

Your World First

C/M/S/

Law . Tax

Health & Safety Compliance

November 2016



Introduction

CMS is a recognised specialist firm in the area of Health & Safety Compliance in the Netherlands and abroad. In this area of expertise we often represent (insurance) companies, its directors and employees in response to incidents or the prevention of incidents.

Whether it is about (preventing) an industrial accident, an environmental incident or an alleged breach of health and safety standards, our Health & Safety Compliance team has the specialist knowledge and experience to provide all necessary legal assistance. The effects of an incident are not limited to a specific area of expertise but can extend to:

- I. Sanctions law (criminal law and supervision)
- II. Administrative law
- III. Civil law

This calls for an integrated approach in which all aspects are taken into consideration, as well as a careful and effective communication strategy towards all stakeholders. That is why our dedicated team includes lawyers with expert knowledge in the areas of sanctions law, administrative law, liability law, insurance law, employment law and transport law.

Emergency?

Our dedicated team of lawyers is available 24/7 for assistance in the Netherlands as well as abroad. If necessary, we work in close cooperation with our specialized CMS-colleagues in Europe, Shanghai, Mexico City, Rio de Janeiro, Casablanca, Algiers, Istanbul, Kiev, Moscow, Beijing, Dubai, Muscat and Teheran.

Please find our contact details in the section 'The Health & Safety Compliance team'.

The Health & Safety Compliance team

- Eva Schothorst – Gransier: Liability & Insurance Law
- Nienke Smeets: Criminal Law and Sanctions
- Aziz al Mansouri: Transport Law
- Barbara Veldmaat: Employment Law

CMS-netwerk



What is a Health & Safety incident?

A Health & Safety incident includes:

- Industrial accident/occupational diseases (severe accident at work, RSI, mesothelioma, etc.)
- Environmental incidents (contamination, fire, asbestos, etc.)
- Impending product-recalls (food, medical devices, etc.)

An incident, next steps?

When a company is faced with a severe incident, inspectors from the concerning supervisory authority (for example the Social Affairs and Employment Inspectorate or the Food and Consumer Product Safety Authority) will often visit unannounced at your premises for inspection. The choices the company makes in this stage are often crucial. The concerning supervisory authority has far-reaching powers (such as attachments, questioning, information request, order a recall, etc.) which require a quick and adequate response. Furthermore, the underlying interests of the corporate liability insurer cannot be neglected. Immediate advice and support is of the utmost importance. At this stage, the incident can no longer be prevented but the (financial) consequences can be controlled.

Our strategy is aimed at minimalising the negative consequences, including the loss, and, as quickly and effectively as possible, to find the best solution. When beneficial to the case, and in consultation with you and/or your insurance company, we engage the help of third parties, such as loss adjusters, forensic technicians and communication advisers.

Our involvement ensures that, when necessary:

- The insurer will be involved immediately to assess insurance cover;
- There will be an immediate investigation into the circumstances and the evidence will be collected so that the strategy can be adjusted accordingly;

- Those involved will be instructed about the do's and don'ts and company policy will be reviewed so that future incidents can be prevented;
- We will keep in touch with the supervisory authority in order to keep abreast of the progress of the investigation and to adequately respond to any developments;
- The people involved will be assisted during questioning by the supervisory authority to secure their rights in the context of a possible prosecution;
- A defence will be put forward in the case that an administrative fine is imposed;
- Possible options of recourse will be secured.

In short, we are on call to offer practical assistance to minimize the impact of an incident on your business and to prevent criminal prosecution, administrative enforcement and/or civil claims. With our hands-on approach, we aim for a quick and constructive solution.

In the event that proceedings or enforcement are nevertheless instituted or when a civil claim is submitted, we will assist your company, directors and/or employees in their defense.

Prevention is better than cure

Of course prevention is better than cure. Our experts will work with you to devise compliance strategies that fit your business needs. The identification of, and the adequate response to the cause of an incident are part of compliance activities. Besides the obligation, corporate liability insurance can set conditions for coverage under the policy. That is why our Health & Safety Compliance team includes experts in the area of prevention. The fact that we know what can go wrong, makes us experts in knowing how to prevent it. The combination of the cause analysis and the legal playing field is the strength of our team and it allows us to assist our clients on multiple areas.

Our clients reach out to us for advice and assistance about:

- Drawing up or reviewing Health & Safety policy for the company;
- Safety aspects of projects;
- Dawn raids by the Food and Consumer Product Safety Authority, the Social Affairs and Employment Inspectorate, the Authority Consumer and Market and the Healthcare Inspectorate;
- Due diligence on corporate takeovers and divesting business units;
- Drawing up contracts or terms and conditions;
- Reviewing environmental permits or other permits;
- Enforcement measures implemented by Environmental Agencies, Provinces or Municipalities.

Sectors

Our client base is comprised of a large number of sectors, including (insurers of) companies in:

- Construction
- Chemistry
- Transport
- Waste disposal
- Energy
- Automotive
- Lifesciences
- Data Centres
- Retail
- Food & Beverages

Credentials

Our clients appreciate the high level of attention and support that we in a difficult period time for every company. A selection of our recent experience:

- o Fatal accident at a multinational in the chemical industry. The Public Prosecution Service and the Social Affairs and Employment Inspectorate did not institute criminal or administrative enforcement. The civil claim was dropped.
- o Advice and assistance to a company in the construction sector about cross-border discharge of waste (European Waste Shipment Regulation). The case is dismissed.
- o A company in the construction sector and a manager were accused of various environmental incidents and violation of various health and safety regulations which were included in the permit. Clients were acquitted.
- o Put up a successful defense against an administrative fine relating to an accident on a sports event. The civil claim was subsequently also dropped.
- o Advising and litigating on behalf of a manufacturer of medical devices, who was held liable by various patients for the alleged defective products. The case is still pending.

- o Defence for a company in the automotive industry against a fine notification of the Employment Inspectorate in response to an accident. The defence was successful and the civil claim was dropped;
- o Legal assistance of (the insurer of) a data center in response to an accident in the data centre, where someone else's employee was seriously injured. The case is still pending;
- o Advising a multinational in the chemical industry where the provincial and municipal governments were threatening to shut down the business and imposed an order subject to a fine for non-compliance and administrative enforcement. The company has not been closed and the various fines were revoked or not incurred;
- o Legal assistance of manufacturers of heating systems in a case concerning product recalls and product liability;
- o Successful defence in various asbestos claims by employees;
- o Accident at a construction site, where a bystander was deadly injured. Criminal and civil representation of a large construction company. Case is still pending;
- o Legal assistance to (the insurer of) a vegetable processing company in connection with a deadly accident involving a forklift truck. Case is still pending.

Publications

We regularly publish in various magazines and journals on a broad range of topics relating to Health & Safety Compliance.

Health & Safety Compliance team



Eva Schothorst - Gransier
Liability & Insurance Law
T +31 30 21 21 142
M +31 6 499 437 15
E eva.schothorst@cms-dsb.com



Barbara Veldmaat
Employment Law
T +31 20-30 16 403
M +31 6 414 851 19
E barbara.veldmaat@cms-dsb.com



Aziz al Mansouri
Transport Law
T +31 30 21 21 527
M +31 6 461 872 73
E aziz.almansouri@cms-dsb.com



N. Smeets
Criminal Law
T +31 70 24 00 956
M + 31 6 553 229 21
E ns@solitt.nl





Law . Tax

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

www.cms-lawnow.com



Law . Tax

Your expert legal publications online.

In-depth international legal research and insights that can be personalised.

eguides.cmslegal.com

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Mexico City, Milan, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Rio de Janeiro, Rome, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tehran, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

cms.law