

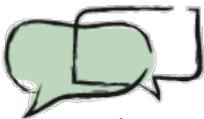


**BASIC INFORMATION
WOR**

MARGO HENDRIKS
TRAINING & COACHING

EMPLOYEE PARTICIPATION

Employee participation is the practice of exerting influence on the policies of the organization. Through employee participation, employees can participate in the decision-making process and join in on the discussions regarding business organization, finances, personnel policies and working conditions.



The organization of employee participation

In an organization with more than 50 employees, a Works Council is required by law. Employee participation takes place through the Works Council. The Works Councils Act grants the Works Council certain rights in order to allow for employee participation regarding the company's policies.

When an organization has between 10 and 50 employees, the organization can make use of Employee Representatives. Employee Representatives have fewer rights than the Works Council. If there are no Employee Representatives, there needs to be an Employee Meeting at least once a year. During this Employee Meeting, the general state of affairs of the company is discussed.

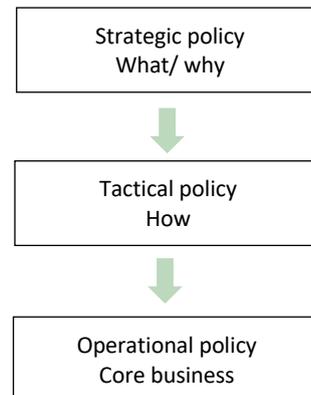


Position of the Works Council within the organization

The Works Council has an independent position within the company. They can completely independently decide what advice they give to the director. The Works Council also has the right to (not) consent to certain personnel policies. The Works Council has a say on all levels of decision

making. In short, the Works Council has influence on:

- The strategic policy: the direction of the organization. They can influence strategic plans, plans for fusions and takeovers and so on.
- The tactical policies of the company, which is more about the 'How' of matters. In other words, the implementation of the company's strategy on a day-to-day basis.
- The operational policy, which is about the organization of the core business and the personnel associated with that.

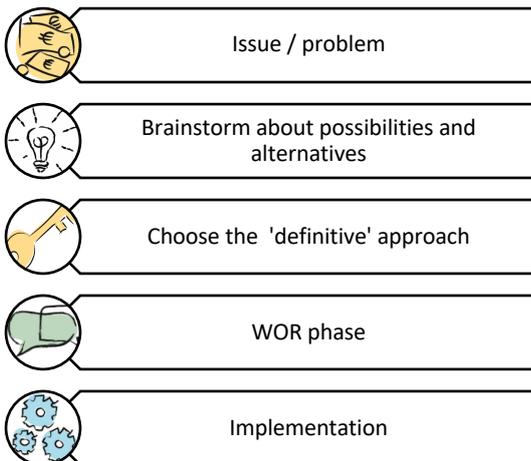


Moment of involvement of the Works Council.

The Works Councils Act stipulates that the Works Council has to be involved at a very specific point in the decision-making process. That is, the Works Council has a say in the 'intended decision'. However, companies are increasingly starting to use more dynamic approaches to the decision-making process. This makes it more and more difficult to determine when the 'intended decision' actually occurs.

However, what does the law mean by 'intended decision'?

Decision-making funnel



- There is an **issue** or **problem** that needs to be solved. First, the problem is clearly defined and then the ‘What’ is worked out.
- A **brainstorm** about the different options and considerations of the alternatives. The ‘Why’ becomes clear.
- The **‘definitive’ approach** is chosen. Now, a plan of action is made, as well as plans for to develop the policy. The ‘How’ and ‘Consequences’ of the new policy are worked out. However, the plans are not implemented yet!
- Once everything has been worked out (What / Why / How and Consequences), the ‘intended decision’ phase starts. In this phase, the Works Council needs to be involved because they have a say in the matter. This is also called the **WOR phase**.
- After the Works Council provides advice or consent regarding the intended decision, the director can start with the **implementation**.

Increasing the influence of the Works Council.

The Works Council can decide to have influence on every step of the decision-making process. It is not necessary to wait for the ‘intended decision’ to be

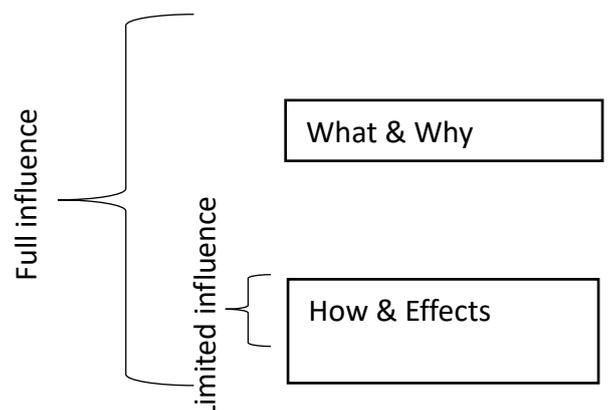
formulated. For example, the Works Council could participate during the brainstorm phase as well. Also, they can think about other alternatives or provide the director with preconditions and points of attention at the very start of the process. The advantage of early involvement is that the Works Council has more influence and that the ‘WOR phase’ goes more smoothly.

TIP: DISCUSS THE ROLE AND INVOLVEMENT OF THE WORKS COUNCIL WITH THE DIRECTOR BEFORE YOU DELVE INTO THE SUBJECT AT HAND. BE SURE TO CREATE A CLEARLY DEFINED WORKING ARRANGEMENT.

Determine your influence as a Works Council.

Before the Works Council handles a request for advice/consent, it first needs to determine the scope of its influence. Do they have their full amount of influence or is it limited?

- **Full influence:** The Works Council has a say in the ‘What’ and ‘Why’ as well as the ‘How’, the way it is implemented and the effects on the employees.
- **Limited influence:** The Works Council only has a say in the way it is implemented and the effects on the employees.



Scope of influence of the director

Another factor that plays a role in determining the scope of influence of the Works Council is the scope of influence of the director. In international organizations or when legislative changes or concerned, the director's scope of influence may be limited to the 'How & Effects'. In this case, the director only has a say in the implementation process.

A great example of legislative change was the introduction of the GDPR (General Data Protection Regulation). (Inter)national politics decided on the 'What' and 'Why' and every company in the Netherlands needed to obey the law. In a case like this, the director can only decide on the way these policies are implemented in his company.

WORKS COUNCILS ACT (WOR)

The WOR regulates all rights, obligations, authorizations, facilities and tasks of the Works Council. In the next few paragraphs, we will discuss the articles from the WOR that affect the Works Council in their day-to-day work.

WOR

Article 2 forms the base. This article stipulates that an organisation with more than 50 employees must establish a Works Council.

Article 31: Right to Information

The Works Council has the right to be informed. By having sufficient information about the company, the Works Council is able to meaningfully consult with the director. The director has the obligation to provide the Works Council with all of the information that is necessary for the Works Council to perform their job properly.

This is stipulated in the Right to Information Act (art. 31 of the WOR). There are two parts to the Right to Information Act: an active right to information and a passive right to information.

Active right to information

The Works Council has the right to ask for all of the information they reasonably need for doing their job properly. The Works Council can specifically request for the information to be in writing. The director is required to provide the requested information as soon as possible.

Passive right to information

Artical 31, in sections one through four, requires the director to provide very specific information without any express requests from the Works Council. This concerns financial data, information about (social) policies, social data and pay ratios.

Articles 23 and 24: Right to Consultation

Article 23 Right to Consultation

This concerns the consultation between the director and the Works Council. The director and the Works Council discuss pending requests for advice and consent. In addition, the director informs the Works Council about other important matters.

The director and the Works Council draw up a meeting agenda prior to the meeting. Both parties can add items to the agenda.

There are a number of rules and regulations for the consultation meeting:

- The Works Council and director are required to have a meeting within two weeks of either party having requested such a meeting. Part of

the request is explaining the reason for the requested meeting.

- The meeting can only take place if the required number of Works Council members are present (as stated in the regulations).
- Both parties have the right to invite a specialist to the meeting.
- During the consultation meeting, the Works Council and the director can make decisions.
- The consultation meeting is suspended by the chairman if the Works Council or the director wishes to deliberate separately on a specific topic.



Article 24 'General state of affairs meeting'

The director and the Works Council have an art. 24

meeting at least twice a year. During this meeting, they discuss the strategic and corporate vision of the company. Essentially, the director and the Works Council take a look at the organization from a helicopter view (the main points) and review and plan ahead together. During this meeting, it is also wise to discuss the information covered in art. 31 (the passive right to information). The aim of this meeting is for the Works Council to familiarize themselves with the context of the organization. Moreover, the Works Council gains insight into what kinds of requests for consent and advice they can expect in the (near) future.

TIP: DURING THE ART. 24 MEETING. IT IS A GOOD IDEA TO IMMEDIATELY MAKE AGREEMENTS ABOUT THE INVOLVEMENT OF THE WORKS COUNCIL REGARDING THE TOPICS THAT WILL PLAY

A ROLE IN THE COMING SIX MONTHS.

Both the director and the Works Council have a duty to appear. In addition, the Supervisory Board (or a delegation thereof) must attend these meetings at least once a year.

Article 23.3: Right to Initiative

The Works Council also has the right to make initiative proposals outside of the art. 23 / art. 24 meetings. Through initiative proposals, the Works Council can influence decisions and bring important topics to the table. The Works Council can send their initiative proposals to the director in writing and the director must respond to these proposals in writing as well. Finally, initiative proposals also need to be discussed in an art. 23 meeting.



Article 25 Right to Advice

The Works Council has a right to advice with regards to business organizational and financial economic topics.

Topic covered by the right to advice are, for example: fusions and take overs, important investments, reorganizations, sustainable partnerships and relocations.

The right to advice follows a specific procedure in which the director requests advice from the Works Council in writing and the Works Council gives their (written) advice after a minimum of 1 art. 23 meeting.

The director is not obliged to follow the advice of the Works Council. However, if the final decision of the director deviates from the Works Council's advice, a one-month suspension period will commence. During this period the director may not implement the decision and must again consult with the Works Council. During

this period, the Works Council may decide to go to the Enterprise Chamber if this is deemed necessary.



Article 27: Right to Consent.

The Works Council's Right to consent carries more weight than their right to advice. The Works Council has the right to play a role in decisions regarding subjects that fall under personnel regulations, social policies and working conditions. It covers topics such as hiring and training policies, working conditions, pensions (if applicable), privacy, personnel control systems, job performance systems and remuneration systems.

The procedure of the right to consent is similar to the procedure of the right to advice. However, the fundamental difference is that, here, the decision of the Works Council is binding. When the Works Council does not consent, the director cannot implement the new policy. If the director and the Works Council cannot come to an agreement, the only way for the director to implement his decision is to take the case to the subdistrict court. However, the court will take the Works Council's decision into account as well.



Article 28: Duty of Care

By law, Works Councils have a duty of care regarding specific topics. Part of this duty of care are a number of topics to which the Works must pay extra attention. In addition, this duty of care provides the Works Council with additional starting points for influencing policies within the organization.

Article 20 confidentiality

Another important article is article 20, which deals with confidentiality. It states that the director can impose on the Works Council an obligation of confidentiality regarding certain topics for a specific period of time.

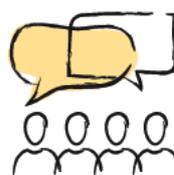
INTERNAL PROCEDURES OF THE WORKS COUNCIL

Elections

Members of the Works Council are elected through Works Council elections. The entire procedure for these elections is described in the Works Council's regulations. The Works Council must adhere to this procedure. Elections are organized by the Works Council itself.

Works Council meeting

The law does not regulate Works Council meetings. The law only stipulates that the Works Council must be given time for deliberation. However, it is very common for Works Council members to come together in a meeting to discuss current affairs and to form their own vision.



TEAM

Composition of the Works Council

Members of the Works Council are elected employees from within the organization. The number of members depends on the number of employees. This is described in art. 6 of the WOR.

Chairman of the Works Council

The Works Council elects a chairman and vice chairman from among its members (art. 7 WOR). The chairman represents the Works Council in court.

The Works Council secretariat

Works Council's regulations often state that the Works Council elects a secretary.



Documents of the Works Council

The Works Council has two important documents: The Works Council regulations and the facility regulations.

The Works Council regulations

The regulations consist of two parts. The first part regulates the elections of the Works Council. It describes the entire procedure and the time frame of the elections.

The second part of the regulations describes the working method of the Works Council. This describes, among other things, who is responsible for drawing up and distributing the agenda, and the procedures regarding (convening) the meetings and taking minutes. In addition, it also describes how the Works Council forms their decisions and it also states the deadline for the Works Council's annual report.

Amendment of the regulations

The Works Council may change the regulations independently. However, any changes to the election procedures can only be made in consultation with the director.

If the Works Council wishes to change the election procedure, they can only do so if no election is currently ongoing. In addition, the Works Council must inform employees of this decision.



Facility regulations of the Works Council

The Works Council's facility regulation regulates, among other things:

- General facilities: The Works Council can make use of the available meeting rooms on the company's premises.
- The time spent on meetings, mutual consultation and communication with the constituency. The WOR sets a minimum of 60 hours per year, which does not include the consultations covered in art. 23 and 24 of the WOR. Meetings must take place during normal working hours as much as possible (art. 17 of the WOR).
- Time for training. The Works Council members are entitled to at least five days of training per year. Training costs, travel costs and accommodation costs are based on the arrangements and are at the company's expense.
- Optionally: the services of a secretary.

Setting up committees

The Works Council may establish various committees in order to properly perform their duties.

Art. 15 of the WOR regulates the establishment of committees. For each specific committee, the Works Council must inform the director of their decision to establish said committee in writing, including a description, the members, their duties and the working method of the committee.

The Works Council can set up three different committees, depending on the tasks and subjects that are handled by it.

- Standing / fixed committee.
- Preparation Committee.
- Subcommittee.



Consult experts

The Works Council can consult an expert on certain subjects (art. 16 WOR).

The Works Council can be advised by an internal or external expert. The Works Council must report any costs associated with this to the director in advance.

For more information:

<http://www.dutchcivillaw.com/workscouncilactneth.htm>

