

APPENDIX A:

Tasks and powers of the Works Council, COR, or GOR pursuant to other legislation and regulations

1 General

The tasks and powers of the Works Council (including also the COR and the GOR) are not stipulated exclusively and exhaustively in the Works Councils Act (WOR); various other acts and regulations also allocate tasks and powers to the Works Council. This appendix is based on the existing provisions but is not exhaustive. The following summary does not take account of parliamentary bills that were being considered by the Dutch parliament when this publication appeared.

2 Tasks and powers in other legislation

A Legislation

a Equal treatment legislation

Where non-discrimination and equal treatment is concerned, [WOR Article 28](#) provides that the Works Council has a promotional task, namely to promote compliance with the provisions regarding terms of employment (paragraph (1)) and to guard against discrimination (paragraph (3)). Where work is concerned, the principle of non-discrimination/equal treatment has been worked out in a number of statutory provisions, some of which will be discussed briefly below.

General Equal Treatment Act [*Algemene Wet Gelijke Behandeling*] (AWGB)

The [AWGB](#) prohibits discrimination on the basis of religion, convictions about life, political affiliation, race, gender, nationality, sexual orientation or marital status. The prohibition of discrimination applies, *inter alia*, to recruitment and selection for a position, the commencement or termination of a position, terms of employment, promotion, and training and education.

Equal Treatment of Men and Women Act [*Wet Gelijke Behandeling van mannen en vrouwen*] (WGBm/v)

The [WGBm/v](#) and [Article 7:646 of the Civil Code \(BW\)](#) prohibit employers from discriminating between men and women as regards recruitment and selection for a position, the commencement of employment, terms of employment, promotion, provision of instruction, or termination of employment.

Discrimination according to hours worked

The Act Amending the Dutch Civil Code and Central and Local Government Personnel Act in connection with the prohibition on distinction between employees according to hours worked [*Wijzigingswet Burgerlijk Wetboek en Ambtenarenwet i.v.m. verbod tot maken van onderscheid tussen werknemers*

naar arbeidsduur] ([WOA](#)) prohibits direct and indirect discrimination according to hours worked. That prohibition is also laid down in [Article 7:648 of the Civil Code](#). The statutory provision is intended to ensure that employers treat full-timers and part-timers equally, including in the area of training (paid for by the employer), pay, overtime supplements, allowances for work at inconvenient hours, and specific monetary benefits.

Discrimination according to whether or not employment contract is temporary

[Article 7:649 \(1\) of the Civil Code](#) prohibits employers from making a distinction in terms of employment between employees with a permanent or temporary employment contract. The legislation also applies to on-call workers, seasonal (auxiliary) workers, holiday workers, home workers, and trainees if they are working on the basis of an employment contract. The legislation does not apply to employment agency workers, however.

Equal Treatment of Disabled and Chronically Ill Persons Act [*Wet gelijke behandeling op grond van handicap of chronische ziekte*] (WGBh/cz)

Under the terms of the [WGBh/cz](#), an employer is not permitted to discriminate because of an employee being disabled or chronically ill, unless:

- there are risks to the health and safety of the person concerned and to others;
- the distinction is based on the existence of special facilities required by disabled persons so that they can function in society;
- the discrimination is positive discrimination, necessary in order to eliminate a disadvantage.

The prohibition on discrimination also means that the employer is obliged to make alterations so that people with a disability or chronic illness can carry out their work. The employer can only refuse to make an alteration of this kind if doing so would be disproportionately onerous for the employer. In assessing whether that is the case, account is taken of such factors as feasibility, the cost of the alteration, the size of the organisation, and the financial capacity of the organisation.

Equal Treatment in Employment (Age Discrimination Act) [*Wet gelijke behandeling op grond van leeftijd bij arbeid*] (WGBL)

The [WGBL](#) concerns discrimination on the grounds of age (direct discrimination) or of other features or behaviours that result in discrimination on grounds of age (indirect discrimination). There are a few exceptions to the prohibition of discrimination related to age, for example dismissal because the employee has reached retirement age.

Options open to Works Council in the case of unequal treatment

The employer is obliged to ensure that there is a good ‘working environment’. It is always advisable for the Works Council and the entrepreneur to consult in the event of (supposed) unequal treatment.

The WOR provides a number of ways for the Works Council to carry out its task pursuant to [WOR Article 28 \(1\) and \(3\)](#). In addition to the information provided by the entrepreneur of his own accord, the Works Council can request additional information ([WOR Article 31 and 31b](#)). These matters can lead to internal

consultation between the Works Council and the entrepreneur and/or a confidential adviser [*vertrouwenspersoon*]. Many enterprises have an internal complaints procedure. If the entrepreneur wishes to institute or amend or withdraw such a complaints procedure, he must gain the consent of the Works Council ([WOR Article 27 \(1j\)](#)).

If internal consultation does not lead to a solution and a Works Council considers that there is distinction within the enterprise that is prohibited by law, it can request the Netherlands Institute for Human Rights [*College voor de Rechten van de Mens*] ([CRM](#); formerly the Equal Treatment Commission) to initiate an investigation. Submitting a request to the CRM is a simple matter (writing a letter) and free of charge.

b Working Conditions Act [*Arbeidsomstandighedenwet, 'Arbowet'*] and Working Conditions Decree [*Arbobesluit*]

Working conditions and the WOR

In addition to the health and safety legislation dealt with below, the WOR also assigns the Works Council a number of powers regarding working conditions. Pursuant to [WOR Article 28 \(1\)](#), for example, the Works Council has a promotional task and right of endorsement regarding regulations in the area of working conditions, absence due to illness, and reintegration policy ([WOR Article 27 \(1d\)](#)).

Working Conditions Act and Working Conditions Decree

The Working Conditions Act (WCA) comprises provisions to promote the best possible policy on working conditions in the enterprise. The Act requires employers and employees to work together in implementing that policy ([WCA Article 12 \(1\)](#)). The Working Conditions Act and the Working Conditions Decree (WCD) also directly assign powers to the Works Council regarding working conditions. The employer has the task, for example, to consult with the Works Council on matters affecting the policy on working conditions and on the implementation of that policy ([WCA Article 12 \(2\)](#)), with information being exchanged actively.

All employers are obliged to carry out a Risk Inventory and Evaluation (RI&E), setting out the risks to which the employees are exposed in the course of their work. The RI&E also includes an action plan, specifying what measures the employer will put in place with a view to the risks, and within what period that will be done. The Working Conditions Decree includes specific provisions for specific risks.

In complying with its obligations pursuant to the Working Conditions Act, every employer must call in the assistance of:

- one or more expert employees, often referred to as occupational health and safety officers [*preventiedewerkers*]; the selection and positioning of the expert employee(s) will be determined with the consent of the Works Council; besides being involved in drawing up the RI&E, they also advise the Works Council on measures taken or proposed by the employer to tackle risks ([WCA Article 13](#)); the occupational health and safety officers will provide the employer with a copy of their advice to the Works Council;
- one or more certified experts or certified occupational health physicians who have specific tasks regarding protection and prevention, or an occupational health and safety service ([WCA Articles 14 and 14a](#)); these are obliged to cooperate with the Works Council; the certified experts or occupational health and safety service will provide the Works Council with a copy of their advice to the employer.

For most sectors, enforcement of the regulations in the field of working conditions is assigned to the Inspectorate SZW [*Inspectie SZW*] (formerly the Labour Inspectorate; [WCA Article 24](#)).

The Inspectorate SZW carries out inspection visits to monitor and promote compliance with the occupational health and safety legislation. The Works Council can meet with the representatives of the Inspectorate SZW during their visit to the enterprise without other persons being present. The Works Council can also accompany the inspectors during their visit to the enterprise, unless the Inspectorate objects to this as preventing it from carrying out its duties effectively. The Inspectorate SZW draws up a report on all industrial accidents, copies of which it provides to the employer and to the Works Council ([WCA Article 24 \(5\)](#)).

Under the terms of the Working Conditions Decree, the Works Council's powers include the following:

- The Works Council must always be involved via consultation in drawing up or amending an internal emergency plan ([WCD Article 2.5c](#)).
- The Works Council is entitled to inspect the recorded results of occupational health examinations for workers exposed to hazardous substances ([WCD Article 4.10c \(3\)](#)) and records of workers' exposure to asbestos ([WCD Article 4.53 \(4\)](#)).
- The Works Council can express an opinion on the method of assessing and measuring noise; for that purpose it receives the results of assessments and measurements ([WCD Article 6.7 \(5\) and \(7\)](#)). The Works Council can express its opinion on measures to prevent noise, including hearing protectors for individuals ([WCD Article 6.8 \(8\)](#)).

The Health and Safety Catalogue

The basic principle of the Working Conditions Act is that government will focus on imposing target requirements. The social partners have been given the opportunity to make their own detailed arrangements on how the goals set by the legislature should be achieved. They can do so by using a Health and Safety Catalogue [*arbocatalogus*]. This sets out the various methods and solutions (means) agreed on by representatives of employers and employees in a given industry or sector, or at national level, with a view to complying with the target requirements in the working conditions legislation, and thus reducing workplace risks. Drawing up a Health and Safety Catalogue is not obligatory, either at sector or industry level. If a Health and Safety Catalogue applies

to an enterprise, the employer must consult with the Works Council to determine what measures in the catalogue will be implemented. The Health and Safety Act does not include provisions regarding the Health and Safety Catalogue. More information about the Health and Safety Catalogue can be found at www.ser.nl/nl/thema/arbeidsomstandigheden.

c Working Hours Act [*Arbeidstijdenwet*] and Working Hours Decree [*Arbeidstijdenbesluit*]

Pursuant to [WOR Article 28 \(1\)](#), the Works Council also has a promotional task as regards compliance with working hours and rest periods. The Works Council has a right of endorsement regarding the rules on working hours and rest period ([WOR Article 27 \(1b\)](#)) drawn up by the entrepreneur, except if those rules are incorporated into a collective labour agreement (CAO) ([WOR Article 27 \(3\)](#)).

Working Hours Act (ATW)

The ATW lays down rules regarding employees' working hours and rest periods. It sets a maximum within which arrangements on these matters can be made, partly derived from EU legislation. Many of the arrangements regarding these matters are laid down in a 'collective arrangement' [*collectieve regeling*], i.e. a collective labour agreement or rules set by a public authority. The ATW provides that a written agreement between the employer and the body representing the employees is equivalent to such a collective arrangement ([ATW Article 1:4 \(1\)](#)). It is important to know that arrangements made at CAO level take precedence over arrangements made with the Works Council ([ATW Article 1:4 \(2\)](#)).

The employer must give the Works Council the opportunity:

- to accompany representatives of supervisory authorities (the Inspectorate SZW) during their visits, unless these consider that that would prevent them from carrying out their duties effectively (for example interviewing witnesses) ([Article 6:3 \(a\) ATW](#));
- to talk to the representatives of the supervisory authorities without other persons being present ([Article 6:3 \(b\) ATW](#)).

Working Hours Decree (ATB)

The ATB comprises exceptions and additions to the ATW. There are general exceptions which apply to certain employees and certain situations, but also supplementary rules for the healthcare, mining and transport sectors, and a number of other sectors. Most of these exceptions are only applicable by means of a collective arrangement.

d Collective Redundancy Notification Act [*Wet melding collectief ontslag*] (WMCO)

An employer that intends collectively dismissing 20 or more employees in a single field of work, at one or more times within a period of three months, must notify the relevant employees' organisations and the Employed Persons Insurance Administration Agency (UWV) in advance. In the notification to the UWV, the employer must state, *inter alia*, whether the enterprise has a Works Council and whether the intention to dismiss is related to a decision within the meaning of [WOR Article 25 \(1\)](#); if the latter is the case, he must also state when the Works Council has or will be consulted regarding the decision concerned ([WMCO Article 4 \(4\)](#)). The UWV will not deal with the application

for a dismissal permit until the Works Council or the employees' organisations have been consulted ([WMCO Article 6 \(2\)](#)).

e. Flexible Work Act (WFW)

Pursuant to the [Flexible Work Act](#) [*Wet flexibel werken, WFW*] (until 1 January 2016 referred to as the Working Hours (Adjustment) Act [*Wet Aanpassing Arbeidsduur, WAA*]), an employee may request the employer (which has at least ten employees) to make adjustments – for periods of time, whether or not varying and whether or not of differing extent – to his or her number of hours worked, place of work, or work times as these arise from his or her employment contract or public-law appointment. The employee has this right if he or she has been employed for at least six months as of the date of the adjustment. The basic principle of the Act is that the employer will agree to the employee's request as regards its extent and when it will take effect, unless there are important reasons for not doing so from the point of view of the enterprise's business or the services it provides.

The employee, barring unforeseen circumstances, may submit a new request one year after the employer has granted or rejected a request.

If no collective labour agreement or regulation by or on behalf of a competent administrative body is applicable or does not contain a provision to this effect, Article 2 of the Flexible Work Act may be deviated from with regard to the increase in the number of hours worked or adjustment of the place of work or work times if the employer reaches written agreement on this with the Works Council.

f. Work and Care Act [*Wet arbeid en zorg*] (WAZO)

This act regulates a number of situations in which the employee can request the employer to grant him or her leave, namely the birth of a child, emergencies or other brief absence, short-term or long-term care leave, and parental leave. The act specifies the conditions for requesting leave and for granting or refusing the request. Those conditions differ depending on the kind of leave concerned. They relate, for example, to the manner of requesting leave, income provision, and the grounds on which the employer may dismiss the request. The WAZO also specifies, for each kind of leave, whether and subject to what conditions it is permissible to deviate from the statutory provisions. When deviation is in fact permissible, it may be provided for in a CAO or the regulations of a competent administrative body or, in the absence thereof, by agreement with the Works Council.

g. Right to instigate an inquiry ([Articles 2:344 – 2:359 of the Civil Code](#))

On request, the Enterprise Division of the Amsterdam Court of Appeal may order an inquiry [*enquête*] if there appear to be well-founded reasons for questioning the propriety of the policy pursued by an enterprise, namely a public limited company [*naamloze vennootschap N.V.*], private limited company [*besloten vennootschap met beperkte aansprakelijkheid B.V.*], a cooperative [*coöperatie*], or a mutual insurance company [*onderlinge waarborgmaatschappij*]. Associations [*verenigingen*] and non-profit organisations [*stichtingen*] with more than fifty employees are also subject to the right to instigate an inquiry. A request for an investigation can be submitted by the shareholders, the members of the legal entities referred to, and an employees' organisation which has members in the enterprise. An employees' organisation that intends to submit a request must give the relevant Works Council(s) the opportunity, in advance, to provide written comments on that intention ([Article 2:349 \(2\) of the Civil Code](#)).

The act does not empower the Works Council to submit a request for an investigation. However, the company's articles of association [*statuten*] or an agreement with the entrepreneur may assign that power to other parties, including the Works Council or employees ([Article 2:346\(e\) of the Civil Code](#)). See also [Appendix B](#).

The Enterprise Division will only grant the request for an investigation if there are well-founded reasons for questioning the propriety of the policy pursued by the enterprise.

h. Supervision of large enterprises ('Structure Regime')

Certain 'large' enterprises (see below for the criteria) are subject to the 'Structure Regime' [*structuurregeling*]. This applies to large public and private limited companies (NVs and BVs) ([Articles 2:152-164a and 2: 262-274a of the Civil Code](#)) and also, in amended form, to large cooperatives and mutual insurance companies ([Article 2:63a et seq. of the Civil Code](#)). The following remarks deal only with NVs and BVs.

The Structure Regime stipulates that these large enterprises must have a system of internal supervision. The managements of an N.V. and a B.V. are subject to different systems of internal supervision. If supervision is by a separate Supervisory Board [*Raad van Commissarissen*] (RvC), then management and supervision are dealt with by two separate bodies. This is referred to as the 'dualistic management system' [*dualistische bestuursstelsel*] or the 'two-tier model'.

In addition to this two-tier model, there is now also (since 2013) an alternative system in which executive and (non-executive) supervisory directors form part of a single body, 'the board' [*bestuur*] (the 'one-tier model'). NVs and BVs are free to select one or other of these two systems. If the company intends amending its articles of association so as to change its two-tier model into a one-tier model, then, under [WOR Article 25](#), the Works Council has the right to render advice on this change of powers in the company, provided that the change will affect the enterprise.

The Supervisory Board (when reference is made below to the Supervisory Board or the supervisory directors, that includes the non-executive directors in the one-tier model) supervises the policies of the board and the general course of affairs within the legal entity and its business. For the exercise of its supervisory duties, the Supervisory Board of a Structure Regime enterprise has a number of statutory powers, for example the power of approval of important management decisions.

The law considers an enterprise to be 'large' and to be subject to the Structure Regime if it meets the following three criteria:

1. according to the balance sheet (with explanatory notes) its issued share capital plus reserves amounts to at least EUR 16,000,000;
2. a Works Council has been established for the enterprise itself or for a subsidiary pursuant to a statutory obligation;

3. a total of at least one hundred employees usually work for the company and its subsidiaries (taken together) in the Netherlands.

The Supervisory Board must draw up a profile of its size and composition; this must be discussed at the general meeting of shareholders (GMS) and with the Works Council, both when it is first drawn up and when any amendments are made

(Articles 2:158 and 2:268 (3) of the Civil Code). Since 2013, larger NVs and BVs have been required to aim for a balanced distribution of seats on the Supervisory Board (as well as on the Board of Management); a balanced distribution means that at least 30% of the seats are held by women and 30% by men.

Members of the Supervisory Board of an enterprise subject to the Structure Regime are appointed by the GMS, pursuant to a proposal by the Supervisory Board. The GMS and the Works Council may recommend persons for appointment as members of the Supervisory Board; this is referred to as the ‘ordinary right of recommendation’ [*gewone aanbevelingsrecht*]. The Supervisory Board is not obliged to comply with this recommendation.

In the case of an NV or BV as referred to here, the Works Council has an ‘enhanced right of recommendation’ [*versterkt aanbevelingsrecht*] (or ‘special right of nomination’ [*bijzonder voordrachtsrecht*]) for a maximum of one third of the number of Supervisory Board members. This means that the Supervisory Board must include the persons recommended by the Works Council in its recommendation to the GMS. The Supervisory Board can only refuse a candidate on strict grounds that are listed exhaustively in the legislation, namely:

- the candidate is unsuitable to carry out the duties of a member of the Supervisory Board; or
- the Supervisory Board will not be properly composed if the candidate is appointed.

In such cases, the Supervisory Board and the Works Council must consult about the matter. If they fail to reach agreement, the Supervisory Board can request the Enterprise Division of the Amsterdam Court of Appeal to declare that its objection to the candidate nominated by the Works Council is well founded.

Pursuant to Articles 2:158 and 2:268 (12) of the Civil Code, it is possible to deviate from the above appointment rules in the enterprise’s articles of association. This requires that the Supervisory Board, the GMS and the Works Council reach agreement on an alternative arrangement.

The Civil Code includes provisions for when several Works Councils are involved in the nomination of Supervisory Board members. If a COR has been established, it is only the COR that exercises the powers regarding the appointment procedure.

Ultimately, it is the GMS that decides on the appointment of a candidate proposed by the Supervisory Board, whether or not pursuant to the Works Council’s ‘enhanced’ recommendation. The GMS can reject the proposal by an absolute majority (i.e. at least half plus one).

Besides its powers regarding the appointment of Supervisory Board members of large NVs and BVs, the Works Council also has powers in relation to their dismissal (Articles [2:161](#) and [2:271](#) of the Civil Code).

i. Right to information about policy on remuneration of board of NV

Under [WOR Article 31d](#), the entrepreneur is obliged to provide the Works Council with written information, at least once a year, about the level and

content of the terms of employment and arrangements for each of the various groups of persons working in the enterprise. The same obligation applies with respect to the board and the supervisory body. [WOR Article 31e](#) comprises a number of exceptions to this provision.

In enterprises in which, as a rule, a minimum of 100 people are employed, at least the level and content of the terms of employment and arrangements, and the development of pay differentials in the enterprise will be discussed during the consultation meeting ([WOR Article 32](#)).

The Dutch Civil Code ([Article 2:135](#)) requires NVs to have a policy in place regarding the remuneration of the board. That policy is adopted by the GMS and must cover a number of matters specified in the Civil Code ([Article 2:135 \(1\)](#)). If the company has established a Works Council pursuant to statutory provisions, the proposal to adopt the remuneration policy can only be submitted to the GMS after the Works Council has been given an opportunity, in good time, to adopt a position regarding it ([Article 2:135 \(2\) of the Civil Code](#)).

j. Right of the Works Council to address the general meeting of shareholders (GMS)

The Works Council of an NV has the right to address meetings of shareholders regarding the following matters:

- approval of important board decisions within the meaning of [Article 2:107a \(3\) of the Civil Code](#);
- adoption of the policy on the remuneration of directors ([Article 2:135 \(2\) of the Civil Code](#));
- the appointment, suspension and dismissal of directors and Supervisory Board members in an NV which is not subject to the Structure Regime ([Articles 2:134a and 2:144a of the Civil Code](#), respectively);
- the appointment of Supervisory Board members pursuant to a proposal by the Supervisory Board in an NV which is not subject to the Structure Regime ([Article 2:158 \(4\) of the Civil Code](#)).

k. Medical Examinations Act [*Wet op de medische keuringen*] (Wmk)

Under the [Wmk](#), Works Councils can submit a complaint to the Complaints Committee for Pre-Appointment Medical Examinations (CKA). The CKA ensures that the rules regarding pre-appointment medical examinations are complied with. It has a number of ways of doing so, one of the most important of which is to consider complaints about such examinations. More information about the CKA and its work can be found at <http://www.ser.nl/aanstellingskeuringen>.

e I. European Works Councils Act [*Wet op de Europese Ondernemingsraden*] (WEOR)

The purpose of this Act is to ensure that employees of groups of enterprises with enterprises in several Member States are properly informed and consulted about transnational matters. This Community-scale employee participation serves to complement employee participation at national level, which in the Netherlands is based on the WOR. The [WEOR](#) applies to and imposes obligations on the central management of a Community-scale enterprise and on the parent enterprise of a Community-scale group with its place of business or headquarters in the Netherlands. A Community-scale group of enterprises is deemed to exist if a parent enterprise controls a number of subsidiaries. A Community-scale enterprise is an enterprise that meets the following conditions during a period of two years:

- in at least two Member States it has an average of 150 employees per Member State; and also
- it employs at least 1000 employees in the Member States taken together.

The [WEOR](#) provides for Dutch employee representation bodies to be involved, *inter alia*, in the composition of the obligatory European Works Council (EWC).

The WEOR was amended in 2011 on the basis of EU legislation. Among the important changes are:

- the definitions of information and consultation have been tightened up;
- there is greater clarity as to when a European Works Council is competent;
- information and consultation have been coordinated at national and European level.

f m. Pensions legislation

The powers of Works Councils regarding pensions as a term or condition of employment are regulated by a number of different laws and codes of conduct. These include not only [WOR Article 27](#) (right of endorsement) but also the Pensions Act [*Pensioenwet*] and the Code for Directly Insured Schemes [*Code Rechtstreeks verzekerde regelingen*] (the Code). The WOR and the Code will not be discussed below.

The Netherlands has a number of different types of pension schemes: industry pension funds, company pension funds, insured schemes, the Premium Pension Institution (PPI), and multi-enterprise funds.

The Works Council mainly plays a role (potentially) as regards company pension funds. Depending on the administrative structure of the pension fund, it may also play a role – in addition to the right of endorsement arising from the WOR – under [Article 99 et seq. of the Pensions Act](#), in the composition of the pension fund's board and/or stakeholders body.

The Works Council has a right, each quarter, to know whether the enterprise has arrears of premium or has fallen below the threshold for the minimum required capital ([Article 28 \(2\) of the Pensions Act](#)).

There have been rapid changes in the rules in recent years. With effect from 1 October 2016, the Works Council's right of endorsement was extended, for example, to all proposed decisions to establish, amend, or withdraw rules regarding the pension agreement. The SER's Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) has produced an informative document (with a handy diagram) about this topic. It is intended for Works Councils and directors and deals with the role of the former where pensions are concerned. You can find it on the SER's website, where you can also find a guide for small enterprises: *Praten over pensioen; wanneer, hoe en met wie doe je dat?* [Talking about Pensions; when, how, and with whom?].

n. Home for Whistleblowers Act ([link](#))

The Home for Whistleblowers Act [*Wet Huis voor Klokkeluiders*] entered into force on 1 July 2016. The whistleblower regulations provide that an employer with 50 or more employees must establish a procedure for dealing with reports of suspicion of malpractice within the organisation (Article 2(1) of the Home for Whistleblowers Act). That procedure must set out, *inter alia*, the way such internal reports are to be dealt with, the definition of a suspicion of malpractice, and the employer's obligation to treat a report confidentially if the employee concerned has so requested. Pursuant to WOR Article 27(1)(m), the Works Council has the right of endorsement as regards the introduction, amendment, or abolition of the procedure.

o. General Data Protection Regulation ([link](#))

The EU's General Data Protection Regulation (GDPR) came into force on 25 May 2018, regulating the handling of personal data within the European Union. It lays down privacy rights, extends them, and imposes more responsibilities on organisations. A large number of organisations are obliged to appoint a Data Protection Officer (DPO).

The basic principle of the GDPR is that when personal data is processed, the privacy of the persons concerned must be protected. Processing must therefore comply with certain fundamental requirements and processing principles, for example that processing is necessary in order to comply with a legal obligation or to protect a legitimate interest. Personal data must be processed in a lawful, fair, and transparent manner. Furthermore, the data may only be processed for a specific and explicit purpose. Organisations must also delete personal data as soon as it is no longer needed in order to achieve the original purpose for which it was collected. Pursuant to WOR Article 27(1)(k), the Works Council has the right of endorsement regarding rules on the processing and protection of personal data of persons working in the enterprise and also regarding the job description and duties of the Data Protection Officer. The provisions of the GDPR must of course be complied with when implementing the Rules of Procedure for the Works Council, for example when the members of the Works Council are elected.

B Other regulations relevant to the Works Council or COR

a The SER Code of Conduct for Mergers

The SER Code of Conduct for Mergers [*SER-Fusiegedragregels*] is intended to protect the interests of employees when a merger of enterprises is being prepared and implemented.

[Article 1 of the Code of Conduct for Mergers](#) specifies, *inter alia*, what is to be understood by the terms 'enterprise' and 'merger'. If the merger involves at least one Netherlands-based enterprise with fifty or more employees, the Code must be complied with as regards the associations of employees that it specifies.

The core of the Code is the procedure for notification, information and consultation with the employees' organisations ([Article 4 of the Code of Conduct for Mergers](#)). Before agreement on a merger is reached, the parties involved must inform the employees' associations that a merger is being prepared. The employees' associations must then be given the opportunity

to present their opinion on the proposed merger from the perspective of the employees' interests. All this must be done in such a way that the opinion of the employees' associations can have a significant influence on whether or not the merger takes place, and on the relevant arrangements.

Under Article 4 (7) of the Code of Conduct for Mergers, the parties to the merger are obliged to enable the relevant Works Councils to become aware of the opinion of the employees' associations. This will allow the Works Councils to take that opinion into account when issuing their advice within the meaning of WOR Article 25.

b Public Takeover Bids Financial Supervision Act Decree

This decree, which applies only to listed companies, provides that as soon as it has published its offer document, the bidder must also inform its Works Council or its employees. The company that is the target of the bid must also inform its Works Council or employees. In fact the WOR and the Code of Conduct for Mergers require the employee representatives to already be informed at an earlier stage.

c Netherlands Corporate Governance Code

In 2003, the Tabaksblat Committee drew up the Netherlands Corporate Governance Code (often referred to as the 'Tabaksblat Code' or simply 'the Code'). The Code was last updated by the Monitoring Commission (the 'Van Maanen Commission') in December 2016.

It addresses the governance of listed companies. It comprises principles and best practice provisions that regulate relations between the Board of Management, the Supervisory Board, and the shareholders (i.e. the general meeting of shareholders). Compliance with the Code contributes to confidence in the proper and responsible governance of companies and their embeddedness within society.

The relationship between the enterprise and its employees (as well as their representatives) is regulated by law. The Code deals with that relationship in provisions relating to culture and the contacts between the Supervisory Board and the employee representative body.

The Code can be consulted at <http://www.mccg.nl>

APPENDIX B

Agreements between the entrepreneur and the Works Council

1 General

Agreements between the entrepreneur and the Works Council (including the GOR and COR) may be made in several ways. They may be made orally (e.g., as a form of oral pledge from the entrepreneur which the Works Council accepts) or in writing (e.g., in the form of a promise or agreement laid down in the minutes of a consultation meeting, or in the form of a written agreement drawn up specifically for that purpose), with or without the designation of ‘agreement’ or ‘covenant’. Whatever the form chosen, it is recommended that all agreements should be laid down in writing.

The WOR contains a specific provision ([WOR Article 32 \(2\)](#)) relating to written agreements between the entrepreneur and the Works Council (often referred to as a ‘works agreement’ [*ondernemingsovereenkomst*]), designed to give such agreements a clear legal status. This means, among other things, that the arrangements regarding disputes in [WOR Article 36](#) will apply, which means that the Works Council (but also the entrepreneur) may request the subdistrict court judge [*kantonrechter*] to rule that the other party must comply with the works agreement. Before (or instead of) bringing a dispute about compliance with the works agreement before the subdistrict court judge, a party can first submit it to the Joint Sectoral Committee for mediation. Parties may also decide to agree on their own procedure for mediation, arbitration or a binding opinion, and to put that in writing in a works agreement.

2 What can be agreed in a works agreement?

2

[WOR Article 32 \(2\)](#) stipulates that in a written agreement between the entrepreneur and the Works Council,

- the entrepreneur may confer more authority on the Works Council than is conferred under the WOR (see (d) below);
- the entrepreneur and the Works Council may make agreements on how the provisions of the WOR and rules relating to them are to be implemented, in terms of the practical details relating to participation within the specific enterprise.

Besides agreements on extending the authority of the Works Council and the way in which the WOR is to be implemented, the entrepreneur and the Works Council can also make other agreements. For example, they could agree that one or more Works Council members should be exempted from their normal duties in order to carry out work for the Works Council. The entrepreneur and the Works Council may also agree on written procedures relating to the involvement of the Works Council in decision-making. See, for instance, [WOR Article 24 \(1\)](#), which describes agreements about when and how the Works Council is to be involved in decision-making, such as when the Works Council has the right to render advice, or when it has the right of endorsement. The Platform for Innovative Employee

Participation [*Platform voor Innovatieve Medezeggenschap*] (PIM) has drawn up a ‘Model Agreement on General Consultation Procedure’ [*Voorbeeldovereenkomst Algemene Gang Van Zaken Overleg*], with explanatory notes (see below under (a)). This can be consulted and downloaded from [this website](#). It is fair to assume that such agreements also fall within the scope of [WOR Article 32](#). For other examples of agreements, see also [Appendix C](#) on consultation between the Works Council and its electorate and [Appendix E](#) on the legal status of members of the Works Council.

3 Requirements that a works agreement should meet

[WOR Article 32 \(2\)](#) requires that agreements be laid down in writing. This written agreement may take various forms, from a formal covenant to a simple record in the minutes of a meeting.

A works agreement may extend the powers granted to the Works Council under the Act. By virtue of [WOR Article 32](#), agreements between the entrepreneur and the Works Council may not diminish the legal rights and authorities of the Works Council, but should serve to provide further specification or additions, tailored to the circumstances of the enterprise in question.

A works agreement will remain in force for an indefinite period of time, unless the Works Council and the entrepreneur agree otherwise (e.g., by specifying a specific period of validity). The validity of a works agreement made for an indefinite period of time is unaffected by the termination of the Works Council’s period of office or changes in the management (‘the director’) of the enterprise. A newly elected Works Council continues to be bound to the agreement, as does a new management. A works agreement entered into for an indefinite period of time can be terminated only by one of the parties giving notice of termination or by mutual agreement. The relevant case law has ruled that such notification of termination must be accompanied by well-founded arguments and must observe a reasonable period of notice.

As explained above (Section 1.3), the legal powers of the Works Council do not belong in the Works Council’s Rules of Procedure. The same applies to any extra powers that the works agreement confers on the Works Council and to other agreements made between the entrepreneur and the Works Council. The Works Council’s Rules of Procedure do not constitute an agreement with the entrepreneur. The Rules are binding only on the Works Council, not on the entrepreneur. The Rules of Procedure should therefore not incorporate any agreements made between the Works Council and the entrepreneur; for instance, about the number of hours available for consultation and the number of days available for training and development ([WOR Article 18](#)), or about the Works Council’s budget, if any ([WOR Article 22](#)). It is recommended that the text of any important agreements (whether laid down in a works agreement or not) be added as an appendix to the Rules of Procedure, as a reminder to the Works Council that they exist. This is another good reason for putting agreements between the entrepreneur and the Works Council in writing wherever possible.

Examples of matters that may be laid down in a works agreement are given below. It is important to note that, under the terms of the WOR, agreement between the entrepreneur

and the Works Council on some of these matters is mandatory: these are indicated by a bullet point (•), together with a reference to the appropriate article that requires the entrepreneur and the Works Council to make such agreements.

a Agreements relating to the consultation meeting

Voluntary agreements

WOR Article 23a (2) allows the entrepreneur and the Works Council to agree to deviate from the legal requirement that the consultation meeting must be chaired alternately by the director or his deputy and by the chairman or deputy chairman of the Works Council. The Act allows the entrepreneur and the Works Council to make any other arrangement about the chairmanship of the consultation meeting, as they see fit. They may opt to have the meeting chaired by one of those taking part in the consultation meeting or by a third party. The entrepreneur and the Works Council are also free to make any agreement they wish about the term of office of the chairman.

In principle, the secretary of the Works Council acts as secretary to the consultation meeting. However, the entrepreneur and the Works Council are free to choose any other party to perform this duty.

Mandatory agreements

- WOR Article 23a (5) stipulates that the entrepreneur and the Works Council must make agreements about the procedures to be followed at the consultation meeting and about the time at which and the manner in which the agenda and minutes of the meeting are to be made available to the persons working in the enterprise.
- WOR Article 24 (1) stipulates that the general operation of the enterprise must be discussed in a consultation meeting at least twice a year. Under the terms of this article, the entrepreneur must announce decisions he is considering that relate to the matters listed in WOR articles 25 (advisory powers) and 27 (right of endorsement). The Act stipulates that agreements must be made about when and how the Works Council will be involved in the decision-making process.

b Agreements about mutual consultation and about training and development

Mandatory agreements

- WOR Article 18 (1) stipulates that the entrepreneur and the Works Council must jointly determine the number of hours (during working hours and with full pay) allocated to members of the Works Council and of Works Council committees for mutual consultation and consultation with other persons and for the purpose of acquainting themselves with the working conditions in the enterprise. WOR Article 18 (3) provides that the number of hours may not be fewer than 60 a year.
- WOR Article 18 (2) stipulates that the entrepreneur and the Works Council must also jointly determine the number of days made available to members of the Works Council and members of a standing or divisional committee for training and development, of sufficient quality, during working hours and with full pay.

The number of days referred to in WOR Article 18 (3) may not be fewer than:

- Three days a year for any member of a standing or divisional committee who is not also a member of the Works Council;
- Five days a year for any member of the Works Council who is not also a member of a standing or divisional committee;
- Eight days a year for any member of the Works Council who is also a member of a standing or divisional committee.

The number of hours for consultation and discussion and days for training and development are the minimum. When fixing the number of days and hours, the Act gives as a guideline that they should be enough for members of the Works Council and its committees to be reasonably able to carry out their work.

c Agreements about an annual budget for the Works Council and its committees

Voluntary agreements

Under the terms of [WOR Article 22 \(1\)](#), costs which may reasonably be deemed to be necessary for the Works Council and its committees to perform their duties are to be borne by the entrepreneur. [WOR Article 22 \(4\)](#) stipulates that the entrepreneur and the Works Council may jointly determine a fixed sum to cover the costs that the Works Council and its committees may incur in any one year, and which the Works Council may spend at its own discretion. However, the costs incurred in relation to those activities stipulated in [WOR Articles 17 and 18 \(1\)](#) (the provision of facilities by the entrepreneur, and paid interruption of work for the benefit of Works Council activities) may not be included in the budget. These costs will be borne by the entrepreneur.

The Works Council should bear in mind that the entrepreneur is not obliged to bear any costs that exceed the budget, unless the entrepreneur has agreed otherwise. If the entrepreneur refuses to bear such costs, the Works Council may not lodge an appeal with the subdistrict court judge.

Questions and disputes regarding the reasonableness or interpretation of the application of the statutory right to training and development (extent, payment etc.) can be submitted to the Joint Sectoral Committee. The Joint Sectoral Committees for the market sectors have set up a special body [*scholingskamer*] to deal with these matters, with fast-track proceedings. More information about the Joint Sectoral Committees is given in [Appendix F](#).

d Agreements about extension of powers of the Works Council

Voluntary agreements

Agreements about extensions to the Works Council's powers may be needed when the Works Council is granted powers that go beyond the advisory powers granted to it by the WOR. These additional powers may include, in particular, extended advisory powers and/or the right of endorsement, i.e. the granting of advisory power and/or the right of endorsement with respect to one or more matters other than those already mentioned in the WOR. If, in the works agreement, additional advisory powers have been granted to the Works Council other than those referred to in [WOR Article 25](#), then the right of appeal provided in [WOR Article 26](#) applies. If, in the works agreement, a different (additional) right of endorsement has been granted to

the Works Council, other than that provided by [WOR Article 27](#), then Article 27 (4) to (6) of the WOR applies (request to the subdistrict court).

[WOR Article 32](#) regarding the works agreement also applies to the Central and Group Works Councils (COR and GOR), on the understanding that those councils deal solely with matters of common interest to all or the majority of the enterprises for which they have been established, and regardless of whether the individual Works Councils have powers concerning those matters.

For the advisory power and/or the right of endorsement granted by virtue of [WOR Article 32 \(2\)](#), no advice or endorsement on the part of the Works Council is required to the extent that the enterprise has already settled the matter in a collective labour agreement or a public-law arrangement ([WOR Article 32 \(3\)](#)).

e Agreements about the implementation of the WOR

Voluntary agreements

Agreements about the implementation of the WOR must be made in writing, whatever the form (see ‘General’ at the beginning of this appendix). Agreements that have been made on the basis of [WOR Article 32](#) fall under the rules of arbitration stipulated in [WOR Article 36](#).

Agreements about the implementation of the WOR may include an agreement about the use of facilities. Under the terms of [WOR Article 17 \(1\)](#), the entrepreneur is obliged to allow the Works Council and Works Council committees (and if the entrepreneur has made a secretary available to the Works Council, also this secretary) to use facilities the entrepreneur has at his or her disposal insofar as these may reasonably be deemed necessary for them to perform their duties. The entrepreneur and the Works Council may make agreements on the use of facilities in order to define the legal rights of the Works Council, the committees and the secretary (e.g., with regard to the use of meeting rooms, recording the minutes, photocopiers, telephone, fax, e-mail, internal computer networks, access to the internet, etc.).

Agreements between the entrepreneur and the Works Council about consultation between the Works Council and its electorate are also considered to be agreements about the implementation of the WOR, and [WOR Article 17](#) in particular. See also [Appendix C](#).

Other examples of agreements about how the WOR is to be implemented include agreements about how information is to be provided to the Works Council. [WOR Articles 31 to 31d](#) contains several rules and regulations relating to this provision of information. The entrepreneur and the Works Council may jointly agree that information will be provided beyond that which is required of the entrepreneur under the terms of the Act. For example, in enterprises with 100 employees or more, the entrepreneur is obliged to inform the Works Council about pay differentials ([WOR Articles 31d](#) and [31e](#)). However, this does not prevent an entrepreneur and the Works Council in an enterprise with fewer than 100 employees from making a written

agreement that the entrepreneur will voluntarily apply WOR articles [31d](#) and [31e](#), or parts thereof.

f Agreements between the Works Council and the Supervisory Board in ‘large enterprises’

Appendix A explains the Structure Regime (Section 2 A (h)), the legal provisions that, *inter alia*, give the Works Council a say in the appointment of members of the Supervisory Board in ‘large enterprises’. Members of the Supervisory Board are appointed by the general shareholders’ meeting (of public and private limited companies) or by the membership meeting (of cooperative associations and mutual insurance associations), acting on the recommendation of the Supervisory Board. The Works Council is entitled to recommend persons for appointment to the Supervisory Board. In public and private limited companies, the Works Council has an enhanced right of recommendation of up to a maximum of one third of the membership of the Supervisory Board.

It is customary for the Supervisory Board to draw up a profile of its size and composition, taking into account the nature of the enterprise, its activities, the desired expertise and background of Supervisory Board members, and a balanced number of men and women (see also Appendix A [\(2\)](#) (A) (h)). This profile is discussed with shareholders or members as appropriate and with the Works Council, when first adopted and also in the event of any amendments. Large public and private enterprises are legally obliged to draw up a profile and discuss it with the Works Council. Although they are not legally bound to do so, it would be advisable and good practice for companies that are subject to the Structure Regime but not subject to this legal obligation to nonetheless draw up a profile and discuss it with the Works Council.

The profile is one of the more obvious matters on which the Supervisory Board and the Works Council can reach agreement. In reacting to the profile, the Works Council can express its wishes and opinions about what it sees as the most appropriate size and composition for the Supervisory Board. The Supervisory Board may take this into account when further developing the profile, and also subsequently when sounding out possible candidates and preparing a nomination for the post. The Works Council may further exert influence through its right of recommendation (‘enhanced’ or otherwise).

Another possible point upon which the Works Council and the Supervisory Board may wish to make agreements is the Council’s exercising of its right of recommendation. In practice, the Works Council and the Supervisory Board will often discuss informally the best composition and any desired changes or additions to the Supervisory Board. In this way, although no formal recommendation is made, the Works Council may nonetheless exert influence on the composition of the Supervisory Board. The Works Council and the Supervisory Board may also agree on procedures as to how the right of recommendation (‘enhanced’ or otherwise) may be exercised.

The Works Council, the Supervisory Board and the general meeting of shareholders (of public and private companies) or members meeting (of cooperative associations and mutual insurance associations) may also make

agreements on other matters relating to the appointments procedure (e.g., the precise procedure to be followed). This option to deviate from the legally determined appointments procedure gives the bodies involved an opportunity to make an arrangement that is tailored to the specific circumstances of their enterprise. In the case of public limited companies (NVs) and private limited companies (BVs), the law stipulates that if a deviation from the statutory appointments procedure is laid down in the articles of association, the prior consent of the Supervisory Board and the Works Council is required.

This option to deviate from the statutory procedure expressly applies only to the regulation of appointments. Other deviations from the Structure Regime are not allowed, such as the question as to whether the Structure Regime (i.e., mandatory Supervisory Board with legal powers) should apply or not. The legislation contains binding provisions in this regard.

g Contacts between Works Council, Board of Management and Supervisory Board

WOR Article 24 (1) stipulates that the general operation of the enterprise shall be discussed at least twice a year in consultation meetings. At these meetings, agreements will be made about when and how the Works Council will be involved in the decision-making process in matters that require its advice or endorsement. For these consultation meetings, WOR Article 24 (2) contains a provision for the presence of Supervisory Board members or members of the Board of Management who run the business. The Works Council may decide in particular cases that the obligation to attend can be waived.

It may be wise to make agreements concerning the presence of Supervisory Board members and members of the Board of Management at the above-mentioned twice-yearly consultation meetings. Agreements can also be made about the presence of Supervisory Board members and members of the Board of Management at consultation meetings other than those mentioned in WOR Article 24.

More generally, it may be advisable for the Works Council, the Board of Management and the Supervisory Board of the legal entity conducting the business to make shared agreements on how employee participation in the enterprise will be implemented in practice. Such agreements may relate to contacts between the Works Council, the Board of Management and the Supervisory Board and ways of improving them. In this context, see also Appendix A (2) (B) (c), about the Netherlands Corporate Governance Code.

Appendix C:

Agreements between the Works Council and the entrepreneur about consultation between the Works Council and its electorate

1 Introduction

A well-functioning Works Council is important for the enterprise as a whole. A key aspect of the functioning of a Works Council is the form and content of its relationship with the persons it represents. Without proper communication with those employees, a Works Council cannot properly represent them. A Works Council will only be able to generate support for its decisions if it maintains good contact with the persons it represents. This contributes to the quality of the decision-making process in the enterprise.

The foundation for a close relationship between the Works Council and the employees it represents is laid at the elections. It is important that these result in a representative Works Council, i.e. a Works Council to which the various groups of persons represented (different levels of positions, men and women, age groups, etc.) can relate and which they feel truly represents them. [WOR Article 9 \(4\)](#) stipulates that, if necessary, the Works Council must include provisions in its Rules of Procedure to ensure that the various groups of employees are represented in the Works Council as fully as possible.

The Works Council is a representative body elected by the employees and therefore may not act independently of the wishes and interests of its electorate. The Works Council is expected to represent the interests of the employees, for the purposes of promoting the proper functioning of the enterprise with regard to all its objectives. Nevertheless, Works Council members bear individual responsibility for their actions and determine their standpoint independently after considering all the interests involved.

The WOR contains a number of provisions that regulate in varying degrees the Works Council's consultations with its electorate. Some of these provisions apply primarily to the Works Council, while others apply primarily to the entrepreneur.

The provisions that apply primarily to the Works Council are designed to ensure that employees are kept well informed about and involved in the activities of the Works Council. For instance, the Works Council must specify in its Rules of Procedure the way in which the Works Council's meeting agendas and minutes and its annual report are to be made known to the persons working in the enterprise ([WOR Article 14](#)). One way for the Works Council to involve employees in its activities is to set up a standing committee, a divisional committee or a (temporary) preparatory committee. Within certain limits, employees who are not members of the Works Council may also sit on these committees ([WOR Article 15](#); see also [Section 5](#)).

The provisions that apply primarily to the entrepreneur are designed to enable the Works Council and its committees to perform their duties. For instance, the entrepreneur must allow the Works Council and its committees to use any facilities that are at the entrepreneur's disposal and which they may reasonably be deemed to require in order to perform their duties ([WOR Article 17 \(1\)](#)). The Works Council and its committees may also make use of these facilities for the purpose of consulting their electorate. Furthermore, the entrepreneur must offer the members of the Works Council and its committees an opportunity (during working hours and on full pay) for mutual consultation and consultation with 'other persons' on matters relating to the performance of their duties and for the purpose of acquainting themselves with working conditions in the enterprise. These consultations must take place during a specific number of hours per year (at least 60), to be determined jointly by the entrepreneur and the Works Council ([WOR Article 18](#); see also [Appendix E](#)). [WOR Article 18 \(1\)](#) also contains a provision allowing Works Council members to 'consult with other persons', i.e. their electorate. However, this provision applies only to members of the Works Council and its committees, not to the persons consulted (the electorate).

The SER's Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) has produced a number of informative documents regarding the topics of contact between the Works Council and its electorate ([OR en achterbancontact](#)) and vacancies and the composition of the Works Council ([Vacatures en samenstelling OR](#)). These are available as interactive webpages on the [SER website](#). These webpages also include practical tips, suggestions and references to relevant literature.

2 General provision regarding consultation of the electorate

A more general provision regarding the consultation by the Works Council and its committees of its electorate (i.e., the persons working in the enterprise) is given in [the second sentence of WOR Article 17 \(1\)](#):

'The entrepreneur shall enable the Works Council and its committees to consult all persons working in the enterprise and shall enable the said persons to participate in such consultation, insofar as may reasonably be deemed to be necessary for the members of the Works Council and its committees to perform their duties.'

This provision specifies only the basic arrangement: the details need to be filled in at company level in consultation between the entrepreneur and the Works Council. This consultation (and the resulting facilitation of the Works Council's consultation of its electorate) may stimulate the Works Council to arrive at an efficient and effective way of consulting with its electorate – to the benefit of both the Works Council and its electorate and the entrepreneur.

In further defining the general provision at the level of the enterprise, the entrepreneur and the Works Council and its committees need to bear the following factors in mind. The basic obligation that the law imposes on the entrepreneur is to facilitate the consultation of the electorate insofar as it 'may reasonably be deemed to be necessary for the members of the Works Council and its committees to perform their duties'. This criterion of

reasonableness applies in two directions: i.e., the entrepreneur is obliged, on the one hand, to enable the Works Council and its committees to consult their electorate, and, on the other hand, to enable the ‘persons working in the enterprise’ to be consulted by the Works Council and its committees, but only insofar as this ‘may reasonably be deemed to be necessary’.

This customised approach requires the entrepreneur to weigh, on the one hand, the potential organisational problems and loss of work time that will be caused by consultations between the Works Council and its electorate, against, on the other hand, the interests of the Works Council and, indeed, of the entrepreneur in being well informed about the opinions of the workforce. The reasonableness criterion requires of the Works Council and its committees that they determine the manner and frequency of their consultations wisely, taking into account the circumstances prevailing in the enterprise. The Works Council is naturally expected to try to arrange its consultations in a responsible way in the context of the operational management of the enterprise.

The entrepreneur and the Works Council need to consider together whether, in a given situation, employees or groups of employees need to be consulted orally during working hours, or whether some other, less intense form of consultation (e.g., in writing or digitally) or consultation outside working hours would be ‘reasonable’. In the case of decisions (or proposed decisions) that are likely to have a great impact on the enterprise or some part of it, with significant consequences for a large part or all of the workforce, it may be necessary for employees or groups of employees to be given an opportunity to be consulted orally during working hours. Such meetings should probably only be held rarely and in exceptional circumstances. In the case of less far-reaching decisions on which the Works Council wishes to consult with the employees, such forms of consultation, which impose a burden on the entrepreneur, will normally be unnecessary. The reasonableness criterion would then imply that it should be sufficient for the Works Council to conduct a written or digital survey or hold a meeting either outside working hours, or partly in working hours and partly during a break (e.g., a lunch-time meeting). The reasonableness criterion requires parties to find a reasonable balance between the importance of consulting the electorate and the means of consultation chosen (i.e., there should be proportionality). The entrepreneur and the Works Council need to reach a reasonable agreement on such matters in mutual consultation.

3 Matters to consider when making agreements

The WOR deliberately refrained from making detailed provisions regarding the consultation by the Works Council of its electorate. The Works Council’s relationship with those it represents depends strongly on the situation within the enterprise and issues that are current at any given time. The amount of time required, the facilities needed and the associated costs are not quantified, and no minimum or maximum is stated. Differences exist between enterprises and their circumstances, pertaining, for example, to the size and structure of the enterprise. The following types of question may be relevant:

- Is the enterprise situated in one location, or in several different locations?
- Is everything going smoothly or do many things change within a short period of time?
- Are there many different groups, positions and activities within the enterprise, or not?

- Is the company culture such that employees are notified and consulted about changes through the line organisation or is the Works Council the messenger of change?
- Is time available for consultations, or not?
- How much attention is given to communication within the company and are there resources such as a company newsletter, staff magazine, e-mail, intranet or suchlike?

Consultation between the Works Council and its electorate must therefore be tailored to these differences and circumstances. This is why the Works Council and the entrepreneur must obviously make agreements about the time and facilities required. Such agreements may take the form of a ‘works agreement’, i.e., a written agreement between the entrepreneur and the Works Council as meant in WOR Article 32 (2) (*ondernemingsovereenkomst*, see Appendix B).

The basic arrangement of WOR Article 17 (1) may be implemented in the form of a general provision for consultation between the Works Council and its electorate as part of the facilities arrangement. In addition, specific supplementary agreements may be made for each case. In making an arrangement or agreement, the following aspects need to be discussed: *When? About what? Which group or groups are involved? Which facilities are needed? What are the costs?* Each of these aspects is briefly explained in more detail below.

The questions of *when* and *about what* are closely connected. The WOR provides that, at least twice a year, in order to discuss (amongst other things) the general operation of the enterprise, the Works Council is informed either orally or in writing about the activities and the results of the enterprise in the previous period (WOR Article 31a (1)). The entrepreneur should also inform the Works Council about his expectations regarding the activities and results of the enterprise in the coming period. During these discussions, the entrepreneur should also inform the Works Council of any decisions he is preparing that relate to the matters referred to in Article 25 (advice) and 27 (endorsement) and should make arrangements with the Works Council as to when and how the Works Council should be involved in the decision-making process (see WOR Article 24). In the light of such matters, the Works Council may then wish to consult with its electorate.

In addition, the Works Council and/or the employees may periodically wish to discuss the functioning of the Works Council itself, possibly on the basis of its annual report and/or a Works Council work plan or policy plan. It is recommended that this be linked to the consultation about the general operation of the enterprise.

Furthermore, the Works Council will want to consult with its electorate if there are any proposed decisions that have major consequences for the enterprise and for all or some of the employees.. These may be matters such as those listed in WOR Article 25, such as a reorganisation, merger or change of location of all or part of the enterprise. New arrangements regarding working hours, appointments or remuneration schemes (WOR Article 27) may also have a major effect.

If the enterprise is a publicly held company, the Works Council may wish to consult employees in connection with the Council’s right to speak at the general shareholders’ meeting. See in this connection Appendix A (2) (A) (j).

In exercising its right to raise the matter of the company's remuneration policy for board members, or the appointment or dismissal of members of the Board of Management or Supervisory Board, the Works Council may wish to consult its electorate.

In certain cases, in view of the interests at stake, the Works Council members may need to treat certain information in confidence. This confidentiality (see [WOR Article 20](#)) may complicate the consultation between the Works Council and its electorate. As a result, in such cases, the entrepreneur and the Works Council should carefully identify what information is confidential and how long it is under embargo.

Great care should be taken to ensure that the Works Council is not effectively prevented from consulting its electorate prior to reaching its final opinion. Exceptionally, however, it may be necessary to observe confidentiality until the decision-making process has been completed. The SER's Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) has produced [recommendations](#) regarding the Works Council and confidentiality [*OR en geheimhouding*].

What are the group or groups of people that the Works Council wishes to consult? If the issue in question applies to the whole enterprise, this will of course be all of the staff. For specific matters, one or more groups will usually be the interested parties and will want to be involved.

The Works Council is expected to organise consultations with its electorate in such a way that the group or groups concerned are heard in particular or exclusively, without losing sight of the interests of all staff. A proposal to reorganise the enterprise usually concerns the enterprise as a whole. In the case of a proposal to change the production process in a particular department, for example, the matter clearly does not affect the whole enterprise, and consultation may therefore be limited to the employees concerned.

What facilities do the Works Council and its electorate need? This question is closely linked to the specific circumstances in the enterprise in question. The facilities or resources needed partly depend on the issue in question and on the objectives to be achieved. Those objectives may include communicating relevant information, collecting questions and points of interest, hearing opinions and standpoints of those involved, and testing opinions about the Works Council's standpoint (definitive or provisional).

In order to communicate relevant information, which is one of the Works Council's key objectives, the Works Council should maintain regular contact with its electorate by distributing agendas and lists of meeting decisions/minutes and any other form of communication customary in the enterprise, such as newsletters (which may also be digital). In consulting with

its electorate about proposed changes, the Works Council requires facilities for the dissemination of information insofar as that information has not already been communicated through the line organisation and the 'usual' means of

communication. If merger reports or proposals for reorganisation have already been widely dispersed, the Works Council will not need to do this. If it is purely

a matter of communicating information, a written document or internal e-mail may be sufficient.

It will often be efficient to collect questions and points of interest by means of digital communication (for example through the intranet or e-mail), or in writing, for instance, in the form of a questionnaire. Works Council members may also visit employees in their place of work, or hold consultation hours. Alternatively, a meeting may be organised. The Works Council may appoint members from among its number to maintain contact with certain groups of staff (this is self-evident when Works Council members are elected from certain groups of employees in the context of a group electoral system).

For hearing the opinions and standpoints of those involved, in principle, the same means of communication are suitable. However, it will often be necessary to convene a meeting, as a meeting is an appropriate way of informing people and exchanging opinions.

Testing opinions about the standpoint (definitive or provisional) of the Works Council can be done in several different ways. A questionnaire, for instance, may be particularly suitable if discussion has reduced the Works Council's possible standpoints to two or three.

What costs are involved?

The costs of consultation between the Works Council and its electorate comprise not only the costs incurred by Works Council members themselves, but also the work time of the groups of employees being consulted. To minimise these costs, the Works Council is expected to use the facilities provided by the enterprise for the purposes of this consultation process, to ensure that the manner in which the process is organised is reasonable and necessary, and to discuss such matters with the entrepreneur, in accordance with [WOR Article 17 \(1\)](#).

Appendix D:

Agreements about the role of the Works Council in (International) Corporate Social Responsibility

1 CSR as a basic feature of modern business

What is (International) Corporate Social Responsibility (ICSR)?

Corporate Social Responsibility (CSR) is an increasingly important agenda point for enterprises, politicians and society in general. This trend is often seen to have begun with the SER's advisory report *De winst van waarden* (Corporate Social Responsibility: part of the core business) (November 2000). The concept outlined in that report – triple P, CSR as core business, tailor-made – is still relevant. In it, the SER notes that concern for the social effects of doing business is part of the core business of an enterprise. The enterprise seeks affirmation in society for its core functions; society gives the enterprise space and recognition – the licence to operate – if it complies satisfactorily with society's expectations. According to the report, there are two key elements that dictate whether one can rightly refer to CSR.

1. Consciously targeting business activities at value creation in three dimensions – People, Planet, Profit – and hence at contributing to society's prosperity in the longer term.
2. Maintaining a relationship with the various stakeholders which is based on transparency and dialogue and which responds to legitimate demands from society.

Since publication of the report in 2000, the international dimension of CSR has become increasingly important, as part of the irreversible process of globalisation. The SER's advisory report *Duurzame globalisering* (On sustainable globalisation: A world to be won) (June 2008) therefore includes a long section on International Corporate Social Responsibility (ICSR). This led in December 2008 to the SER's *Statement on International Corporate Social Responsibility*, intended for all relevant parties within the world of business.

ICSR involves not only the 'P' of People but also those of Planet and Profit in an international context. ICSR focuses not only on the actions of internationally operating Dutch companies, but also on what happens within 'their' chain. The SER takes responsible supply chain management to be the voluntary – but not non-committal – undertaking by companies to exercise a positive influence on the social and environmental policy of their suppliers.

There is growing awareness that CSR is – or should be – the natural basic feature of business today, and that it should therefore not be merely a non-committal matter. It is the approach to doing business in the 21st century, voluntarily and of course on the basis of the national and international normative framework. The latter aspect is described at length in the SER's *Statement*.

The 2009 revised version of the [Corporate Governance Code](#) (see also Appendix A (2) (B) (c)) explicitly views CSR as part of good corporate governance. The Code provides that the Board of Management must formulate policy regarding the ‘social aspects of business that are relevant to the Company’. Since 1 January 2009, enterprises subject to the Netherlands Corporate Governance Code (listed companies) have therefore been required to submit social aspects of their business operations for approval by their Supervisory Board and to devote attention to them in their annual report (according to the ‘comply or explain’ principle).

Involvement of Works Council

The Works Council has been established for the purpose of promoting the proper functioning of the enterprise with regard to all its objectives ([WOR Article 2](#)). Since it is recognised that concern for the social aspects of entrepreneurship is a basic feature of modern business, it is obvious for there to be a certain level of involvement on the part of the Works Council in the enterprise’s CSR policy.

The Works Council can play a role in both drawing up and implementing CSR policy, and in creating support for it within the enterprise. Experience shows that, on the one hand, the Works Council can help bring the CSR policy adopted by the enterprise’s board to the attention of the employees through its own communication channels and networks. On the other hand, it can make the board aware of new ideas or problems within the enterprise, thus acting as a kind of catalyst.

Given the scope of the WOR, the Works Council will be involved primarily in the CSR policy of its own enterprise and that enterprise’s employees in the Netherlands, but it can also play a role in ensuring support for the international aspects of CSR and of responsible supply chain management by companies. The Works Councils of a number of large multinational enterprises are already doing this (see Section 3 below).

Some of the guidance offered by the legislation regarding the Works Council’s involvement in CSR policy will be discussed below, followed by possible voluntary agreements between the Works Council and the director.

2 Guidance in the legislation

Guidance in the WOR

An organisation is affected by all kinds of developments that have an impact on its affairs, including developments that are relevant to CSR. In the light of those developments, the organisation draws up a strategy, the results of which – if it is effective – will be beneficial for the organisation in the longer term. The Works Council plays a role in the strategy planning process.

- **[WOR Article 24](#): consultation meeting**

At the meeting to discuss the general course of affairs within the organisation, the Works Council and the director discuss developments that may affect the strategic policy of the organisation. An ‘Article 24’ meeting is therefore highly suitable for

discussing CSR with the director.

- **WOR Article 28: promotional tasks of the Works Council**
The WOR assigns a number of tasks to the Works Council which can be seen as ‘promotion’. Many of these have something to do with CSR, for example care for the environment, equal treatment and diversity, as well as with compliance with the health and safety legislation and with promoting work review meetings.
- **WOR Article 23 (3): right of initiative of the Works Council**
The Works Council can also make use of its right of initiative to place CSR on the agenda. That does not mean that it is required to put forward an elaborate, fully worked-out proposal. It is permitted to do so, but it may sometimes be more efficient for the Works Council to at first simply bring up a topic for discussion, such as CSR. This will enable both the Works Council and the director to consider whether and how the topic can be addressed.
- **WOR Articles 31a and 31b: provision of information to the Works Council**
The legislation requires the entrepreneur to provide extensive information to the Works Council, twice a year, regarding financial and economic policy (WOR Article 31a) and at least once a year regarding its social policy (WOR Article 31b). That information must then be discussed at one or more consultation meetings.

In the light of the information that it receives about the enterprise’s financial and economic policy (WOR Article 31a), the Works Council can also assess how the enterprise has devoted attention to sustainability in such areas as purchasing, procurement, mobility, construction, energy, and internal environmental protection.

Although the written information about the enterprise’s social policy (WOR Article 31b) only comprises data on the numbers and various groups of people working in the enterprise and the social policy pursued by the enterprise regarding those persons, the data must be provided in such a way as to show the effects that the various components of social policy have had on individual business units and job categories. This will then allow the Works Council to also assess the CSR aspects of the enterprise’s social policy.

In addition to this general guidance, the Works Council has the right of advice and endorsement regarding certain specific aspects of CSR. Its right to advise on investments and on environmental policy (internal environmental protection) (WOR Article 25 (1h) and (1i)) enables the Works Council to influence the ‘Profit’ and ‘Planet’ aspects of CSR, while its endorsement right regarding such matters as working conditions and staff training (WOR Article 27) allows it to influence the ‘People’ aspect. In this context, the Works Council must remember that the WOR has national effect.

Guidance in the Dutch Civil Code (BW)

- **Article 2:391 (1) of the Civil Code: non-financial aspects also to be covered in the annual report**

Pursuant to this article, ‘large enterprises’¹ are also obliged to report on their non-financial obligations insofar as they are relevant to interpreting the financial information and the position of the enterprise.

The Works Council can place discussion of the annual report and especially the section on non-financial obligations – of which CSR may form part – on the agenda for the consultation meeting.

■ **Article 2:107a (1b) in conjunction with (3) of the Civil Code: Views of Works Council at general shareholders’ meeting**

This article concerns the Works Council’s right to address the general meeting of shareholders of public limited companies. It offers scope for the Works Council to also bring up aspects of CSR at that meeting.

The foregoing shows that a Works Council has various options for raising various aspects of CSR (including international CSR). Given the complexity of CSR/ICSR issues, it may well be that in doing so the Works Council feels a need for supplementary knowledge and expertise. Having the right to information ([WOR Article 31a](#)) and to call in an expert ([WOR Article 16](#)) and/or a Works Council committee on a particular issue ([WOR Article 15](#)) allows the Works Council to build up or obtain the necessary knowledge and expertise.

3 Options for voluntary agreements

As noted above, the consultation meeting is the most suitable venue for discussing CSR with the director. This can involve both the drawing up and implementation of CSR policy within the enterprise and the creation of support for it.

Besides placing CSR issues on the agenda for the consultation meeting, the director and the Works Council can also make voluntary supplementary agreements. At medium-sized enterprises that are not required to include non-financial information in their annual report, the Works Council and the director can agree, for example, that the director will provide information annually about the enterprise’s policy on CSR/ICSR and integrate it into the annual social report, for discussion at the consultation meeting.

In the case of ICSR issues, the OECD’s Guidelines for Multinational Enterprises provide an overarching framework of standards for enterprises’ international operations. The Guidelines offer pointers for enterprises in dealing with such matters as employment and industrial relations, human rights, child labour, the environment, corruption, and supply chain management.² The Guidelines (which were revised in 2011) are endorsed by the business community and also form an important component of the SER’s *Statement on International Corporate Social Responsibility* (2008).³

The Foundation for Multi-National Works Council Discussion (MNO) has drawn up a

¹ ‘Large enterprises’ are enterprises that meet two of the following criteria: 1) assets amounting to more than EUR 17.5 m, 2) more than 250 employees, and 3) net turnover of more than EUR 35 m.

² See <http://www.oesorichtlijnen.nl> for more information.

³ See also SER (2011) [Tweede Voortgangsrapportage Internationaal Maatschappelijk Verantwoord Ondernemen](#), 17 March 2011.

model code which Works Councils can use to formalise their involvement in CSR policy.⁴

Possible topics for the consultation meeting

The following list presents a number of possible CSR/ICSR issues that can be placed on the agenda for the consultation meeting with the director. The list is intended to provide examples only and is therefore not exhaustive; CSR is above all a matter of ‘customisation’.

- General principles: What does CSR mean within this particular enterprise? What changes are desirable to improve sustainability? How can people be made more familiar with the enterprise’s vision and mission for CSR? Does the enterprise have a sustainable purchasing policy? How can the OECD Guidelines be made an integral part of the way the enterprise operates?
- Specific aims: Is it worth formulating specific aims for such matters as supply chain management or CO₂ reduction? What capacity and expertise does the enterprise need to achieve these aims?
- What problems may be involved? How can one increase support within the expertise for achieving these aims?
- Use of CSR tools: Is it worth developing a code for suppliers? What are the elements making up such a code? How can such a code be utilised most effectively? What experience is there within the enterprise in applying such codes?
- Annual social report: The director could provide information annually about the enterprise’s policy on CSR/ICSR and integrate it into the annual social report, then discussing it at the consultation meeting with the Works Council.
- Consultations with external stakeholders: What role can the Works Council play in consultations about CSR with external stakeholders such as trade unions and NGOs?

More information about ICSR and the ICSR agreements can be found at www.ser.nl/nl/thema/imvo.

⁴ MNO Foundation (2011) [De rol van medezeggenschap bij maatschappelijk verantwoord ondernemen](http://www.stichting-mno.nl) (www.stichting-mno.nl).

Appendix E:

The legal status of members of the Works Council

1 Considerations

A well-functioning Works Council is important for the functioning of the enterprise as a whole. One important requirement for a well-functioning Works Council is that, for any problems that may arise from combining Works Council duties with normal work, solutions are found to which both the management of the enterprise and the employees concerned can agree.

One of these problems concerns the amount of time taken up by Works Council duties. Neither the management nor the employees, Works Council members or candidate Works Council members can anticipate exactly how much time will be required for Works Council duties. These duties entail more than just preparing for and attending Works Council meetings and consultation meetings. Nor can the consequences of Works Council membership for the fulfilment of the positions held within the company by the members of the Works Council be anticipated exactly. This depends largely on variable factors per company and per employee, such as the size and complexity of the enterprise, the nature and extent of the problems with which the Works Council is confronted and the positions held by the employees concerned.

There are no set guidelines for dealing with this situation that are applicable to all enterprises. This is because the problems arise precisely from the interaction of the employees' normal work duties with their duties as participants in the consultation process, which can lead to circumstances that are quite different in different enterprises.

The starting point for tackling this problem is the statutory regulation regarding the protection of employees who are or have been involved in Works Council duties against victimisation or dismissal. The protection against victimisation is laid down in [WOR Article 21](#). This article imposes a duty of care on the entrepreneur to ensure that members and ex-members, the person holding the post of secretary, candidates or former candidates or anyone who takes or has taken the initiative to establish a Works Council are not placed at any disadvantage with respect to their position. When employees know that they are properly protected in this way, they are more likely to take part in the activities of the participation body. Such protection enables those taking part in Works Council activities to perform their duties free from any fear of intimidation by the management of the enterprise.

2 Protection against dismissal

The statutory protection against dismissal of Works Council members in Article 7:670(4) and (10) of the Civil Code covers employees who are or have been involved in Works Council duties.

Article 7:670(4) of the Civil Code provides that an employer cannot terminate an employment contract if the employee concerned is a member of a Works Council. The same prohibition of termination applies pursuant to Article 7:670(10) of the Civil Code if the employee:

- has been placed on a list of candidates for a Works Council;
- was a member of a Works Council less than two years ago;
- is a member of a Works Council preparatory committee.

If the employer has appointed a Secretary to the Works Council, these prohibitions of termination also apply to the Secretary.

Pursuant to Article 7:670a(2)(a) to (e) and Article 7:670a(3) of the Civil Code, the above prohibitions of termination do not apply in the following cases:

- the employee has agreed in writing to termination;
- termination is during the probationary period;
- termination is issued with immediate effect (Article 7:677(1) of the Civil Code) for a compelling reason;
- termination takes place because of cessation of the enterprise's activities (exception: if an employee is on pregnancy or maternity leave);
- termination takes place because the employee has reached retirement age, provided that termination is not related to circumstances to which the prohibitions of termination relate;
- termination takes place on the ground that jobs are necessarily ceasing to exist because of commercial circumstances, other than the termination of the enterprise's activities, and the employee has been employed for at least 26 weeks in the job that is ceasing to exist.

If the employer applies to the Employed Persons Insurance Administration Agency (UWV) for permission to dismiss a Works Council member for commercial reasons, the prohibition of termination will not therefore apply. In such a case, there is no difference in protection against dismissal between the employees referred to above who are or have been involved in involved in Works Council duties and other employees.

Pursuant to Article 7:671b(1)(a) of the Civil Code, the subdistrict court, at the request of the employer, can dissolve the employment contract in the cases referred to in Article 7:669(3)(c) to (i) of the Civil Code (for example in the event of regular inability to work due to illness with unacceptable consequences for the business operations, unsatisfactory performance, a culpable act or omission on the part of the employee, or a disrupted working relationship).

The subdistrict court can also grant a request for dissolution if there are commercial circumstances or a case of long-term illness, if the UWV has refused permission, or if there is a fixed-term contract that cannot be terminated prematurely (Article 7:671b(1)(b) and (c) of the Civil Code). Article 7:671b(2) of the Civil Code provides that the subdistrict court may only grant a request for dissolution within the meaning of paragraph 1 of that article if the conditions for termination have been met and no termination prohibitions apply. If the employer requests dissolution on the grounds of Article 7:669(3)(b) to (i) of the Civil Code and there is a termination prohibition within the meaning of Article 7:670(4) and (10) of the Civil Code, the subdistrict court, contrary to Article 7:671b(2) of the Civil Code, may still grant a request for dissolution if:

- the request does not relate to circumstances covered by those termination prohibitions (see also the prohibition on victimisation in WOR Article 21); or
- there are circumstances of such a nature that the employment contract should be terminated in the interest of the employee.

3 Arrangements and agreements

Entrepreneurs are well advised to pay due attention to the legal status of Works Council members within the enterprise, and to consult with Works Councils about

this. If necessary, they should take appropriate measures to deal with the issues relating to the legal status of Works Council members, as mentioned below.

The nature and the size of the enterprise should, of course, be taken into account here, as should the way in which the work is organised. Ideally, the drawing up of general arrangements (preferably in writing) should be carried out in collaboration with the Works Council (or, if necessary, with the COR). General arrangements and agreements that ensue from this consultation with the Works Council should be made generally known in the enterprise.

It is recommended that specific agreements be made with individual Works Council members on the basis of the general arrangements, tailored to each member's situation.

Any actual promises or other substantive agreements made as a result should be put in writing, so that there can later be no doubt, either on the part of the director or the member's immediate superior, or on the part of the Works Council or the Works Council member in question.

4 Time needed

The WOR only gives a general indication of the amount of time required of individual Works Council members for Works Council duties. [WOR Article 17 \(2\)](#) stipulates that the Works Council and its committees shall as far as possible hold their meetings during normal working hours. Under the terms of [WOR Article 18 \(1\)](#), the entrepreneur and the Works Council must jointly determine the number of hours (during working hours and with full pay) allocated to members of the Works Council and of Works Council committees for mutual consultation and consultation with other persons. [WOR Article 18 \(2\)](#) stipulates that the entrepreneur and the Works Council must also jointly determine the number of days made available to members of the Works Council and members of a standing or divisional committee for training and development (during working hours and with full pay), of sufficient quality.

The actual amount of time required for Works Council duties depends on various factors, such as:

- The size, structure and complexity of the enterprise;
- The position of the person in question in the consultation system;
- The way the duties of the Works Council are allocated;
- The efficiency of the Works Council and its committees (if any);
- The extent to which use can be made of facilities, e.g. administrative facilities.

There is a certain amount of inherent tension between the proper performance of a Works Council member's normal work and Works Council duties. When a Works Council member spends a relatively large amount of time on Works Council duties, there is a danger that he or she may no longer perform his or her normal work

optimally. It is important that, as an employee, the Works Council member, with regard to his or her colleagues and management, he or she continues to perform his or her normal work as well as possible. However, it is also necessary that the Works Council functions well, and this inevitably makes demands (often heavy demands) on the time of individual Works Council members.

With respect to each of the aspects mentioned above, it is important to resolve any tension as far as possible by establishing clear agreements between the entrepreneur and the Works Council about the proper functioning of the Works Council as a whole, the amount of time required to ensure that, and the amount of time that individual Works Council members may spend on Works Council duties during normal working hours.

In this context, proper consultation with the management of the department in which the Works Council member works is essential. Ideally, this should take place as soon as the employee has been nominated for Works Council membership. This will give both the management and the Works Council member (or candidate member) plenty of time to prepare for the fact that Works Council duties will take up time. Unforeseen circumstances (e.g., radical reorganisations) may lead to a temporary adjustment of the agreements concerning the amount of time made available. It may also be necessary to come to certain agreements in consultation with the entrepreneur. After all, it is the collective responsibility of the entrepreneur, the immediate superior and the individual in question to ensure that a Works Council member is not overburdened in carrying out his or her job. In this regard, care should be taken that the various duties are distributed among the Works Council members as equally as possible.

The immediate superior of a Works Council member will take account of the member's Works Council work when distributing work among all employees in his or her department. It is advisable to review arrangements periodically (e.g., at the start of a new term of office, or at other times) and where necessary to change them. Finally, it may be found useful (particularly in the case of a large company) to formalise a procedure for resolving any problems or disputes about how the arrangements made are to be implemented.

5 Career and income

Particularly with respect to career and income development, the entrepreneur should take specific measures to comply with the obligation to provide Works Council members with protection against victimisation, as referred to in [WOR Article 21](#). The following points deserve attention:

- The member's income should not be adversely influenced by Works Council membership;
- The Works Council member must be able to compete normally for promotion or transfers, and must be able to make normal use of training activities relevant to his/her position;
- Works Council work is also work. Factors relating to membership of the Works Council should not be allowed to have any negative impact on an employee's appraisal. It is therefore important that the extent to which the Works Council member may spend normal working hours on Works Council duties is clearly defined;
- Timely agreements should be made about what position the member will take up after membership of the Works Council has ended. For this aspect, which is particularly an

issue in the case of exemption or partial exemption from normal activities, see the ‘Exemption’ section below.

6 Exemption

Particularly in large enterprises, one or more Works Council members – and in particular the chairman and/or secretary of the Works Council – may request, on the grounds of [WOR Article 18](#), full or partial exemption from their normal duties, in order to carry out their Works Council duties. It is important to bear in mind the disadvantages that attach particularly to full exemption. The Works Council members in question run the risk of becoming estranged from the workplace and their colleagues. This may lead to problems if, after a long period of exemption, they decide to return to their position. If full or partial exemption is decided upon, it is recommended that the entrepreneur and the Works Council members involved make agreements in writing, with due regard to any principles already determined. The following points should be taken into account:

- The duration of the exemption (e.g., the period of one term of office of the Works Council);
- The exemption should not result in any change to the member’s employment contract; after the exemption period has elapsed, it will be determined whether the employee concerned can return to his or her old job again;
- It may not always be possible for an employee to return to his or her previous position.

In the meantime, the position may (perhaps necessarily) have been filled on a permanent basis by someone else. The position may also have been subject to significant organisational and technical changes, making a return to the original position problematic. Clearly, in such cases, the entrepreneur must offer the former Works Council member another position that is equal to the previous position in terms of content and salary.

7 Part-time work

Specific problems may also arise for Works Council members who are part-time employees. These mainly arise in connection with the amount of time required for Works Council duties in relation to the part-time work. The WOR provides a partial solution to these problems in that [WOR Article 17 \(3\)](#) stipulates in general terms that a member of the Works Council or a committee shall retain their entitlement to full pay or remuneration for the time during which they attend Works Council or committee meetings during working hours. This provision applies equally to part-time employees and full-time employees. [WOR Article 17 \(2\)](#) stipulates in close connection with paragraph (3) that the Works Council and its committees must, as far as possible, hold their meetings during normal working hours. This may give rise to problems in relation to Works Council members who work part-time; and the problems become more acute the fewer the hours the employee works.

Various situations may occur. For example:

- a. The Works Council usually meets during the normal working hours of a Works Council member who works part-time, but occasionally the meeting overruns and extends beyond this person’s working hours. In that case, there is normally no need

for any special measures.

- b. The Works Council usually meets outside the normal working hours of a Works Council member who works part-time. In this case, it is recommended that compensation in the form of time-in-lieu be given.
- c. The Works Council usually meets outside the normal working hours of a Works Council member who works part-time, but the Works Council member in question works so few hours that compensation in the form of time-in-lieu is not an option. In this case, given equal opportunities legislation, the part-time employee will normally receive pay or remuneration for time spent at Works Council meetings outside normal working hours. This is the same arrangement as applies to any full-time employee who is required to attend a Works Council meeting outside normal working hours.

8 Shift work

Some of the specific problems affecting Works Council members who work in shifts resemble those of members who work part-time and they can therefore be dealt with in a similar way: see the previous section (especially points (a) and (b)). However, one problem deserves special attention: the shift schedule of those Works Council members who work shifts. Given the desirability of Works Council business being conducted as far as possible during normal working hours, the Works Council should plan its activities as far as possible to take account of the normal shift schedule of any member who is a shift-worker, so that meetings can be scheduled during that member's normal working hours. Where, in exceptional cases, this is not possible, consideration could be given (in consultation with the employee's immediate superior) to swapping the shift of the Works Council member in question with that of another employee.

Appendix F: Joint Sectoral Committees

1 Introduction

Joint Sectoral Committees are made up of representatives of employers' and employees' organisations and mediate in disputes regarding employee participation issues (in many cases between the Works Council and the entrepreneur). They also provide information about employee participation and act as a source of knowledge and information.

The Works Councils Act (WOR) provides that the Social and Economic Council (SER) will set up Joint Sectoral Committees for groups of enterprises, to deal with matters relating to the Works Council, the Central Works Council (COR) and the Group Works Council (GOR), the employee representative body and the meeting with employees (within the meaning of [WOR Article 35b](#)) of these enterprises (see [WOR Article 37 \(1\)](#)). In the case of enterprises in which work is carried out exclusively or almost exclusively on the basis of a public-law employment contract, that power is exercised by the Minister of the Interior and Kingdom Relations ([WOR Article 46d \(d\)](#)).

There are three Joint Sectoral Committees: the Joint Sectoral Committee Market I (for enterprises in commercial sectors), the Joint Sectoral Committee Market II (for those in the care, social welfare, and social/cultural sectors), and the Joint Sectoral Committee for Government.

2 Tasks

Mediation

The main task of the Joint Sectoral Committees is to mediate between parties (in response to a written request) in disputes that can be traced to the WOR. If the Committee's mediation efforts fail, it will offer the parties advice on how to resolve the dispute.

The amendment of the WOR on 19 July 2013 means that it is no longer obligatory to submit WOR-related disputes to the Joint Sectoral Committee before commencing court proceedings. However, the WOR still assigns the Joint Sectoral Committee the task of dealing with employee participation issues resulting from application of the WOR. That includes mediating and advising on disputes that may arise about matters regulated by the WOR, for example between the Works Council and the entrepreneur.

The Joint Sectoral Committee can also be asked to mediate in the event of a dispute arising between an interested party (e.g., an employee) and the Works Council and/or the entrepreneur about the obligation to set up a Works Council, the adoption of the Works Council's Rules of Procedure, the publication of agendas and minutes of Works Council meetings, or Works Council elections.

Having the Joint Sectoral Committee deal with a dispute in this way has a number of advantages.

- The procedure is primarily intended to provide a forward-looking and sustainable

solution, so that the process of employee participation can be set in motion once more. If the dispute cannot be resolved through mediation, the Joint Sectoral Committee will usually advise on the matter in writing. It will often also attempt to identify any underlying problem, and will include that in the advice it provides.

- The process of mediation and advice is informal, efficient and accessible. There are no requirements as to how the dispute is to be submitted, meaning that no expensive legal assistance is necessary.
- The process is free of charge, i.e. it does not cost anything for a dispute to be dealt with.
- The composition of the Joint Sectoral Committee guarantees that the dispute will be considered by a committee with the necessary legal knowledge, and which is also familiar with the specific sectors for which it has been established – it ‘knows the field’.

The Joint Sectoral Committees for the market sectors have each set up a special ‘training committee’ [*scholingskamer*] to answer enquiries and to deal with disputes about training and development for Works Council members. The training committees work with fast-track proceedings so as to clarify matters as quickly as possible.

Promoting employee participation / source of knowledge and information

Another important task of the Joint Sectoral Committees is to promote employee participation within the sector. They do this by, amongst other things, providing information and advice, and encouraging employers and employees in their implementation of employee participation.

Registration

The WOR provides that certain documents must be sent to the Joint Sectoral Committee for registration:

- the written decision by the entrepreneur to voluntarily establish a Works Council or to discontinue one that has been established voluntarily ([WOR Article 5a \(2\)](#))
- the works agreement [*ondernemingsovereenkomst*], in which additional powers are allocated to the Works Council ([WOR Article 32 \(2\)](#)).

The amendment to the WOR that came into force on 19 July 2013 did away with obligatory registration of the Works Council’s Rules of Procedure (and provisional Rules of Procedure) and its annual report. For the time being, the Joint Sectoral Committees in the market sectors will continue to register the Rules of Procedure and annual reports that they receive. The simplest way to submit these documents for registration is via the www.bedrijfscommissie.nl website (Registration / Registration Form).

Up-to-date information about the Joint Sectoral Committees and contact details can be found at www.bedrijfscommissie.nl (for the market sectors) and www.bedrijfscommissieoverheid.nl (for government).

Appendix G:

Committee to Promote Employee Participation

1 Introduction

The amended version of the Works Councils Act (WOR) that came into force in July 2013 explicitly gives the SER responsibility for promoting employee participation within enterprises. The SER has set up a Committee to Promote Employee Participation [*Commissie Bevordering Medezeggenschap*] (CBM) to carry out that task. The CBM is made up of members designated by the employees' and employers' organisations, independent members, and an advisory member.

2 Tasks of the CBM

The core task of the CBM is to promote, in the broad sense, employee participation and the quality of that participation in enterprises. It is also charged with various tasks in the field of training and development for Works Council members, independently providing advice to the Dutch Government and Parliament on employee participation and the preparation of advisory reports by the SER in this field, dealing with requests from enterprises for exemption from the obligation to set up a Works Council, and monitoring of the Joint Sectoral Committees in the market sector. These tasks are specified in the resolution establishing the Committee to Promote Employee Participation [[*Besluit Instelling Commissie Bevordering Medezeggenschap*](#)].

3 How does the CBM carry out its tasks?

The CBM deals with issues that are important for the development of employee participation, promotes discussion of those issues, and encourages the stakeholders to address them. The CBM draws up an annual work programme comprising current themes and topics that are relevant to employee participation in actual practice. It tackles these matters by means of recommendations, good practices, publications and information on the website, regularly also with the involvement of stakeholders.

As part of its responsibilities regarding training and development for Works Council members, the CBM formulates an annual proposal for reference amounts (to be set by the SER) for training and development of sufficient quality, and monitors the use of the relevant facilities by Works Council members.

4 Target group

The CBM carries out its activities primarily for the entrepreneurs and employees in companies who need to give concrete shape and substance to employee participation in the workplace. Intermediaries play an important role in contacts with this target group and in shaping employee participation by this target group. The CBM also involves these intermediaries in its work, e.g., training institutions, trainers and Works Council advisors. It also frequently focuses on supervisors and HR officers.

5 Publications

A number of CBM publications are relevant and useful for directors of enterprises, employees involved in employee participation, intermediaries, specialist Works Council publications and employee participation organisations, such as professional and sector-specific associations and organisations for Works Councils. The publications can be found at www.ser.nl.

Up-to-date information about the CBM and contact details can be found at www.ser.nl.

APPENDIX H:

Foundation for Certification of Works Council Training

1 Introduction

The Foundation for Certification of Works Council Training [*Stichting Certificering Opleiding Ondernemingsraden*] (SCOOR Foundation) was established by the SER in August 2013 in the light of the SER's advisory report on the future of training and development for Works Council members [*Toekomst scholing en vorming leden ondernemingsraad*] (2011). In that report, the SER advocates a new training system for Works Councils in which monitoring the quality of the training provided is an important element.

The SER's recommendations were incorporated into the amendment to the Works Councils Act (WOR) of July 2013. The Explanatory Memorandum accompanying the amended Act states that the social partners represented in the SER will develop a system for ensuring and promoting the quality of training for Works Councils. It is in that context that the SER has set up the independent SCOOR Foundation.

The Register of Employee Participation Trainers [*Register Medezeggenschapsopleiders*] (RMZO) was established in May 2012 at the initiative of the Association of Employee Participation Professionals [*Beroepsvereniging Medezeggenschapsprofessionals*] (BVMP) and the Employee Participation Sector Association [*Branchevereniging Medezeggenschap*] (BVMZ).

The SCOOR Foundation merged with the RMZO Foundation on 1 July 2019 to form the SCOOR-RMZO Foundation.

2 Object and tasks

Trainers and training institution in the registers hold the SCOOR-RMZO seal of approval, showing that they meet the relevant quality requirements.

The SCOOR-RMZO seal of approval indicates:

- relevant current expertise that goes beyond the WOR. This also includes such matters as strategic policy, working conditions, organisational development, social policy, etc.;
- a high-quality organisation: the training institution has, and maintains, its operations in good order;
- professional trainers: employee participation professionals have the necessary knowledge and skills, and keep them up to date through training and intervision.

3 Certification regulations

The SCOOR Foundation's certification regulations have been drawn up so as to assess the quality of training programmes for Works Council members. The

regulations comprise six parts, setting requirements, *inter alia*, for the training institutions' quality assurance systems, operational management and knowledge of employee participation of the institutions offering training. All such institutions – including one-man businesses or specialised departments of a training institution – may qualify for certification. Participation in the certification procedure is voluntary.

Actual assessment in the light of the certification requirements is carried out by an independent audit agency, after which the board of the SCOOR Foundation decides whether a certificate should be awarded (or renewed, suspended or revoked, as the case may be). A certificate is basically valid for three years.

4 Quality register

All trainers who train Works Councils and other employee participation bodies can be registered in a quality register. They have basic knowledge and skills and professional views in five areas, and they keep these up to the required standard through training and intervision. They are required to re-register every five years.

5 More information

More information about the SCOOR Foundation and contact details can be found at www.scoor-rmzo.nl.

APPENDIX I:

Model text for a letter to employees concerning the electoral register (appendix to Article 7 of the Model Rules of Procedure for Works Councils).

The following text may be used by the Works Council in a letter, e-mail or newsletter addressed to all persons working in the enterprise concerning the election procedure, more specifically the electoral register:

'Elections for the Works Council (OR) of [name of enterprise] will be held on [date of elections]. The Works Council has drawn up an electoral register listing persons working in the enterprise who, on the election day, are eligible to vote and/or stand for election. Pursuant to the (Dutch) Works Councils Act [Wet op de ondernemingsraden, 'WOR'] and the Rules of Procedure for the Works Council [OR-reglement], persons who have been working in the enterprise for at least [...] months on the election day are eligible to vote. Persons who have been working in the enterprise for at least [...] months on the election day are eligible to stand for election to the Works Council. To find out whether or not you have been included in the electoral register, or if you are in doubt as to whether you are eligible to vote and/or stand for election, you should approach the Works Council (i.e. its electoral committee) [via: contact details for electoral committee]. Pursuant to Article [...; Article 7(1) of the Model Rules of Procedure for Works Councils] of the Rules of Procedure for the Works Council, you may lodge an objection with the Works Council (i.e. its electoral committee) against the Works Council's decision regarding the electoral register (or how it was drawn up) within one week from today.'

