

1. Commodity and industrial boards

Commodity and industrial boards are partnerships between the employers' associations and trade unions in a particular sector of the Dutch economy. Along with the Social and Economic Council they form the statutory industrial organisation (PBO). The boards are authorised to impose levies and draw up mandatory rules for all companies that fall within their scope of operation, for example ordinances intended to improve food safety, combat animal and plant diseases or improve working conditions.

The boards are assigned specific powers when they are installed. Various ministries and the Social and Economic Council monitor the way the boards exercise their powers and other matters, in accordance with the Industrial Organisation Act [*Wet op de bedrijfsorganisatie*]. The Social and Economic Council is responsible for the following:

- monitoring the inauguration and discontinuation of the boards;
- monitoring the composition of their executive committees;
- approving their decrees;
- approving their finances.

The right to inaugurate a commodity or industrial board is laid down in the Constitution of the Netherlands, with the actual procedure being defined in the Industrial Organisation Act. The members of a board's executive committee are appointed by the relevant employers' associations and trade unions. The committee generally has an equal number of employer and employee representatives (parity). The chairperson is appointed by the Crown. A commodity or industrial board is set up at the request of the relevant sector. There must, however, be sufficient support for doing so; in other words, the initiators must be suitable representatives of the business community in that particular sector. This is something that the Social and Economic Council assesses once every four years. Any move to discontinue a commodity or industrial board is taken jointly by the member organisations.

There are two types of boards: commodity boards and industrial boards. Commodity boards unite companies that work with the same product (e.g. meat, fish, dairy or wine). They cover the entire production chain, from raw material to end product, starting with the primary sector and encompassing industry, wholesale and retail. Commodity boards are most common in the agro-food sector. Industrial boards cover companies that play the same role in the economy, for example hospitality establishments, retail businesses or companies that work according to traditional methods. Such companies tend to provide consumer services.

2. Background to the Council's advisory report

The Industrial Organisation Act was amended in 1999 as part of the government's efforts to modernise the statutory industrial organisation. A new provision was added to the act stipulating that the Cabinet must report to the Lower House of Parliament once every four years concerning the efficiency and effectiveness of the boards¹.

The Cabinet contracted a firm of consultants to investigate the boards' performance between 1999 and 2003. The consultants published a report on their findings, and the Cabinet issued an opinion on this report in November 2004². Based on this report, the Cabinet judged the boards' performance as satisfactory. Because politicians and other parties have nevertheless called the performance of the boards into question, the Cabinet refrained from making any statement

¹ Article 139 of the Industrial Organisation Act

² Lower House of Parliament, 2004-2005, 25 695, no. 25, appendix 2

concerning the future of the statutory industrial organisation. After various motions were passed in the Lower House of Parliament, each of the commodity and industrial boards was asked to draw up a foresight study and prognosis based on its results, to be submitted to the Cabinet before the end of 2005. The boards were asked to focus in particular on the medium-term, i.e. from the present until 2010.

The Lower House of Parliament passed a number of motions during a general session devoted to the Cabinet's opinion³. One of the motions provided for a discussion between the Cabinet and the Lower House regarding the future of the boards, to be held before the summer recess in 2006. In another motion, the Lower House expressed its interest in the views of the Social and Economic Council with respect to the future of the boards and the Council's role as regulatory body.

It was also in response to the second motion that the Council adopted its advisory report on 17 March 2006. The Council's report will also help the Cabinet and the Lower House comply with the first motion, i.e. to discuss the future of the boards.

3. The Council's opinion

3.1 The boards and their environment

The foresight studies have revealed that the boards are subject to the influence of social trends affecting the markets, businesses, the government, the public and consumers. The most significant trends include:

- increasing levels of globalisation and liberalisation and more fiercely contested markets;
- growing differentiation between the companies falling within the boards' scope of operations;
- a greater focus on training projects and working conditions;
- increasing market differentiation;
- efforts to reduce bureaucracy and minimise regulatory intervention.

The boards indicate in their foresight studies that they are aware of such trends in their own sectors and in society in general. The extent to which they actually succeed in keying into these trends will ultimately determine the added value they provide, and, by association, their future.

3.2 The nature of the statutory industrial organisation

Because the boards operate under public law but have as their members voluntary associations of employers and employees organised under private law, the initiative for inaugurating a board must be taken by the parties operating in the relevant sector. The fact that the member organisations are representative for their sector plays an important role in ensuring the democratic legitimacy of the system. Indeed, that legitimacy is twofold: it comes from the top down because it is the government alone that can issue the decree to inaugurate a board, and from the bottom up because the member organisations must represent the majority in the sector.

According to the law, the boards must serve the interests of both the public and the companies for which they have been founded. The Council feels it would be impractical to attempt to establish a conclusive and unchanging definition of these concepts. Ultimately, whether or not something is thought to serve the public interest depends on a political opinion which, while established democratically, is also subject to change in the course of time. The boards must, however, account for their actions in terms of their serving their members' and the public

³ Lower House of Parliament, 2004-2005, 25 695, nos. 26-28

interest. Their doing so helps to define such concepts and makes it possible for stakeholders and regulatory bodies to evaluate them.

3.3 Scope of operations of commodity and industrial boards

As the boundaries of a sector blur or as companies expand in size or merge their operations with another business, their relationship to their board may change. Trends such as these may give rise to questions concerning the boundaries of a board's scope of operations, specifically as to whether a particular sector or subsector should continue to be covered by that board. It is the Council's view that any change in a board's scope of operations should have the consent of all parties involved in the board. The executive committees must monitor whether the board's scope of operations is in line and up to date with trends and developments in the sector.

If the sector or subsector is unable to reach consensus on the board's scope of operations, the Council will help to assess the boundaries by asking the following questions:

- do the companies belonging to the sector or subsector concerned differ from other companies that fall within the board's scope of operations, based on relevant objective factors related to the function and activities of the board?
- is the organisation that is asking for limits to be set on the board's scope of operations sufficiently representative of the companies in the relevant sector or subsector?
- can the companies belonging to the relevant sector or subsector be excluded sufficiently from the benefits of the board, and will this not mean losing necessary links in the chain?

The more these questions are answered in the affirmative, the more likely it is that the Council will recommend limiting the board's scope of operations. Every request requires a separate assessment, however, in order to ensure that factual differences are taken into account.

By correctly limiting a board's scope of operations, companies that only carry out an economic activity covered by the board as a sideline will not be subject to the board's levies and regulations unnecessarily. Such a situation can be avoided by making provision in the decree inaugurating the board, or by setting threshold amounts for levies so that companies engaged in an activity as a sideline are exempt from payment.

3.4 Governance

One vital factor in ensuring the continuity of the industrial organisation's governance system is that it must have the confidence and trust of its stakeholders. Such trust can be enhanced by intensifying the dialogue between the parties and by requiring the executive committee to render a more thorough account of its actions and decisions.

The statutory structure of the statutory industrial organisation provides for a number of safeguards that ensure prudent and conscientious governance. With the public increasingly demanding proper accountability and transparency, the Council considers additional guarantees desirable in order to reinforce the existing system of checks and balances. Given the nature of the statutory industrial organisation, a system of self-regulation is preferable.

The boards must look specifically at the quality of their executive committees and at public accountability, and should do so at regular intervals. Given developments in the field of public governance, the statutory industrial organisation can achieve these aims by adopting a code of good governance. Various recommendations described in the present advisory report can be incorporated into such a code, for example standards for prudent governance and integrity, internal monitoring, accountability, communication and rules for dealing with overlapping board memberships (personal unions).

Because the code must have the broadest possible support in order to be effective, it should be drawn up by the commodity and industrial boards themselves, in consultation with stakeholders wherever possible. The Council supports the idea of establishing such a good governance code for the statutory industrial organisation and backs moves in this direction by the boards. It intends to encourage, coordinate and support the realisation of a code.

Although the boards will themselves be responsible for introducing the code, the Council believes that the code must be anchored in the law and that the task of monitoring compliance with the code should come within its remit as a regulatory body.

3.5 Regulatory task

The mandatory nature of the Council's regulatory task continues to correspond well with the division of responsibilities and powers within the statutory industrial organisation. A board's executive committee determines the actual policy, while the regulatory body monitors compliance with the core statutory rules. As a regulator, the Council does not assess the appropriateness of ordinances and decrees, but does expect the boards to account for their decisions in this regard to their members and other stakeholders. The regulatory tools are therefore designed to encourage the boards to account properly for themselves and to operate transparently.

3.6 Ordinances and levies

The number of rules and regulations produced by the boards has been cut by more than half in a little more than five years. The administrative burden generated by the boards – approximately EUR 23 mln in 2004 – was regarded as minimal and has been cut back even more since then. There are, moreover, plans to reduce the administrative burden even further. The size of the levies is also declining. General levies have fallen by 12% since 2002, and earmarked levies by 39%. The annual average levy charged by an industrial board is approximately EUR 250 per company. The same average levy charged by a commodity board comes to approximately EUR 750 per year.

The Council believes that there should be a clear relationship between what a board does for a particular sector or subsector and the levies that it charges for these services. Earmarked levies are an effective means of ensuring that the link is in fact obvious. Increasing the share of earmarked levies in the budgets of the board will make the relationship clearer to the members and increase the general basis of support. Equally, the size of the levy that a company is required to pay should be in proportion to the benefit that it derives from a board's activity.

Companies may sometimes be required to pay several different levies all at once. Various practical solutions have been found for more problematic instances when different levies fall due at the same time. The boards should make provision to prevent such undesirable situations. Essentially, companies should not receive more than one levy assessment.

Some boards make use of a statutory rule whereby they cover part of the membership levy that employers are obliged to pay to their representative associations (the "Schilthuis" allowance). The aim of the Schilthuis allowance – to encourage membership of employers' associations – means that it supports the statutory industrial organisation. The Council therefore sees no reason to strike this provision from the law.