

Advisory report on amendments to the Works Councils Act (*Wet op de ondernemingsraden*, WOR)

19 December 2003

It is in the interest of both Works Councils and employers that, together, they be able to apply the concept of employee participation in such a way that it meets their respective needs. In view of the diversity of enterprises within the Netherlands, the Works Councils Act should therefore be as flexible as possible. Opinions are divided within the Social and Economic Council of the Netherlands (*Sociaal Economische Raad*, SER) on whether this makes it necessary to amend the current Act.

These observations were presented in an advisory report on amendments to the Works Councils Act adopted by the SER on 19 December 2003. This report was drawn up in response to a request for advice from the Minister of Social Affairs and Employment, accompanied by eleven specific policy guidelines on amendments to the Act based on the findings of an evaluative study. The Minister also asked for the SER's opinion on the private member's bill 'Disclosure of Top-Income Earners' (*Openbaarheid van topinkomens*), which was being discussed in the Lower House (*Tweede Kamer*) at that time.

The advisory report covers a number of issues concerning employee participation, including:

- the powers of the Works Council (*ondernemingsraad*, OR)
- the structure of employee participation within individual companies and groups of companies
- whether the WOR should serve as a framework act
- the disclosure of incomes and information about incomes to the Works Council
- the possible involvement of the Works Council in decisions on remuneration policy
- the Works Council's elections and way of working
- the right of temporary workers to employee participation
- compliance with the mandatory establishment of a Works Council.

The SER's opinion was divided on a number of these issues.

The powers of the Works Council and the nature of the WOR

The current WOR defines the powers of the Works Council in categorical terms: the employer may not deviate from the arrangements to the detriment of the Works Council, and the Works Council may not systematically abdicate one or more of its powers. In certain specific situations, however, the Works Council may indicate that it waives a particular power.

The cabinet wants to allow employers and Works Councils to enter into a Works Agreement whereby they restrict the powers of the Works Council for a short or longer period, possibly in exchange for other rights and powers. The cabinet also asks whether there is a need for the WOR to become a framework act.

The employers' SER representatives feel that giving employers and Works Councils the opportunity to enter into agreements that restrict the powers given by law to the Works Council, possibly in exchange for other rights and powers, is a good step towards making employee participation more flexible at enterprise level as well as towards the establishment of the WOR as a framework act.

The union SER representatives and the Crown-appointed SER representatives consider that employees' rights to employee participation do not allow the Works Council to abdicate powers. They place great importance on employee participation remaining a powerful tool and would find it unnecessary and undesirable if the WOR was made a framework act.

Extension of the Works Council's powers and facilities

The cabinet believes that the findings of the evaluative study do not justify increasing the powers or facilities of the Works Council.

The union SER representatives consider the powers and facilities of the Works Council to be inadequate. Amongst other things, they advocate reinforcing the Works Council's right of initiative and right to prior consultation and granting the Works Council the right to ask the Enterprise Section of the Amsterdam Court of Appeal (*ondernemingskamer*) to launch an inquiry into the enterprise in question (*enquêterecht*).

The employers' and Crown-appointed SER representatives feel that the Works Council already has a wide range of powers and facilities at its disposal, and that no extension of these is required.

Disclosure of remuneration-related information to the Works Council and its involvement in remuneration policy

The cabinet asked the SER for its opinion on the private member's bill 'Disclosure of Top-Income Earners' (*Openbaarheid van topinkomens*), which was being discussed in the Lower House at that time. The bill aims to disclose top income levels by granting all enterprises with a mandatory Works Councils a general right to information about the salaries of directors and members of the Supervisory Board.

The SER is of the opinion that the compulsory disclosure of information on the level and content of agreements and arrangements in employment conditions in all enterprises with a mandatory Works Council is not feasible and would not be effective in the form suggested in the private member's bill. For these reasons, the SER unanimously advises against the bill. However, opinions were divided on the issue of what exactly should be established by law with regard to:

- (a) the disclosure of the salaries of directors and members of the Supervisory Board
- (b) the involvement of the Works Council in determining remuneration policy
- (c) the extension of information provided to the Works Council on remuneration scales within the enterprise.

The advisory report is available in Dutch, in full and in summary, at <http://www.ser.nl>

Translation: Balance Texts and Translations, Maastricht