Netherlands has a strict regime concerning labour law provisions aimed at protecting employees. Employers are required to take care of a safe working environment and to have fair working conditions. These requirements are included in labour laws and individual labour agreements and CLAs.

¹⁰ *ibid.*[35-36 and 44-45].

There are several actors involved in the RMG supply chain. The Dutch legislation that will be discussed applies to all actors in the supply chain as long as they operate or are located in the Netherlands, such as retail companies, warehouses, and RMG brands. When in this article a reference is made to an employer or employee, it can refer to an employer or employee working in, for instance, a retail company, a warehouse or the (headquarters of the) RMG brand as long as it operates or is located in the Netherlands.

This section first outlines the labour laws that apply to employers and employees within the Netherlands in general; independent of the sector they operate and work in (section A). Next, section B will outline the social labour provisions included in CLAs applicable to the RMG supply chain.

A. Overview of labour laws: The Working Conditions Act and the Working Hours Act

The law regarding employment agreements is included in Book 7 of the Dutch Civil Code (hereafter: DCC). This legislation has many provisions about, among others, requirements concerning the validity and qualification of an employment agreement, obligations for the employer and employee, and provisions about sickness and dismissal. One of the obligations for employers entails preventing employees from suffering damage in the performance of their work. In order to do this, the employer has to maintain the working environment, machinery and tools in a safe manner, has to take safety measures and has to give instructions on how employees can use these machinery and tools safely.¹¹

Besides the general law that regulates employment agreements, there are stricter requirements on working conditions included in other laws. The Working Conditions Act (hereafter: WCA), Working Conditions Decree, and Working Conditions Regulation provide strict requirements for employers concerning working conditions. The WCA describes in general terms which safety measures an employer has to comply with, whereas the Working Conditions Decree and

¹¹ Article 7:658 DCC.

the Working Conditions Regulation prescribe in a more detailed way specific requirements for employers. In this article I will only elaborate on the WCA.

According to the WCA, employers are obliged to protect the health and safety of employees and to implement a policy aiming at achieving the best possible working conditions.¹² Employers are obliged to assess to which risks employees are exposed in the performance of their work. The employer has to report on these risks in a written inventory and assessment report. In order to mitigate the risks, an action plan has to be drawn up that indicates which measures are taken and within which timeframe. This risk inventory and assessment report has to be made available for all employees at any time.¹³ An employer has to inform his employees about the risks associated with their work and the measures in place to prevent or mitigate the risks.¹⁴ In return, employees also have a responsibility in relation to safety at work. Employees have to take care of their own safety and health and that of their colleagues, they should be careful with tools and dangerous substances and have to wear protective clothing if asked to do so by their employer.¹⁵

Employers have a particular responsibility related to accidents at work. They are obliged to take measures to prevent and mitigate serious accidents at work involving dangerous substances.¹⁶ In case of an accident at work, the accident has to be notified by the employer to the Labour Inspectorate (*Arbeidsinspectie*) if it led to death, lasting injury or hospital admission.¹⁷ In case an employer does not comply with the provisions of the WCA, a civil servant of the Ministry of Social Affairs and Employment could give an order of compliance¹⁸ and/or an order to suspend the work activities¹⁹ to the employer, the latter only if there is a serious danger for

¹² Article 3 (1) WCA.

¹³ Article 5 (1), (3), and (6) WCA.

¹⁴ Article 8 (1) WCA.

¹⁵ Article 11 WCA.

¹⁶ Article 6 (1) WCA.

¹⁷ Article 9 (1) WCA.

¹⁸ Article 27 (1) WCA.

¹⁹ Article 28 (1) WCA.

individuals. In addition, a fine could be imposed in case one or more provisions of the WCA are violated. In case no measures are taken for work involving dangerous substances, a fine could be given up to €830,000, and for non-compliance of any other provision of the WCA the maximum fine could be €83,000.²⁰ Fines are doubled if the employer is fined for the second time in five years for the same violation and tripled in case of a serious violation or in case the employer is fined for the third time in a period of five years for the same violation.²¹

Besides the WCA, the Working Hours Act (hereafter WHA) stipulates the maximum number of working hours an employee may work. The WHA applies to every employer and employees from the age of sixteen.²² It is prohibited to employ children under the age of 16, unless, for example the employment does not take place during school hours. However, in all cases, the child should at least be twelve years old.²³

The WHA protects employees from working too many hours a day. In the Netherlands, in practice the average working week consists of 39 hours a week on a fulltime basis.²⁴ However, if part-time working employees are taken into account, the average number of working hours a week in practice drops down to 29.2 hours.²⁵

²⁰ Article 34 (1), (3) and (4) WCA and article 23 (4) Dutch Criminal Code.

²¹ Article 34 (5) and (6) WCA.

²² Article 1:1 and 1:2 WHA.

²³ Article 3:2 WHA.

²⁴ Eurostat, 'Labour Market and Labour Force Survey (LFS) Statistics' (*Eurostat*, 2017) <[http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Labour_market_and_Labour_force_survey_\(LFS\)_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=Labour_market_and_Labour_force_survey_(LFS)_statistics)> accessed 24 June 2018.; Eurostat, 'Average Number of Usual Weekly Hours of Work in Main Job, by Sex, Professional Status, Full-Time/Part-Time and Economic Activity' (*Eurostat*, 2018) <http://appsso.eurostat.ec.europa.eu/nui/show.do?query=BOOKMARK_DS-056210_QID_-66FA1E0E_UID_-3F171EB0&layout=TIME,C,X,0;-GEO,L,Y,0;NACE_R2,L,Z,0;WORKTIME,L,Z,1;WSTATUS,L,Z,2;SEX,L,Z,3;UNIT,L,Z,4;INDICATORS,C,Z,5;&zSelection=DS-056210WORKTIME,FT;DS-056210WSTATUS,SAL;DS-056210UNIT,HR;DS-056210NACE_R2,TOTAL;DS-056210SEX,T;DS-056210INDICATORS,OBS_FLAG;&rankName1=WSTATUS_1_2_-1_2&rankName2=UNIT_1_2_-1_2&rankName3=WORKTIME_1_2_-1_2&rankName4=INDICATORS_1_2_-1_2&rankName5=SEX_1_2_0_1&rankName6=NACE-R2_1_2_0_1&rankName7=TIME_1_0_0_0&rankName8=GEO_1_2_0_1&sortC=ASC_-1_FIRST&rStp=&cStp=&rDCh=&cDCh=&rDM=true&cDM=true&footnes=false&empty=false&wai=false&time_mode=ROLLING&time_most_recent=true&lang=EN&cfo=%23%23%23%2C%23%23%23.%23%23%23> accessed 24 June 2018.

²⁵ OECD, 'Average usual weekly hours worked on the main job' (OECD, 2018) <https://stats.oecd.org/Index.aspx?DataSetCode=AVE_HRS> accessed 24 June 2018.

This is because the Netherlands is the OECD country with the highest part-time employment rate.²⁶

The WHA sets limits to the maximum working hours an employee may work in case of overtime. In case of overtime, employees may not work more than twelve hours a day and 60 hours a week. The maximum amount of working hours a week is even less if the employee works 60 hours a week on a regular basis. If the employee works for four consecutive weeks, the maximum number of working hours may not be more than 55 hours a week on average²⁷ and not more than 48 hours a week on average in a period of 16 consecutive weeks.²⁸

Between each shift, the employee should have a resting time of at least eleven hours per 24 hours. This resting period may be shortened to eight hours once a week, if the nature of the work or the business circumstances requires this.²⁹ After each working week, employees are entitled to a longer resting period of 36 consecutive hours in a period of seven days or 72 hours in a period of two weeks.³⁰ The individual employment agreement of an employee stipulates on which days of the week the employee has to work. Employers may require that their employees work on Sundays, if the nature of the employment requires this and if it is stipulated in the employment agreement. This could for instance be the case for employees working in a hospital or shops. An employee may refuse to work on Sundays because of religious reasons.³¹ If an employee has to work on Sundays, he is entitled to have at least thirteen Sundays off per year.³²

If the employer does not comply with the provisions of the WHA, a civil servant of the Ministry of Social Affairs and Employment could give the employer a maximum fine of €83,000.³³ This fine is doubled if the employer is fined for the

²⁶ OECD, 'Part-Time Employment Rate' (OECD, 2018) <<https://data.oecd.org/emp/part-time-employment-rate.htm>> accessed 24 June 2018.

²⁷ Article 5:7 (3) WHA.

²⁸ Article 5:7 (2) WHA.

²⁹ Article 5:3 (2) WHA.

³⁰ Article 5:5 (2) WHA.

³¹ This is established in case law.

³² Article 5:6 WHA.

³³ Article 10:7 (1) WHA.

second time in five years for the same violation³⁴ and tripled in case of a serious violation³⁵ or in case the employer is fined for the third time in a period of five years for the same violation.³⁶

B. CLAs

Next to legislation on working conditions, a CLA may also govern the relationship between an employer and employees in relation to working conditions. CLAs are usually agreements between one or more employers or employers' organisations and one or more employee organisations (unions).³⁷ In the Netherlands, everyone is entitled to set up a union or to become a member of a union. This is considered to be the freedom of association.³⁸

For a CLA to be binding, the employer has to be a member of one of the employers' organisation that is a party to the CLA.³⁹ If the employer is not a member of one of the employers' organisations to the CLA, the CLA will not be binding for the employer or the employees.⁴⁰ If the employer is a member of one of the employers' organisation to the CLA, the CLA is only binding for those employees who are a member of one of the unions that is a party to the CLA.⁴¹ However, the employer is obliged to offer the same working conditions to employees who are not members of one of the unions that are a party to the CLA.⁴² If an employer is not bound by the CLA, the CLA can however still apply to that employer in case the CLA is declared generally binding by the Dutch Minister of Social Affairs and Employment, which means that the CLA will apply to all employers and employees in a specific sector, irrespective of their membership to an employers' organisation or union.⁴³

³⁴ Article 10:7 (2) WHA.

³⁵ Article 10:7 (3) WHA.

³⁶ Article 10:7 (4) WHA.

³⁷ Article 1 Act on collective labour agreements (ACLA).

³⁸ Whacm Bouwens, *Schets van Het Nederlandse Arbeidsrecht* (21st edn, Kluwer 2011).[238].

³⁹ *ibid.*[249 and 250].; Article 9 ACLA.

⁴⁰ *ibid.*[249, 250 and 255].

⁴¹ *ibid.*[250].; Article 9 ACLA.

⁴² *ibid.*[253 and 255].; Article 14 ACLA.

⁴³ *ibid.*[260 and 261].; Article 2 (1) Act on the Extension of Collective Labour Agreements.

A CLA can be concluded for one specific sector or one organisation.⁴⁴ There are several CLAs that apply to the textile sector, which is for instance the MITT CLA for the Fashion, Interior, Carpet and Textile industry,⁴⁵ the Fashion, Sport and Lifestyle CLA⁴⁶, and the CLA for the wholesale of goods in the textile industry.⁴⁷ These CLAs have provisions on, among others, working hours, holidays, sickness, overtime work, and salary, and may in some cases deviate from the law.

Influence of Dutch Brands on the Working Conditions in the International RMG Supply Chain

The legislative framework in the Netherlands aims to ensure a safe working environment and safe working conditions for employees. However, the manufacturing of garments designed by Dutch clothing brands takes place mainly outside of Europe where the working conditions are often poor, with long working hours a day, a meagre salary, and an unsafe working environment.⁴⁸ The aforementioned labour laws are therefore not applicable to manufacturers of garments who work abroad, for instance in Bangladeshi or Indian factories. As a result, Dutch clothing brands (in) directly contribute to severe working conditions in their supply chain,

⁴⁴ *ibid.* [244 and 245].

⁴⁵ FNV, 'The MITT CLA' (FNV, 2016) <https://www.fnv.nl/site/alle-sectoren/caos/caos/30053/Mode_interieur_tapijt_en_textielindustrie-cao_2016-2018.pdf> accessed 15 March 2018. (only available in Dutch).

⁴⁶ FNV, 'The Fashion, Sport and Lifestyle CLA' (FNV, 2016) <https://www.fnv.nl/site/alle-sectoren/caos/caos/30051/Fashion_Sport_en_Lifestyle__cao_2016-2018.pdf_ZONDER_FNV.pdf> accessed 15 March 2018. (only available in Dutch).

⁴⁷ FNV, 'The CLA on the Wholesale of Goods in the Textile Sector' (FNV, 2017) <https://www.fnv.nl/site/alle-sectoren/caos/caos/42881/Textielgoederen_ea_cao_2017-2018.pdf> accessed 15 March 2018. (only available in Dutch).

⁴⁸ T. Lambooy, [*et., al.*] (n 2); Schone Kleren Campagne, 'Arbeidsomstandigheden' (Schone Kleren Campagne, 2009) <<https://schonekleren.nl/informatie/de-kledingindustrie/arbeidsomstandigheden>> accessed 25 June 2018.; Enrico D'Ambrogio, 'Briefing Workers' Conditions in the Textile and Clothing Sector: Just an Asian Affair?: Issues at Stake after the Rana Plaza Tragedy' (European Parliament, 2014) <<http://www.europarl.europa.eu/EPRS/140841REV1-Workers-conditions-in-the-textile-and-clothing-sector-just-an-Asian-affair-FINAL.pdf>>.[4].; SOMO, 'Fact Sheet Unsafe Garment Factory Buildings' (SOMO, 2013) <<https://www.somo.nl/wp-content/uploads/2013/07/Unsafe-Garment-Factory-Buildings.pdf>> accessed 25 June 2018.; Clean Clothes Campaign and SOMO, 'Fatal Fashion' (SOMO, 2013) <<https://www.somo.nl/nl/fatal-fashion>> accessed 25 June 2018.; International Labour Organization, Working Conditions of Migrant Garment Workers in India: A Literature Review (International Labour Organization 2017) <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf>.

if these brands choose to have their clothing manufactured in a factory where the working conditions are not good. To avert this, several initiatives were taken to prevent Dutch clothing brands from collaborating with clothing factories where the working conditions are severe. This section will discuss some public and private initiatives that were taken in the Netherlands to enhance working conditions in the RMG sector in Bangladesh.

In response to the collapse of the Rana Plaza building in 2013, several private and public initiatives were launched in the Netherlands, to prevent such a terrible accident from happening again. The first initiative was the Bangladesh Accord on Fire and Safety (hereafter: the Accord), which was signed on 15 May 2013 for a period of five years.⁴⁹ The Accord expired in May 2018, but the signatories agreed upon renewing the Accord until May 2021.⁵⁰ The Accord was signed by more than 170 clothing brands, retailers, and importers from all over the world, ten trade unions and 4 NGOs.⁵¹ The Bangladesh Accord Foundation is incorporated in the Netherlands.⁵² The Accord aims for the signatories to the Accord and the suppliers of the signatories to ensure the safety of workers in Bangladeshi RMG factories.⁵³ In order to protect the safety of workers, the Accord provides for, among others, the following measures: safety inspections in the factories where the signatories to the Accord manufacture their clothes;⁵⁴ a fire and building safety training programme for all workers, managers, and security staff;⁵⁵ and a worker complaint procedure for health and safety issues.⁵⁶ In case a factory does not comply with the safety standards of the Accord, a Safety Inspector could impose corrective actions, which have to be implemented by

⁴⁹ Accord on Fire and Building Safety in Bangladesh, 'About the Accord' (*Bangladesh Accord*, 2013) <<http://bangladeshaccord.org/about/>> accessed 24 June 2018.

⁵⁰ Bangladesh Accord, '2018 Accord on Fire and Building Safety in Bangladesh' (2018).[1].

⁵¹ Accord on Fire and Building Safety in Bangladesh, 'Signatories' (*Accord on Fire and Building Safety in Bangladesh*, 2013) <<http://bangladeshaccord.org/signatories/>> accessed 24 June 2018.

⁵² Bangladesh Accord Foundation, 'Annual Report 2013' (2013).[3].; Bangladesh Accord Foundation, 'Annual Report 2014' (2014).[6].

⁵³ Bangladesh Accord, 'Bangladesh Accord 2013'. [1].

⁵⁴ *ibid.* [para 8 and 9]; Bangladesh Accord (n 50). [para 4 and 5].

⁵⁵ Bangladesh Accord (n 53).[para 16]; Bangladesh Accord (n 50).[para 11].

⁵⁶ Bangladesh Accord (n 53). [para 18].; Bangladesh Accord (n 50).[para 13].

the factory within a given time,⁵⁷ in accordance with a Corrective Action Plan.⁵⁸ The signatories have to ensure that their suppliers provide full participation to the inspection, corrective actions, health and safety, and training programme. If a supplier does not cooperate and participate, the signatory company will “implement a notice and warning process”, which could lead to the termination of the business contract with that supplier.⁵⁹

The Accord could be a perfect means to put pressure on Dutch RMG companies to safeguard humane working conditions in Bangladesh. Although Bangladeshi legislation applies to Bangladeshi factory workers, Dutch clothing brands that are signatories to the Accord are bound by the Accord and therefore have to ensure that the working conditions in the factories where their garments are manufactured are safe. Therefore, Dutch clothing companies can have an influence on the working conditions in the Bangladeshi factories, due to such private initiatives as the Accord. However, there are also some disadvantages to the Accord. First of all, the Accord is only binding for the RMG brands that signed the Accord. The 2018 Accord is signed by 24 Dutch clothing brands and the former 2013 Accord was signed by 25 Dutch clothing brands. However, this number is still very limited. Another disadvantage of the Accord is that it only applies to Bangladeshi factories and does not take into account other countries. The scope of the Accord is also limited to safety issues and does not stipulate anything about a fair wage or a maximum number of working hours.

Another initiative that was taken is the Agreement on Sustainable Garment and Textile, which was signed on 9 March 2016 (hereafter: the Agreement) for a period of five years.⁶⁰ On the initiative of the Social and Economic Council of the Netherlands (SER), RMG brands, trade unions, NGOs, a few sector associations,

⁵⁷ Bangladesh Accord (n 53).[para 12].; Bangladesh Accord (n 50).[para 7].

⁵⁸ Bangladesh Accord Foundation, ‘Annual Report 2015’ (2015).[10].

⁵⁹ Bangladesh Accord (n 53).[para 21].; Bangladesh Accord (n 50).[para 16].

⁶⁰ SER, ‘Agreement on Sustainable Garment and Textile’ (SER, 2016) <<https://www.ser.nl/en/publications/publications/2016/agreement-sustainable-garment-textile.aspx>> accessed 15 March 2018.

and the Dutch government signed the Agreement.⁶¹ These RMG brands account for 42 to 45 per cent of the Dutch garment sector as of 2018.⁶² The Agreement targets nine specific themes: (1) discrimination and gender, (2) child labour, (3) forced labour, (4) freedom of association, (5) living wage, (6) safety and health in the workplace, (7) raw materials, (8) water pollution and use of chemicals, water and energy, and (9) animal welfare.⁶³ With regard to these nine themes, the parties to the Agreement are obliged to carry out due diligence as from one year after signing the Agreement, in order to find out what their negative impact is on these themes and to formulate specific goals and take measures to mitigate any negative impacts.⁶⁴ Furthermore, the parties have to submit an annual action plan in which they have to explain, among others, (1) which risks were identified during the due diligence process, (2) how their purchasing process has contributed to possible negative impacts and the measures that are in place to mitigate those risks, (3) the policies that were in place and the measures that the company has taken with regard to the nine themes and (4) formulate qualitative and quantitative goals, to be achieved after three years and after five years from the date of signing the Agreement.⁶⁵ The nine themes should be included in the company's Corporate Social Responsibility (CSR) policy.⁶⁶

Furthermore, Dutch RMG brands that have committed themselves to the Agreement have to be transparent about their production locations.⁶⁷ The SER publishes a list with the production sites every year.⁶⁸ The Agreement also caters for a complaint procedure. In case a signatory company to the Agreement does not

⁶¹ *ibid.*; IRBC, 'Businesses' (*IRBC Agreements*, 2016) <https://www.imvoconvenanten.nl/garments-textile/signatories?sc_lang=en> accessed 5 March 2018.

⁶² SER, 'Voortgangsrapportage IMVO Convenanten: Samen Op Weg Naar Verantwoorde Ketens' (SER, 2018) <https://www.ser.nl/~media/files/internet/publicaties/overige/2010_2019/2018/imvo-voortgangsrapportage-2018.ashx> accessed 25 July 2018.

⁶³ SER, (n 60). [15].

⁶⁴ *ibid.* [12, 15 and 24].

⁶⁵ *ibid.* [8 and 24].

⁶⁶ *ibid.* [24].

⁶⁷ *ibid.*

⁶⁸ IRBC, 'A List of the Manufacturing Sites Are Published at: "Aggregated List of Production Locations"' (*IRBC Agreements*, 2017) <https://www.imvoconvenanten.nl/garments-textile/agreement/method/factories?sc_lang=en> accessed 25 June 2018.

comply with the Agreement, a stakeholder can file a complaint at the Complaints and Disputes Committee if he suffers injury, loss, or damage by the company. The conduct of the company has to be substantially significant for the stakeholder. A remarkable feature of this complaint procedure is that the decision of the Complaints and Disputes Committee will be binding for the parties.⁶⁹ The Complaints and Disputes Committee can include certain measures in the decisions, which comprise of binding or non-binding recommendations for improvement or the duty to remediate in accordance with the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.⁷⁰

The Agreement could be a helpful tool to urge Dutch companies to enhance the working conditions in the garment factories abroad. Whereas the Bangladesh Accord only has a bearing on Bangladesh, the Agreement is much broader, because it does not only cover Bangladeshi factory workers, but also factory workers in other countries. Furthermore, the Agreement does not only cover safety issues but also topics such as discrimination and a fair wage. Although the Bangladesh Accord has more signatories to the Accord than the Agreement has, the Agreement is only signed by Dutch brands and has more Dutch signatories than the Accord has. The Agreement had 73 Dutch signatories by 2018.⁷¹ However, these 73 Dutch companies do not account for the total number of Dutch clothing companies and therefore there are still a number of companies to which the Agreement does not apply. These two initiatives show new ways in which Dutch clothing companies can exert influence on the poor working conditions in garment factories abroad. However, the Accord and the Agreement are signed on a voluntary basis, which makes it difficult to target every Dutch RMG brand.

Challenges in the Dutch RMG & Waste Sector

In the previous sections the legislative framework was discussed that is in

⁶⁹ SER,(n 60).[12 and 13].

⁷⁰ Article 34 (4) Rules of Procedure of the Complaints and Dispute Mechanism of the Agreement Sustainable Garment and Textile.

⁷¹ SER,(n 62).

place in the Netherlands to safeguard safe working conditions in the Dutch RMG sector. In the SMART study, no severe social hotspots were found in the phases 4 and 6 of the RMG supply chain in the Netherlands. Despite the fact that there are no severe challenges regarding the working conditions in the retail and RMG waste sector, there were still some social issues and challenges identified in the research pertaining to employees in the Netherlands, irrespective of the sector they are working in. This section highlights some of these social challenges.

One of the current issues in the Netherlands is the inequality of men and women. In 2014, women earned approximately 20,5 per cent less than men⁷² and in 2016, women got paid per hour 15,6 per cent less than men.⁷³ During their career, women earn, on average €300,000 less than men do.⁷⁴ Furthermore, the promotion opportunities for women are also lower than for men. In 2018 the corporate boards of Dutch listed companies comprised of a meagre 18,7 per cent of women, 5,7 per cent women in the executive board and 25,1 per cent women in the supervisory board.⁷⁵

Another challenge regarding the equal treatment of men and women concerns parental responsibilities. A woman who is pregnant has a minimum paid maternity leave period of 16 weeks,⁷⁶ whereas the father since 1 January 2019 has five days of paid paternity leave and three weeks of unpaid paternity leave.⁷⁷ The Netherlands is among the countries with the shortest period of paternity leave.⁷⁸ The European Commission initiated a proposal for a Directive on Work-Life Balance for Parents

⁷² OECD, 'Gender Wage Gap' (*OECD*, 2014) <<http://www.oecd.org/gender/data/gender-wagegap.htm>> accessed 25 July 2018.

⁷³ Eurostat, 'Gender Pay Gap Statistics' (*Eurostat*, 2016) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#Further_Eurostat_information> accessed 25 July 2018.

⁷⁴ WOMEN Inc, 'Over Loonverschil' (*WOMEN Inc*) <<https://www.womeninc.nl/loonverschil/over-loonverschil/>> accessed 1 August 2018.

⁷⁵ M. Lückerath-Rovers, 'The Dutch Female Board Index 2018' (*tias.edu*, 2018) <<https://www.tias.edu/docs/default-source/Kennisartikelen/female-board-index-2018.pdf>> accessed 10 April 2019.

⁷⁶ Article 3:1 (2) and 3 Work and care act (*Wet arbeid en zorg*).

⁷⁷ Article 4:2 Work and care act (*Wet arbeid en zorg*).

⁷⁸ European Parliament 'At a Glance: Maternity and Paternity Leave in the EU' (*europarl*, 2016) <[http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/593543/EPRS_ATA\(2016\)593543_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/593543/EPRS_ATA(2016)593543_EN.pdf)> accessed 1 August 2018.

and Carers,⁷⁹ which enables fathers to have at least ten days of paternity leave, for which the employer has to pay an adequate income that is at least equal to the salary the employee would have received if the employee was sick.⁸⁰ This proposal has not yet been adopted and enacted. The lack of paternity leave for fathers to the same extent as for mothers constitutes a problem if the mother decides to pursue her career instead of the father. Because a newborn requires a lot of time, and the paternity leave for fathers is only five days, the father does not have much time to bond with his child. If the father had more days/weeks off for paternity leave, he would have more time to bond with the child. The uptake of paternity and parental leave also has some other advantages. It has, for instance, a positive effect on female employment after the mother gave birth to a child.⁸¹ Furthermore, it reduces discrimination of women in the workplace, because men and women are seen as equal if they are both allowed to take up leave.⁸² It is therefore important for the career of the mother that the father can take up a paternity leave of more than five days for the father to bond with the child.

Co-determination rights for employees are another potential issue within the Dutch RMG sector. Every employer is obliged to have a works council if the employer has, on average, more than 50 employees.⁸³ Several rights are assigned to a works council, such as a right to give advice concerning important business decisions⁸⁴ and the right to endorse policies, for instance, about working conditions.⁸⁵ A potential issue can occur here, especially for smaller retailers, when they do not

⁷⁹ European Commission, 'Proposal for a Directive of the European Parliament and of the Council on Work-Life Balance for Parents and Carers and Repealing Council Directive 2010/18/EU', (2017) 253 COM.

⁸⁰ *ibid.* [art. 4 (1) and 8.]

⁸¹ J. van Belle, 'Paternity and Parental Leave Policies across the European Union' (*rand*, 2016) <https://www.rand.org/content/dam/rand/pubs/research_reports/RR1600/RR1666/RAND_RR1666.pdf> accessed 25 July 2018.; OECD, 'Parental Leave: Where Are the Fathers? Policy Brief' (*OECD*, 2016) <<https://www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf>> accessed 25 July 2018.; European Parliament Directorate General for Internal Policies, 'A New Strategy for Gender Equality Post 2015', *European Parliament Directorate General for Internal Policies* (European Parliament 2014) <[http://eige.europa.eu/resources/IPOL_STU\(2014\)509984_EN.pdf](http://eige.europa.eu/resources/IPOL_STU(2014)509984_EN.pdf)>.

⁸² OECD, 'Parental Leave: Where Are the Fathers? Policy Brief' (n 81).

⁸³ Article 2 (1) Works Council Act.

⁸⁴ Article 25 (1) Works Council Act.

⁸⁵ Article 27 (1)(d) Works Council Act.

have more than 50 employees and are therefore not required to establish a works council. As a result of this, employees cannot exercise influence on the business by means of endorsing policies for working conditions or important business decisions.

The aim of this section was to highlight the challenges that employees may face in the Netherlands. These challenges do not apply to the Dutch RMG supply chain only but apply to all employees. This section has shed light on the most important challenges in the Netherlands. Of course, the challenges may not be the same for every company and have to be looked at on a case-by-case basis.

Conclusion

In this article, the legal framework that applies to employees working in the Dutch RMG sector is described. The obligations for employers include the obligation to maintain a safe working environment and to have fair working hours for employees. Additional obligations may arise from CLAs especially for the RMG sector in the Netherlands. It was noted that the manufacturing of the RMG, sold by Dutch brands and retail companies, mainly takes place abroad. In many of the manufacturing low-income countries, the working conditions in the RMG sector fail to comply with adequate standards as other articles in this special issue demonstrated. However, Dutch labour laws cannot solve these issues, as these employers and employees do not fall within the ambit of the law. Therefore, two Dutch initiatives were taken with the aim to enhance the working conditions in RMG factories abroad. These are the Accord and the Agreement. These two initiatives can put pressure on Dutch RMG brands and retail companies to enhance the working conditions in the RMG factories abroad by obliging them to take measures to implement the fair working conditions standards prescribed in the Agreement and the Accord in their supply chain companies.

Potential challenges identified in this article for employees working in the Netherlands are the inequality of men and women regarding equal pay, gender diversity in corporate boards, parental leave, and co-determination rights of employees.

This study has some limitations. The research method for this article was limited to desk research only. Adopting a qualitative research method could enhance the insights on the potential hotspots in the Dutch RMG sector. This could be an interesting avenue for future research. Furthermore, there was only a focus on two supply chain phases of a pair of jeans and a T-shirt within the Netherlands. Future research can be conducted on other types of RMG.'

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