

OFF THE RECORD

The benefits of a works council

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Due to its strong social benefits, good work-life balance, and robust workers' rights, the European Union (EU) is often misrepresented as an employee's paradise. An important aspect of workers' rights is employee participation through a works council. However, many companies in the EU do not have a works council, even though they are required to do so. Often, companies do not want to set one up at all, although setting up a works council can have many positive consequences for employers.

Establishing a European works council

A European works council (EWC) must be established in a 'community-scale undertaking' or 'community-scale group.' This applies when an undertaking, or group, has at least 1,000 employees in the EU, with at least 150 employees in at least two different member states.

The process of establishing an EWC begins with a written request from at least 100 employees, or their representatives, from at least two companies or establishments in different Member States. Following such a request, the central management must establish a special negotiating body (SNB). This body then negotiates with central management regarding the establishment, composition, powers, and working methods of the EWC. The method of appointing members of the SNB is governed by the national law of the member states concerned.

If negotiations are not initiated within six months of the request, or no agreement is reached within three years, the central management must establish an EWC 'outside the agreement' in accordance with the subsidiary provisions of the European Works Council Act (Articles 15–20 of the WEOR). The composition of the EWC is then determined based on the number of employees per member state.

As an alternative to the EWC, national legislation could stipulate that a company must establish a national works council. In the Netherlands, for example, companies with 50 or more employees are required to set up a works council (ondernemingsraad). There are some variations on the Dutch works council: joint, group, and central. The joint works council replaces the separate works councils of several companies belonging to a single entrepreneur and represents the employee participation rights of these combined companies. The group works council is an umbrella body above the works councils



of a coherent group of companies within a group, whereby the underlying works councils continue to exist. The central works council deals with matters that concern the entire company or several parts thereof and consists of members of the underlying works councils. Below, we will elaborate on a Dutch works council and its advantages and rights.

Advantages of a Dutch works council

Employee participation benefits both employees and employers. Employers benefit from having a tool through which they can obtain broader support for their decisions, while employees benefit from being able to influence the company's decision-making process. Works councils are most beneficial when they improve and streamline decision-making processes. Based on the Works Councils Act (WOR), works councils have the right to be consulted and the right of consent. These rights are exercised during the decision-making process. When exercising its right to be consulted, the works council can express the views of the staff on the proposed decisions. It can also communicate concerns to the employer at an early stage. This enables the employer to prepare for potential problems more effectively and to be more aware of what is happening in the workplace. Furthermore, if the works council believes that a difficult decision is fair, this increases support for it.

The works council also helps to establish employee policies more efficiently, especially if consent is required. An example of this is the work-from-home policy. Without a works council, an employer would have to make separate agreements with each employee about working from home. However, if a works council has been established, agreements can be made that apply to

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all employees. This saves time and ensures that a uniform policy applies to all employees.

Experience also shows that employee engagement increases with the presence of a works council. A works council demonstrates to employees that the employer takes them seriously and that it is transparent and values employee participation. Consultation reduces the number of top-down decisions. All of this leads to greater trust and engagement among employees.

Rights of a Dutch works council

Works councils are granted two important rights by the legislator: consultation and consent. These rights can be exercised by a works council and may have far reaching consequences. However, often, these rights are exercised in the interest of the company.

Right to be consulted

The entrepreneur must consult the works council prior to taking certain decisions. That way, the works council can actively check the policy of the management, try to exercise an influence and to promote the interests of the employees.

The duty to consult the works council applies to intended decisions regarding:

- Transfer of (part of) the undertaking
- Reorganization, expansion, or termination of (an important part) of the activities
- Making major investments on behalf of the company
- Appointment or dismissal of a director of the company

Consultation procedure

1. The advice must be requested by the director(s) of the company because the management represents the entrepreneur in consultations versus the works council.
2. The advice must be requested at a point in time when it can have a substantial effect on the decision that is to be taken. The management must turn to the works council when the internal preparations of the decision have reached a point that enables the management to present a coherent overview of potential consequences. In a consultation meeting the works council can request more detailed explanation of the management.
3. The works council must have the information necessary to assess the intended decision, including at least:
 - a. The motives of the decision
 - b. The consequences of the decision expected for the personnel
 - c. The measures the management intends to take in connection with these consequences.

The management shall grant the works council a reasonable period to provide advice. It will depend on the circumstances which period is considered reasonable in an advisory procedure.

Taking decisions without waiting for the advice of the works council is not devoid of risks. The Enterprise Section of the Amsterdam Court of Appeal has ordered entrepreneurs for that reason several times to revoke the respective decision.

Right of consent

In addition to the consultation right, the works council is granted a right to approve certain decisions of the company, or a right of consent.

The right of consent refers to intended decisions regarding the social policy of a company not regulated by a collective labor agreement. This includes decisions relating to the establishment, modification, and withdrawal of arrangements regarding:

- Working hours and holidays
- Remuneration or job evaluation systems
- Working conditions, sick leave, and reintegration policy
- Privacy and use of social media
- Pension agreement

Matters already regulated by a collective agreement or of an individual nature do not fall under the right of consent.

Consent procedure

1. The entrepreneur must submit to the works council in writing the intention to take a decision that requires consent (including his reasons and the expected consequences for the staff).
2. The works council must be given the opportunity to study the request for consent and to discuss it (internally).
3. The entrepreneur and the works council must (at least) once discuss the matter jointly once.
4. The works council will notify the entrepreneur whether or not it agrees with the request for assent.
5. Then, the entrepreneur will notify the works council as soon as possible in writing and substantiated of his decision.

A decision made without the required consent is void (not valid), if the works council invokes nullity of this decision in writing up to one month after:

- the works council was notified of the decision by the entrepreneur, or
- the works council noticed that the entrepreneur has applied or implemented the decision.

At the request of the works council, the entrepreneur may be obliged by the subdistrict court not to apply or implement this voided decision.

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If the works council does not give its consent to a decision of the entrepreneur, the entrepreneur may request the subdistrict court's alternative consent. The subdistrict court may only grant this consent after having considered the arguments brought forward by the entrepreneur and the works council and determining that (a) the decision of the works council is unreasonable, or (b) there are serious reasons for the company that require the intended decision.

In conclusion

We have explored how a works council can have a positive impact on company business. Employee participation often provides more support for the decisions to be taken, or the policy to be pursued. It also ensures that problems are communicated to the management at an early stage. The rights of a works council are intended to ensure effective employee participation and ignoring these rights can have far-reaching consequences for the company.