

## Alternative dispute resolution in the Dutch jurisdiction

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### *Introduction*

In the field of Corporate Social responsibility (CSR), in 2016 a new multi-stakeholder CSR-tool was launched in the Netherlands: sector agreements or covenants. The covenants (also called sustainable business agreements) are intended to prevent violations of fundamental (labour) rights in sectors with the highest risk of such violations. Parties to the covenants are the government, trade unions, industry organisations and civil society organisations. Businesses can either be a party or can become an adhering party. The covenants are sectoral.

The Dutch covenants help the parties to increase their leverage by working together at sector level to address violations of fundamental labour rights, especially in supply chains. January 2020 there are nine covenants supported by the Social Economic Council of the Netherlands (SER): Garments and Textile (July 2016), Banking (October 2016), Gold (June 2017), Food Products (June 2018), Insurance (July 2018), Pension Funds (December 2018), Natural Stone (May 2019), Metals (July 2019) and Floriculture (July 2019).<sup>1</sup>

### *Dispute resolution*

Enforceability of fundamental rights is essential, especially in the supply chains. The covenants have their own dispute settlement mechanism in the form of *dispute* or *complaints* committees. A *dispute* concerns parties affiliated to the covenant and must be related to obligations arising from the covenant, *complaints* can be submitted by stakeholders. A stakeholder is anyone who experiences harm as a result of a violation of the covenant by an adhering company or in the supply chain.

Non-legal - confidential - forms of dispute resolution are attempted such as dialogue and mediation. If the violation continues, the offender may be prohibited from participating any longer in the covenant, exclusion is the last resort.

All covenants - except for two<sup>2</sup> - have designated dispute resolution to the steering group of the covenant. The Sustainable Garment and Textile covenant has an independent *complaints and dispute* committee which was established in the summer of 2017. The Committee has three members: an independent chairperson, a member with business experience in the garment and textile industry appointed by the branch organisations and a member with expertise in the garment and textile industry appointed by the trade unions and social organisations affiliated to the covenant. A decision taken by the Committee is published on the website of the covenant; the Committee's decisions are binding.

### *Cases*

Up to now the committee of the Sustainable Garment and Textile covenant has rendered a decision in two cases, both on May 22, 2019.<sup>3</sup> In the decision concerning the textile company *Manderley Fashion*, the Committee established that the company had not met the obligations arising from the covenant; however a distinction was to be made between not wanting and not being able to meet the obligations of the covenant. In the case of *Vandyck bed- en badmode*, the company itself indicated that it wanted to end its participation in the covenant because the company did not want to be associated with

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<sup>1</sup> [https://www.imvoconvenanten.nl/convenantenoverzicht?sc\\_lang=nl](https://www.imvoconvenanten.nl/convenantenoverzicht?sc_lang=nl) Floriculture was assisted by the SER at the formation stage, but the implementation secretariat is not part of the SER. Sustainable forest management was not formed with assistance from the SER, though the covenant is stated on the website.

<sup>2</sup> The Garment and Textile covenant and the Natural stone covenant.

<sup>3</sup> [https://www.imvoconvenanten.nl/kledingtextiel/agreement/complaints?sc\\_lang=nl](https://www.imvoconvenanten.nl/kledingtextiel/agreement/complaints?sc_lang=nl)

political activism. The company viewed the obligation to ask Turkish suppliers if they had hired illegal refugees from Syria as such. During the proceedings, however, it became clear that Vandyck had taken insufficient account of the consequences: a withdrawal from the covenant is published on the website and it turned out that the company was uncomfortable about this. After consultation with the secretariat, Vandyck decided not to withdraw from the covenant, and declared it would henceforth adhere to the obligations arising from the covenant.

### *Concluding*

In the field of CSR alternative dispute resolution is common, think of the mediation procedure at the NCPs (National Contact Points) based on the OECD Guidelines or the 'company-union dialogue' the ILO MNE Declaration offers. The committee of the Sustainable Garment and Textile covenant, providing a widely accessible form of dispute resolution, complements this. Besides that, it may help parties in a civil law suit when the committee has established a violation, thus paving the way to the possibility of recovering damages as a result of violating fundamental labour rights.