

Guide to the Works Council

The Works Councils Act

Atim

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Rules!?! Some like to have them to refer to, others don't want to be confined by them. What about you? How are you going to apply the rules of the Dutch Works Councils Act (Wet op de Ondernemingsraden (WOR))? Our advice? Don't stick too rigidly to the rules. Instead, try to understand the underlying principles and see the law as a guide.

Imagine the following scenario. You're about to play a new party game. Wouldn't you start by studying the rules? Once you read the instructions, the items in the box make sense and the object of the game is clear. The rules explain what you can and can't do to achieve the object of the game.

Experienced players no longer feel the need to refer to the instructions. They assume they know the rules and how the game is played. Then you show up. An inexperienced newcomer armed with the official rules. It turns out that the players who have been at it longer have slowly adapted the rules to suit their own purposes and made up some of their own. Got you!

This is not an uncommon experience for those involved in the game of employee representation. Newcomers seek refuge in the Dutch Works Councils Act (Wet op ondernemingsraden (WOR)). More experienced players assume they know how things are done. Having a beginner point out 'discrepancies' is an unpleasant surprise.

In principle, the solution is simple. More experienced Works Council members should allow new members the reassurance of being able to refer to the official rules while they learn how to play the game. This puts everyone on a level footing and makes the process of employee participation more engaging for all concerned.

At the same time, all Works Council members will benefit from the following advice: don't be too rigid in the way you apply the rules. Rather than sticking strictly to the letter of the law, try to understand the 'why' of the rules. If you don't, invoking the rules will tend to be counterproductive. In fact, the rules then become a source of irritation! An inquisitive and receptive attitude is more likely to yield results. If everyone understands the 'why' of the WOR, the rules are more logical and easier to accept.

Why?

So feel free to question the need for a Works Councils Act. Does an organisation really need to establish a Works Council? Article 2 of the WOR offers an answer:

Article 2 of the Dutch Works Councils Act

Any entrepreneur carrying on an enterprise [...] shall, in the interests of the proper functioning of the enterprise with respect to all its objectives, establish a Works Council [...].

This fragment can be loosely interpreted as follows: 'Dear Director, it would be remiss of you not to establish a Works Council. All aspects of your organisation will benefit from the existence of a Works Council.' It can also be interpreted as an instruction to the Works Council: 'Dear Works Council, make sure you add real value to the organisation!' This second interpretation raises another interesting question. Just how

does the Works Council add value to the organisation? The same article also offers an answer to this question:

Article 2 of the Dutch Works Councils Act

Any entrepreneur carrying on an enterprise [...] shall, in the interests of [...] establish a Works Council in order to ensure the proper consultation and representation of the persons working in the enterprise [...].

In other words, the Works Council's main task is to act on behalf of and represent in consultations the people within the organisation that elected the Works Council. This is the main idea behind the Works Councils Act. A Works Council adds value to an organisation by effectively performing these two tasks. Together the members of the Works Council have to work out how to do this.

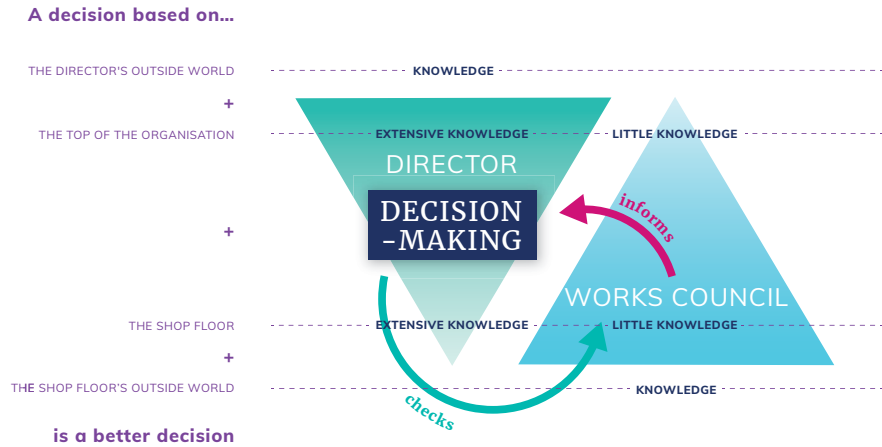
Essential input of knowledge

Articles 6 and 9 of the WOR tell you that you can be elected to represent the people who work for the organisation. Unfortunately, the Act isn't as clear on how you do this once you've been elected. At Atim we believe that, to make good decisions, the decision-makers within an organisation need good information. And this means information that is as complete as possible. This is where the Works Council plays an essential role. Because the Works Council has direct access to knowledge that is not or only partly known at the top of the organisation, and that is the information on 'the shop floor'. Communicating this knowledge as clearly as possible during consultations with the Executive Board and incorporating it in sound advice and votes of assent is what we believe is involved in effectively representing the people who elected you.

A successful three-way relationship

The management is responsible for the decisions made within the organisation. A successful three-way relationship between the Works Council, the workers and the management enables the management to fulfil its responsibility more effectively. This idea is illustrated in Figure 1.

Figure 1.



Directors are generally well informed about matters at the top of the organisation, such as finance, organisational structure and policy. They often know far less about matters at the bottom of the company on the shop floor. But, being the Works Council, you have access to this source of knowledge. An effective Works Council can inform the management about the issues that concern the employees, where their interests lie and what effect company policy is having on the shop floor. To do this you need to be able to describe the employees' actual experiences and observations without implying assumptions and conclusions. For example, stating that 'employees have many complaints about HR' provides factual information, whereas saying that 'HR is performing poorly' expresses a personal conclusion.

A Works Council that is on its toes will also check that the information it has provided is properly taken into account in the decision-making. A realistic Works Council knows that while the interest of the employees is important, it is not the only interest. In some situations other interests

may be the determining factor in a decision. If so, the director with the mandate to consult with the Works Council must be able to provide the Works Council with a clear explanation.

A game that is engaging for everyone

At Atim we believe that, to effectively represent those who elected it, the Works Council needs to be guided by the ideas we have presented in taking action and adopting positions. The other articles of the WOR serve as a guide. They describe the facilities, and powers and agreements that have been put in place to enable you to perform your tasks as a representative as effectively as possible. All Works Councils have to agree rules of procedure (at the outset) so their performance can be monitored.

But the WOR also gives Works Councils plenty of scope to operate as they see fit. So, again, we'd like to remind you of our advice: when studying the rules, try to understand the 'why'. This will enable you to make clear agreements with each other. And that will make the game more engaging for everyone!

~ Atim

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I General provisions

Article 1

1 For the purposes of this Act, the terms given below shall have the following meanings:

a Our Minister: Our Minister of Social Affairs and Employment;

b The Council (SER): The Social and Economic Council of the Netherlands, as mentioned in the Organisation of Business and Industry Act [Wet op de bedrijfsorganisatie];

c Enterprise: Any organisation operating in the community as an independent entity in which work is performed on the basis of a private-law or public-law employment contract;

d Entrepreneur: Any natural person or legal person carrying on an enterprise;

e Director: An individual who, alone or jointly with others, exercises the highest direct authority in managing work within an enterprise;

f Joint Sectoral Committee [Bedrijfscommissie]: the authorised Joint Sectoral Committee, as mentioned in Articles 37, 43 and 46.

2 For the purposes of this Act, persons shall be deemed to be working in an enterprise if they are engaged in work there on the basis of either a public-law employment contract or on the basis of an employment contract with the entrepreneur carrying on the enterprise. Persons working in more than one enterprise operated by the same entrepreneur shall be deemed to be working in the enterprise from which their work is managed.

3 For the purposes of this Act, the following persons shall also be deemed to be persons working in an enterprise:

a Anyone who, in the context of the activities of an enterprise, have been working for the said enterprise for at least 15 months on the basis of a contract with a temporary employment agency [uitzendovereenkomst], as defined in the Dutch Civil Code [Burgerlijk Wetboek], Book 7.10, Article 690;

b Anyone working for an entrepreneur, either on the basis of a public-law employment contract or on the basis of an employment contract with the said entrepreneur, within an enterprise being carried on by a different entrepreneur.

4 For the purposes of this Act, the director or directors of an enterprise shall not be deemed to be persons working in the enterprise.

II The establishment of a Works Council

Article 2

1 Any entrepreneur carrying on an enterprise in which normally at least 50 persons are working shall, in the interests of the proper functioning of the enterprise with respect to all its objectives, establish a Works Council in order to ensure the proper consultation and representation of the persons working in the enterprise, and in order to be able to comply with any requirements of or pursuant to this Act that relate to the said Works Council.

2 If, at any time subsequent to the establishment of a Works Council, there are normally fewer than 50 persons working in the enterprise, the Works Council shall

automatically cease to exist upon the expiry of its current term of office, unless the entrepreneur implements Article 5a, paragraph (2).

Article 3

1 Any entrepreneur carrying on two or more enterprises in which, jointly, normally at least 50 persons are working shall establish a Joint Works Council for one or more of these enterprises if this is in the interests of the proper implementation of this Act within the enterprises concerned.

2 Paragraph (1) shall also apply mutatis mutandis to any group of associated entrepreneurs carrying on two or more enterprises in which, jointly, normally at least 50 persons are working. The entrepreneurs concerned shall designate one of their number to act on their behalf as entrepreneur for the purposes of this Act in dealings with the Joint Works Council.

3 Any enterprises for which a Joint Works Council is established shall be deemed to be a single enterprise for the purposes of this Act.

Article 4

1 Any entrepreneur carrying on an enterprise in which normally at least 50 persons are working shall establish a separate Works Council for part of that enterprise if this is in the interests of the proper implementation of this Act within the enterprise.

2 Any part of an enterprise for which a separate Works Council is established shall be deemed to be an enterprise for the purposes of this Act.

Article 5

1 If exceptional circumstances prevent the

proper implementation of the Act within a given enterprise, the Council (SER) may, at the request of the entrepreneur carrying on the enterprise in question, grant the entrepreneur, for a maximum period of five years, written exemption from the obligation to establish a Works Council. The Council (SER) can only grant such an exemption if the entrepreneur has taken steps to ensure compliance with paragraphs (7) and (8) regarding the information provided to and the consultation with employees on the matters mentioned in paragraph (6).

2 The Council (SER) shall make it possible for employees' organisations, as mentioned in Article 9, paragraph (2) (a), to express their views on the request for exemption.

3 The Council (SER) may attach conditions to any exemption.

4 The obligation mentioned in Article 2, paragraph (1), shall not apply until an irrevocable decision has been passed concerning the request for exemption.

5 For the purposes of this Article, the terms given below shall have the following meanings:

a Information: The provision of information and data by the entrepreneur to the employees so that they can acquaint themselves with the subject matter and scrutinise it;

b Consultation: The exchange of ideas and the creation of a dialogue between employees and the entrepreneur.

6 Information and consultation shall comprise:

a Information on recent and likely developments relating to the activities and economic state of the enterprise;

b Information and consultation relating to

the state, structure and likely developments of the job situation within the company, as well as any measures planned to pre-empt such developments, particularly in respect of any circumstances posing a threat to employment;

c Information and consultation concerning decisions that may entail substantial changes in either the way work is organised or in employment contracts.

7 The nature of the information provided, as well as the time and manner in which it is provided, should be such that employees can adequately study the information and, if necessary, prepare for the consultation.

8 Consultation shall take place:

a At an appropriate time, using appropriate means and in respect of appropriate subject matter;

b At a level of management and representation appropriate to the subject to be discussed;

c On the basis of the information to be provided by the entrepreneur and any advice provided by the employees;

d In such a way that the employees can meet the entrepreneur to hear the entrepreneur's response to their advice and the grounds upon which that response was arrived at;

e With the aim of achieving agreement on those decisions mentioned in paragraph (6) (c), that lie within the power of the entrepreneur to take.

Article 5a

1 All requirements of or pursuant to this Act shall also apply to any entrepreneur who is obliged, pursuant to a collective labour agreement or an arrangement relating

to terms of employment laid down by a body under public law, to establish a Works Council for an enterprise which he carries on. If the said collective labour agreement or arrangement relating to terms of employment laid down by a body under public law ceases to oblige the entrepreneur to establish a Works Council, the said Works Council shall automatically cease to exist upon the expiry of its current period of office, unless the entrepreneur implements paragraph (2).

2 An entrepreneur who is not, or is no longer, under any obligation to establish or maintain a Works Council may nonetheless decide to do so, at his discretion. The stipulations of this Act shall then apply as of the moment that the entrepreneur gives written notification of any such decision to the Joint Sectoral Committee. If circumstances change materially, the entrepreneur may dissolve the said Works Council at the end of its then current term of office. The entrepreneur shall inform the Joint Sectoral Committee in writing of any decision to dissolve the Works Council.

III Composition of the Works Council and procedures

Article 6

1 The members of a Works Council shall be directly elected by the persons working in the enterprise from their own ranks. In an enterprise:

- with fewer than 50 persons, there shall be 3 members;

- with 50 to 100 persons, there shall be 5 members;

- with 100 to 200 persons, there shall be 7 members;

- with 200 to 400 persons, there shall be 9 members;

- with 400 to 600 persons, there shall be 11 members;

- with 600 to 1000 persons, there shall be 13 members;

- with 1000 to 2000 persons, there shall be 15 members;

and so forth, with an additional 2 members for every further 1,000 persons, up to a maximum of 25 members. In its Rules of Procedure [reglement], the Works Council may, with the permission of the entrepreneur, decide upon a different number of members and may also decide to elect a deputy for one or more members of the Works Council. Deputy Works Council members shall enjoy the same rights and obligations as the members for whom they deputise.

2 Persons who have been working in the enterprise for at least 3 months shall be eligible to vote.

3 Persons who have been working in the enterprise for at least 3 months shall be eligible to stand for election.

4 If the entrepreneur and the Works Council consider that it will be in the interests of the proper implementation of this Act in the enterprise, they may jointly designate as persons working in the enterprise one or more groups of persons who regularly perform work in the enterprise but whose status in this regard is not provided for in any employment contract with the entrepreneur or in any public-law employment contract. The entrepreneur and the Works Council may jointly mutatis mutandis cease to designate one or more groups of such persons as

persons working in the enterprise. If the Works Council and the entrepreneur fail to agree, either party may request the judge of the sub-district sector [kantonrechter] to decide in the matter.

5 The Works Council may incorporate into its Rules of Procedure regulations that differ from those in paragraphs (2) and (3) with regard to period of service with the enterprise if this is in the interests of the proper implementation of this Act within the enterprise.

6 The number of members of the Works Council may not be changed during the term of office of the Works Council on the grounds of any increase or reduction in the number of persons working in the enterprise.

Article 7

The Works Council shall elect a chairman and one or more deputy chairmen from its number. The chairman, or in the chairman's absence, a deputy chairman, shall be the legal representative of the Works Council

Article 8

1 The Works Council shall draw up Rules of Procedure covering matters which in or pursuant to this Act are entrusted to it or left to it for regulation. The said Rules of Procedure shall contain no stipulations which conflict with the Act or which hinder the proper implementation of the Act. Prior to approving its Rules of Procedure, the Works Council shall give the entrepreneur an opportunity to express his views. The Works Council shall immediately provide the entrepreneur with a copy of its Rules of Procedure.

2 With regard to the contents of the Rules of Procedure, the Council (SER) may establish further regulations by decree for all enterprises

or for a group of enterprises. In the latter case, the relevant Joint Sectoral Committee shall be heard. A decree from the Council (SER) shall require the approval of Our Minister. Any such approval shall be published in the Government Gazette [Staatscourant].

3 If the Council issues a decree as mentioned in paragraph (2), the Works Councils affected shall, within twelve months of the publication of the approved decree in the Government Gazette, amend any provisions in their Rules of Procedure in conflict with the decree so as to comply with it.

Article 9

1 Members of the Works Council shall be elected by secret written ballot from one or more lists of candidates.

2 A list of candidates may be submitted by: a Any employees' organisation whose membership includes persons working in the enterprise who are eligible to vote, whose object according to its Articles of Association is to protect the interests of its members as employees and which operates as such in the relevant enterprise or industrial sector, and which moreover has had full legal competence for at least two years, provided that it has consulted its members in the enterprise on the composition of the list of candidates. In determining whether the organisation meets the requirement of two years' full legal competence, in the case of an organisation that, pursuant to its Articles of Association, may be considered the continuation of one or more other employees' organisations having full legal competence, account shall be taken of the period of the full legal competence of the said organisation or organisations.

b Any person (or group of persons) working in the enterprise who is eligible to vote but who is not a member of an organisation as mentioned in (a) that has submitted a list of candidates.

3 The Works Council may stipulate in its Rules of Procedure that, for certain groups of persons working in the enterprise or for certain parts of the enterprise, separate lists of candidates shall be submitted from which the said persons or parts are to elect the number of Works Council members specified in the Rules of Procedure. If the Works Council exercises this power, the requirements laid down in paragraph (2) regarding the submission of lists of candidates shall apply separately to every group or part so designated.

4 The Works Council shall, if this is in the interests of the proper implementation of this Act in the enterprise, include provisions in its Rules of Procedure to ensure that the various groups of persons working in the enterprise are represented in the Works Council as fully as possible.

Article 10

The Works Council shall lay down additional rules in its Rules of Procedure relating to candidature, elections and the determination of election results, and to the filling of interim vacancies in the Works Council.

Article 11

1 The Works Council shall ensure that the entrepreneur, the persons working in the enterprise and those who have submitted lists of candidates are notified of the results of the elections.

2 It shall ensure that the names and positions held in the enterprise by the

members of the Works Council are permanently on display in a place freely accessible to all persons working in the enterprise and are presented clearly.

Article 12

1 The members of the Works Council shall all resign simultaneously every three years. They shall be immediately eligible for re-election.

2 The Works Council may lay down in its Rules of Procedure that, contrary to paragraph (1), the members shall all resign simultaneously every two years or every four years, or that half their number shall resign every two years. The Works Council may also impose limitations regarding eligibility for re-election.

3 The term of office of a member of the Works Council shall terminate automatically when the said member ceases to be a person working in the enterprise.

4 Members of the Works Council may resign their membership at any time. They shall notify the Chairman and the entrepreneur in writing of any such resignation.

5 Anyone filling an interim vacancy shall resign at the time at which the person being replaced would have been required to resign.

Article 13

1 At the request of the entrepreneur or the Works Council, the judge of the sub-district sector may bar a Works Council member from participating in the activities of the Works Council, the duration of the bar being at the sub-district court judge's discretion. Any such request may only be made by the entrepreneur on the grounds that the Works Council member in question is seriously hindering consultation meetings between the

Works Council and the entrepreneur, or by the Works Council on the grounds that the party in question is seriously hindering the work of the Works Council.

2 Prior to the submission of any request, the party who is the subject of the request shall be given an opportunity to express his views on the matter. The entrepreneur and the Works Council shall notify each other if they submit any such request as mentioned in paragraph (1).

Article 14

1 The Works Council shall establish Rules of Procedure to govern its proceedings.

2 The Rules of Procedure shall contain provisions regulating at least the following matters:

- a The occasions upon which the Works Council shall meet for the purposes of performing its duties;
- b The manner in which Works Council meetings are to be convened;
- c The number of members present constituting a quorum;
- d The ways in which the right to vote at meetings may be exercised;
- e The provision of a secretariat;
- f The manner in which the agenda for Works Council meetings is to be drawn up and the manner in which the entrepreneur, the members of the Works Council and other persons working in the enterprise are to be notified of it;
- g The latest date upon which the entrepreneur, the members of the Works Council and the other persons working in the enterprise are to be notified of the agenda, this date being, except in the case of urgent matters, at least 7 days before the meeting;

h The taking of the minutes of Works Council meetings and the drawing up of the annual report of the Works Council, and the manner in which these are to be made available to the entrepreneur, the members of the Works Council and the other persons working in the enterprise.

Article 15

1 The Works Council may set up any committees which the Works Council may reasonably be deemed to require in order to perform its duties. The Works Council shall notify the entrepreneur in writing of its intention to set up any such committee, stating the duties, composition and powers of the committee and the procedures it is to follow. If the entrepreneur objects, the Works Council may request the judge of the sub-district sector to decide on the matter.

2 The Works Council may, with due observance of paragraph (1), set up permanent committees to deal with subjects designated by it. Next to one or more members of the works council, persons working in the company can also be a member of a permanent committee. In the resolution setting up a permanent committee the works council may transfer all or part of its rights and powers regarding the subjects designated by it, with the exception of the power to institute legal proceedings, to the committee concerned if the majority of the committee members are members of the works council.

3 The Works Council may, with due observance of paragraph (1), set up committees for parts of the enterprise to deal with matters concerning the said parts of the enterprise.

In its decision to set up any such committee, the Works Council may grant the committee power to consult with the manager of the relevant part of the enterprise. In that case, the rights and powers of the Works Council with respect to matters relating to the said part of the enterprise shall, unless the Works Council itself decides to take action on a particular matter, be transferred to the committee, with the exception of its power to institute legal proceedings. At least one member of such a committee shall be a member of the Works Council.

All other members shall be persons working in the part of the enterprise in question.

4 The Works Council may, with due observance of paragraph (1), set up committees to prepare matters to be dealt with by the Works Council. Such preparatory committees may not exercise any powers or rights belonging to the Works Council. A preparatory committee may only be set up for a limited period of time, to be specified by the Works Council in its decision to set up the committee in question. At least one member of such a committee shall be a member of the Works Council. Other members of the committee may be persons working in the enterprise who are not members of the Works Council.

5 Article 13 shall apply mutatis mutandis to members of Works Council committees who are not members of the Works Council.

Article 16

1 The Works Council may invite one or more experts to attend a Works Council meeting in connection with the discussion of a particular subject. Such invitations may also be extended to one or more directors of

the enterprise or to one or more persons as mentioned in Article 24, paragraph (2).

2 At the meeting, members of the Works Council may ask the persons mentioned in paragraph (1) for information and advice.

3 An expert may also be invited to submit advice in writing.

4 The above paragraphs shall apply mutatis mutandis to Works Council committees.

Article 17

1 The entrepreneur shall allow the Works Council, its committees and, if the entrepreneur has established the post of secretary to the Works Council, the secretary to the Works Council to use any facilities that he may have at his disposal in his capacity as entrepreneur and which the Works Council and its committees may reasonably be deemed to require in order to perform their duties. 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.

2 The Works Council and its committees shall as far as possible hold their meetings during normal working hours.

3 Members of the Works Council and members of Works Council committees shall retain their entitlement to full pay or remuneration for the time during which they do not perform the work specified in their employment contract owing to their attendance at a meeting of the Works Council or one of its committees.

Article 18

1 For a specified total number of hours per year, to be agreed upon jointly by the Works Council and the entrepreneur, the entrepreneur shall give members of the Works Council and its committees an opportunity during working hours and with full pay or remuneration to meet in mutual consultation and to consult with other persons on matters relating to the performance of their duties and for the purposes of acquainting themselves with the working conditions in the enterprise.

2 For a certain number of days per year, to be agreed upon jointly by the Works Council and the entrepreneur, the entrepreneur shall give members of the Works Council and its standing committees and committees for parts of the enterprise as mentioned in Article 15, paragraphs (2) and (3) respectively, an opportunity during working hours and with full pay or remuneration to undergo any training and development of sufficient quality which they deem necessary to enable them to perform their duties.

3 The entrepreneur and the Works Council shall set the number of hours, as mentioned in paragraph (1), and the number of days, as mentioned in paragraph (2), at a total which may be deemed to be reasonable in order to enable members of the Works Council and its committees to perform their duties, with the proviso that the total number of hours shall be at least sixty per year and the total number of days shall be as follows:

a For a member of one of the committees mentioned in paragraph (2) who is not also a member of the Works Council, at least three days per year;

b For a member of the Works Council who is not a member of a committee mentioned in

paragraph (2), at least five days per year; and
 c For a member of the Works Council who is also a member of a committee, at least eight days per year.

4 The Works Council, or any member of the Works Council or any of its committees, may request the judge of the sub-district sector to rule that the entrepreneur must comply with the provisions of paragraphs (1), (2) and (3).

Article 19

(No longer in force)

Article 20

1 Members of the Works Council and members of its committees, as well as any experts consulted in accordance with Article 16, shall treat all business and industrial secrets which may come to their knowledge in the said capacity in strict confidence, and also all matters with respect to which the entrepreneur, the Works Council or the relevant Works Council committee has imposed an obligation of confidentiality, or whose confidential nature they may be expected to understand on account of an obligation of confidentiality being imposed. Any intention to impose an obligation of confidentiality should, where possible, be announced before the matter in question is dealt with. The party imposing the obligation of confidentiality shall also at the same time give notice of which oral or written information is to be subject to the obligation, how long the obligation is to last and whether there are any parties with respect to whom the obligation need not be observed.

2 Paragraph (1) shall apply mutatis mutandis to the staff of the secretariat of the Works Council or any Works Council committee.

3 The obligation mentioned in paragraph (1) shall not apply to anyone instructed by the courts to investigate the conduct of affairs in the enterprise.

4 The obligation mentioned in paragraph (1) shall also not apply to any person approached for consultation by a member of the Works Council or by a member of a Works Council committee, provided that the entrepreneur or the party imposing the obligation of confidentiality has given prior approval for the consultation meeting with the said person and that the latter has given a written undertaking to observe confidentiality regarding the matter in question. In that case, paragraph (1) shall apply mutatis mutandis to the said person.

5 In the event that the entrepreneur or the person who has imposed the obligation of confidentiality refuses to give the approval mentioned in the previous paragraph, he shall state the grounds upon which such refusal is based.

6 The obligation of confidentiality shall not end upon termination of membership of the Works Council or the relevant Works Council committee, nor when the person in question ceases to work in the enterprise.

7 The Works Council as a whole, each member of the Works Council or of any committee of the Works Council, any expert consulted pursuant to Article 16, or any person appointed to provide secretarial support to the Works Council or to any committee of the Works Council may request the judge of the sub-district sector to lift any obligation to confidentiality imposed, on the grounds that, in considering the interests of those involved, the entrepreneur's decision to impose confidentiality was unreasonable.

Article 21

The entrepreneur shall ensure that no person working in the enterprise whose name appears or has appeared on a list of candidates as mentioned in Article 9 or who is or has been a member of the Works Council or one of its committees is placed at any disadvantage with respect to his or her position in the enterprise on the grounds of any candidature for or membership of the Works Council or a Works Council committee. If the entrepreneur has established the post of secretary to the Works Council, the first sentence of this paragraph shall also apply to the person holding that post. The first sentence of this paragraph shall also apply to anyone who takes or took the initiative to establish a Works Council. The Works Council, as well as each person working in the enterprise as mentioned in the first three sentences of this paragraph, may request the judge of the sub-district sector to rule that the entrepreneur must comply with the provisions mentioned in the first three sentences of this paragraph. With regard to persons working in the enterprise on the basis of a public-law employment contract, a different court shall act instead of the judge of the sub-district sector.

Article 22

1 Any costs incurred which may reasonably be deemed necessary for the Works Council and its committees to be able to perform their duties shall be borne by the entrepreneur.

2 With due observance of paragraph (1), any costs incurred by the Works Council or its committees in consulting experts, in accordance with the provisions of Article 16 and Article 23a, paragraph (6), and any costs

incurred by the Works Council in bringing legal proceedings shall only be borne by the entrepreneur if he has been notified in advance that the said costs will be incurred. The preceding sentence shall not apply if paragraph (4) has been implemented.

3 With due observance of paragraph (1), the costs of the training and development mentioned in Article 18 (2) shall be for the account of the entrepreneur. The Council (SER) may establish guideline amounts for various costs relating to training and development.

4 In agreement with the Works Council, the entrepreneur may set a sum for the total costs that may be incurred by the Works Council and its committees in any one year, insofar as these costs are not incurred in consequence of the provisions of Article 17 and Article 18, paragraph (1), which sum the Works Council may spend at its own discretion. Any costs in excess of this sum shall be borne by the entrepreneur only insofar as he consents to bear them.

Article 22a

The Works Council may not be ordered to pay the costs of any legal proceedings between the entrepreneur and the Works Council.

IV Consultation with the Works Council

Article 23

1 The entrepreneur and the Works Council shall meet within 14 days of either party having submitted a request for a consultation meeting to be held and having stated the

reasons for desiring such a meeting.

2 Consultation meetings as mentioned in paragraph (1) shall deal with matters relating to the enterprise concerning which either the entrepreneur or the Works Council considers a consultation meeting desirable or concerning which a consultation meeting between the entrepreneur and the Works Council is required by or pursuant to this Act. The Works Council may submit proposals concerning the aforesaid matters and present its views. Matters relating to the enterprise shall not include issues of policy relating to any duty under public law, or matters concerning the performance thereof, which are assigned to the entrepreneur by or pursuant to statutory regulation, except insofar as the said performance affects the work of the persons working in the enterprise.

3 The Works Council may also submit proposals to the entrepreneur regarding the matters mentioned in paragraph (2) outside the consultation meetings. Any such proposal shall be submitted to the entrepreneur in writing and be accompanied by explanatory notes. The entrepreneur shall not take a decision on the proposal until it has been discussed at least once at a consultation meeting. As soon as possible after the said consultation meeting, the entrepreneur shall inform the Works Council by notice in writing as to whether he accepts the proposal, and if so, to what extent, stating also the grounds upon which the decision is based.

4 Consultations shall be conducted on behalf of the entrepreneur by the director of the enterprise. If the enterprise has more than one director, the directors shall decide jointly which of them is to conduct consultations with

the Works Council.

5 The director mentioned in paragraph (4) may allow one of his codirectors to deputise for him with regard to a particular subject or if he is unable to attend. If the management of the enterprise consists of only one director and he is unable to attend, he may arrange to be replaced by a person as mentioned in Article 24, paragraph (2), or by a person working in the enterprise who has been authorised to conduct consultations with the Works Council on behalf of the entrepreneur.

6 The director or the person deputising for him may receive assistance during consultation meetings from one or more co-directors, from persons as mentioned in Article 24, paragraph (2), or from persons working in the enterprise.

Article 23a

1 A consultation meeting may be held only if the provisions governing the holding of Works Council meetings set out in the Rules of Procedure of the Works Council have been satisfied in respect of the Works Council. All members of the Works Council may speak at the meeting.

2 Unless the entrepreneur and the Works Council jointly agree otherwise, the consultation meeting shall be chaired alternately by the director or his deputy in accordance with Article 23, paragraph (5), and the chairman or deputy chairman of the Works Council.

3 The secretary to the Works Council shall act as secretary to the consultation meeting unless the entrepreneur and the Works Council jointly appoint a different person as secretary.

4 The agenda of the consultation meeting

shall consist of items submitted to the secretary by the entrepreneur or the Works Council. The minutes of the consultation meeting shall require the approval of the entrepreneur and the Works Council.

5 The entrepreneur and the Works Council shall make joint arrangements governing the procedures to be followed at consultation meetings, and the time at which and the manner in which the agenda and the minutes of the consultation meeting are to be made available to the persons working in the enterprise.

6 Articles 17 and 22 shall apply mutatis mutandis to consultation meetings. Both the Works Council and the entrepreneur may invite one or more experts to attend a consultation meeting, provided that this may reasonably be deemed necessary for the proper treatment of a given matter. The parties shall notify each other in good time if they intend to issue any such invitation.

Article 23b

1 Decisions may be made by both the entrepreneur and the Works Council during a consultation meeting.

2 The chairman shall adjourn a consultation meeting if either the entrepreneur or the Works Council considers it desirable to deliberate separately on a particular matter.

Article 23c

If the Works Council grants authority to a committee relating to a part of the enterprise to consult with the manager of the relevant part of the enterprise, the provisions of the following articles shall apply to such consultation meetings: 17; 22; 23; 23a, paragraphs (2), (4) and (6); 23b; 24,

paragraph (1); 25; 27; 28; 31a, paragraphs (1), (6) and (7); 31b; and 31c. The said consultation meetings shall not deal with any matters dealt with in consultation meetings with the Works Council.

Article 24

1 The general operation of the enterprise shall be discussed at least twice a year in consultation meetings. The entrepreneur shall inform the said meetings about any decisions he is considering relating to the matters mentioned in Articles 25 and 27. At the meetings, agreement will also be made about when and how the Works Council will be involved in the decision-making process.

2 If the enterprise is carried on by a public limited company [naamloze vennootschap], a private limited company [besloten vennootschap met beperkte aansprakelijkheid], a cooperative [coöperatie] or a mutual insurance association [onderlinge waarborgmaatschappij], the company's Supervisory Directors, if any, or one or more representatives from their number shall be present at the meetings mentioned in paragraph (1). If at least half the shares of the company are held directly or indirectly by another company for its own account, the aforementioned obligation shall rest on the Directors of the last-mentioned company or one or more representatives designated by them. If the enterprise is carried on by an association or a foundation [stichting], the members of the Executive Committee of the association or foundation or one or more representatives from their number shall be present. The Works Council may decide in particular cases that this paragraph need not be applied.

3 The provisions of paragraph (2) shall not apply to an enterprise carried on by an entrepreneur who carries on at least five enterprises for which a Works Council has been established to which the provisions of this Act pertain, or by an entrepreneur forming part of a group of associated entrepreneurs who have jointly established at least five Works Councils to which the provisions of this Act pertain.

IV-A Special powers of the Works Council

Article 25

1 The entrepreneur shall give the Works Council an opportunity to render advice on any decision he proposes to make with regard to:

- a Transfer of control of the enterprise or any part thereof;
- b The establishment, take-over or relinquishment of control of another enterprise, or entering into, making a major modification to or severing a continuing collaboration with another enterprise, including the entering into, effecting of major changes to or severing of an important financial holding on account of or for the benefit of such an enterprise;
- c Termination of operations of the enterprise or a significant part thereof;
- d Any significant reduction, expansion or other change in the enterprise's activities;
- e Major changes to the organisation or to the distribution of powers within the enterprise;

- f Any change in the location of the enterprise's operations;
 - g Recruitment or borrowing of labour on a group basis;
 - h Making major investments on behalf of the enterprise;
 - i Taking out major loans for the enterprise;
 - j Granting substantial credit to or giving security for substantial debts of another entrepreneur, unless this is normal practice and part of the activities of the enterprise;
 - k The introduction or alteration of an important technological provision;
 - l Taking an important measure regarding the management of the natural environment by the enterprise, including the taking or changing of policy-related, organisational or administrative measures relating to the natural environment;
 - m Adopting a provision relating to the bearing of the risk mentioned in Article 40, introductory words and paragraph (1) (a-c) of the Social Insurance Funding Act [Wet financiering sociale verzekeringen];
 - n Commissioning an expert from outside the enterprise to advise on any of the matters referred to above and formulating his terms of reference. Provisions (b) and (n), insofar as the latter relates to a matter mentioned in (b), shall not apply if the other enterprise is established or is being established abroad and the proposed decision cannot reasonably be expected to lead to a decision as mentioned in (c) to (f) concerning an enterprise being carried on by the entrepreneur in the Netherlands.
- 2** The entrepreneur shall submit the proposed decision in writing to the Works Council for its advice. This advice shall be requested at a time when it can still

significantly affect the decision to be taken.

3 When its advice is being sought, the Works Council shall be furnished with a summary of the grounds for the decision, its expected consequences for persons working in the enterprise and the measures proposed for dealing with such consequences.

4 The Works Council shall not render advice on a proposed decision as mentioned in paragraph (1) until the matter in question has been considered at least once in a consultation meeting. Article 24, paragraph (2), shall apply mutatis mutandis to the discussion of the proposed decision at the consultation meeting.

5 If a decision mentioned in paragraph (1) is taken, advice having first been given by the Works Council, the entrepreneur shall, as soon as possible, send the Works Council written notification of the decision. If the Works Council's advice has not been followed or only partially so, the Works Council shall also be informed of the reasons for this. To the extent that the Works Council has not already given its advice on the implementation of the decision, its advice shall also be sought on such implementation.

6 Unless the entrepreneur's decision accords with the advice of the Works Council, the entrepreneur shall postpone implementation of the decision until one month after the day upon which the Works Council was notified of the decision. This obligation shall lapse if the Works Council gives notice to that effect.

Article 26

1 The Works Council may lodge an appeal with the Enterprise Section [Ondernemingskamer] of the Amsterdam Court of Appeal [Gerechtshof] against a

decision by an entrepreneur as mentioned in Article 25, paragraph (5), either if the decision does not accord with the advice of the Works Council or if facts or circumstances have become known which, if they had been known to the Works Council at the time of rendering its advice, could have been grounds for not rendering the advice as rendered.

2 Appeals shall be lodged by petition within a month of the Works Council being informed of the decision mentioned in paragraph (1).

3 The entrepreneur shall be informed of any appeal that is lodged.

4 Appeals may be lodged only on the grounds that the entrepreneur, in weighing the interests involved, could not in all fairness have arrived at the said decision.

5 The Enterprise Section shall deal with the petition with the utmost urgency. Before giving its ruling, it may, in its official capacity, take evidence from experts as well as from persons working in the enterprise. If the Enterprise Section grants the appeal, it shall declare that in weighing the interests involved, the entrepreneur could not in all fairness have arrived at the said decision. It may, if the Works Council has so requested, also take one or more of the following measures:

- a Order the entrepreneur to rescind his decision in whole or in part, and to reverse specified consequences of the decision;
- b Prohibit the entrepreneur from performing certain actions or causing them to be performed in implementation of the decision or parts thereof. No measures taken by the Enterprise Section may infringe any rights acquired by third parties.

6 Any failure to comply with or any violation of a prohibition as mentioned in paragraph (5) is forbidden.

7 If both parties so request, or if the entrepreneur undertakes to rescind or modify the decision against which an appeal has been lodged or to reverse certain consequences of the decision, the Enterprise Section may for a period of its own specification defer judgement on a petition for measures to be taken.

8 Following the submission of a petition, the Enterprise Section may take provisional measures, if necessary without delay.

Paragraph (5), sentences four and five, and paragraph (6) shall apply mutatis mutandis.

9 Appeals against a decree by the Enterprise Section may be lodged only with the Supreme Court [Hoge Raad].

Article 27

1 The endorsement of the Works Council shall be required for every proposed decision on the part of the entrepreneur to lay down, amend or withdraw:

- a Any regulation relating to a pension insurance scheme, a profitsharing scheme or a savings scheme;
- b Regulations relating to working hours and rest periods or holidays;
- c Pay or job-grading systems;
- d Regulations relating to working conditions, sick leave or reintegration;
- e Regulations relating to policy on appointments, dismissals or promotion;
- f Regulations relating to staff training;
- g Regulations relating to staff appraisals;
- h Regulations relating to industrial social work;
- i Regulations relating to job coordination meetings;
- j Regulations relating to complaints procedures;

k Regulations relating to the handling and protection of personal information of persons working in the enterprise;

l Regulations relating to measures aimed at or suitable for monitoring or checking the attendance, behaviour or performance of persons working in the enterprise; all the above matters being insofar as they relate to all the persons working in the enterprise or any group thereof.

m A procedure for dealing with a report of suspected abuse, as mentioned in Article 2, paragraph (1) of the Whistleblowers Authority Act [Wet Huis voor klokkenluiders];

all the above matters being insofar as they relate to all the persons working in the enterprise or any group thereof.

2 The entrepreneur shall submit his proposed decision in writing to the Works Council. In addition, he shall present a summary of his reasons for the decision, as well as the consequences that the decision is expected to have for persons working in the enterprise. The Works Council shall not take a definitive standpoint on the matter in question until it has been discussed at least once in a consultation meeting. After the consultation meeting, the Works Council shall as soon as possible notify the entrepreneur in writing of its standpoint and the grounds on which that standpoint is based. After the Works Council has made its standpoint known, the entrepreneur shall notify the Works Council in writing of the decision he has taken and the date upon which the said decision will take effect. **3** The obligation mentioned in paragraph (1) shall not apply if and insofar as the matter in question has already been regulated for the enterprise in a collective

labour agreement or in an arrangement relating to terms of employment laid down by a body under public law.

4 If the Works Council declines to endorse the entrepreneur's proposed decision, the entrepreneur may ask the judge of the sub-district sector to rule on the matter. The judge of the sub-district sector shall

only grant permission for the decision to be implemented if the Works Council's refusal to endorse the decision is unreasonable or if the entrepreneur's proposed decision is required for important organisational, economic or social reasons relating to the enterprise.

5 Any decision as mentioned in paragraph (1) taken without the endorsement of the Works Council or the permission of the judge of the sub-district sector shall be invalid if the Works Council submits a written appeal to the entrepreneur against the decision on the grounds of invalidity within one month of either the entrepreneur having notified the Works Council of the decision in accordance with the last sentence of paragraph (2) or, in the absence of such notification, of the Works Council having discovered that the entrepreneur has implemented or applied the decision.

6 The Works Council may request the judge of the sub-district sector to order the entrepreneur to refrain from any actions which would involve implementing or applying an invalid decision as mentioned in paragraph (5). The entrepreneur may request the judge of the sub-district sector to declare that the Works Council's appeal against the decision on the grounds of invalidity, as mentioned in paragraph (5), is unfounded.

7 The endorsement of the Works Council

shall be required for every proposed decision on the part of the entrepreneur to lay down or withdraw:

- a A pension agreement allocated to an enterprise pension fund as mentioned in Article 1 of the Pension Act;
- b A pension agreement allocated to a non-obligatory sectoral pension fund;
- c A pension agreement allocated to an obligatory sectoral pension fund as mentioned in Article 1 of the Pension Act, for the part of the pension agreement for which it is not obligatory to be administered by that sectoral pension fund; to the extent that the provisions that have been or will be laid down in the pension agreement are consistent with the provisions that have been or will be laid down in the pension agreements of all persons (or a group of persons) working in the enterprise. Paragraphs (2) to (6) inclusive shall apply mutatis mutandis.

Article 28

1 The Works Council shall do all within its power to ensure due observation of any regulations applying to the enterprise regarding terms of employment and issues of working conditions and working and resting hours of persons working in the enterprise.

2 The Works Council shall also do all within its power to promote the consultative coordination of work activities and the transfer of responsibilities within the enterprise in order that the persons working in the enterprise may be as involved as possible in regulating work in the part of the enterprise in which they work.

3 The Works Council shall guard against discrimination in general within the enterprise, and shall in particular promote the equal

treatment of men and women and the employment of disabled persons and minorities in the enterprise.

4 The Works Council shall do all in its power to promote environmental care on the part of the enterprise, including the taking or changing of policy-related, organisational or administrative measures relating to the natural environment.

Article 29

The Works Council may appoint from its number or elsewhere a number (to be determined by the entrepreneur, but at least half) of the board members of institutions set up by the entrepreneur for the benefit of the persons working in the enterprise, except insofar as by or pursuant to law the management of any such institution is regulated otherwise.

Article 30

1 The entrepreneur shall invite the Works Council to render advice on any proposed decision on the part of the entrepreneur to appoint or dismiss a director of the enterprise.

2 This advice shall be invited at a time when it can still significantly affect the decision to be taken.

3 The entrepreneur shall inform the Works Council of the reasons for his decision and in the event of an appointment shall also provide information on the basis of which the Works Council can form an opinion of the individual in question in relation to his or her future position in the enterprise. Article 25, paragraph (4) and Article 25, paragraph (5), sentences 1 and 2, shall apply mutatis mutandis.

IV-B Informing the Works Council

Article 31

1 If requested to do so, the entrepreneur shall in a timely fashion provide the Works Council and its committees with all the information and data such as they may reasonably be deemed to require in order to perform their duties. The information and data shall, upon request, be provided in writing.

2 At the beginning of every term of office, the entrepreneur shall provide the Works Council with written information on the following matters:

a The legal form of the entrepreneur: if the entrepreneur is not a legal entity under public law, the Articles of Association [statuten] of that legal entity must also be provided;

b If the entrepreneur is a natural person [natuurlijke persoon], a partnership [maatschap] or a partnership without legal form [niet-rechtspersoonlijkheid bezittende vennootschap]: the name and address of the said natural person or the names and addresses of the members of the said partnership or the managing partners of the said partnership without legal form;

c If the entrepreneur is a legal entity: the names and addresses of the members of the Supervisory Board or the Board of Management;

d If the entrepreneur forms part of a group of entrepreneurs: the entrepreneurs forming the group, the power structures linking them, and the names and addresses of those who in consequence of the said power structures are able to exercise actual control over the enterprise;

e Any entrepreneur or institution with whom the entrepreneur, other than by reason of the power structures mentioned under (d), maintains long-term relations of fundamental importance for the continuation of the enterprise, as well as the names and addresses of those who, as a result of such relations, are able to exercise actual control over the entrepreneur;

f The way in which the enterprise is organised, the names and addresses of the directors and other principal managerial staff, and the manner in which powers are distributed among them.

3 Paragraph (2) (d) shall also apply to any entrepreneur forming part of an international group of enterprises. Paragraph (2) (e) shall also apply to any entrepreneur who, other than by reason of the power structures mentioned in the previous sentence, maintains long-term relations with foreign entrepreneurs or organisations.

4 The entrepreneur shall inform the Works Council as soon as possible of any changes occurring in the information specified in paragraph (2).

Article 31a

1 In order to facilitate proper discussion of the general operation of the enterprise, the entrepreneur shall, at least twice a year, provide the Works Council, either orally or in writing, with general information concerning the activities and financial results of the enterprise relating to the preceding period and in particular regarding the matters mentioned in Article 25.

2 In the case of an enterprise operated by a foundation or association as mentioned in Article 360, paragraph (3) of Book 2 of the

Dutch Civil Code, a cooperative, a mutual insurance association, a public limited company or private limited company, the entrepreneur shall submit to the Works Council for the purposes of discussion and as soon as possible after the annual accounts have been drawn up, a copy of the annual accounts and the annual report in Dutch together with the other information required to be attached to these, pursuant to Article 392 of Book 2 of the Dutch Civil Code. The statement that a legal entity is required to make pursuant to Article 362, paragraph (6), last sentence, of Book 2 of the Dutch Civil Code shall be made simultaneously with that made to the general meeting.

3 In the case of an entrepreneur belonging to a group of associated entrepreneurs, if the financial information relating to the said entrepreneur is included in a consolidated annual account as mentioned in Article 405 of Book 2 of the Dutch Civil Code, the entrepreneur shall submit to the Works Council for the purposes of discussion a copy of this consolidated annual account, the annual report and the other information as mentioned in Article 392 of the said Book regarding the legal body that compiled the consolidated annual account. If the financial information relating to such an entrepreneur is not included in a consolidated annual account, the entrepreneur shall instead submit to the Works Council for the purposes of discussion written information that will enable it to gain insight into the joint financial results of the enterprises operated by the said group of entrepreneurs.

4 If the annual accounts of the entrepreneur relate to more than one enterprise, the entrepreneur shall simultaneously submit to

the Works Council written information that will enable it to gain insight into the extent to which the enterprise for which the Works Council was established contributed to the joint financial results of those enterprises by. If a consolidated annual account as mentioned in paragraph (3) is submitted, the above shall apply mutatis mutandis.

5 In the case of an enterprise operated by an entrepreneur to whom paragraph (2) does not apply, the entrepreneur shall submit to the Works Council for the purposes of discussion alternative written information to be designated by Order in Council [Algemene Maatregel van Bestuur, AMvB]. Paragraphs (3) and (4) shall apply mutatis mutandis.

6 At least twice a year, for the purposes of discussing the general operation of the enterprise, the entrepreneur shall inform the Works Council orally or in writing of his expectations with respect to the activities and the financial results of the enterprise in the coming period, in particular with regard to such matters as mentioned in Article 25, and to all investments at home and abroad.

7 If it is the entrepreneur's custom to draw up a long-term plan for the enterprise, or an estimate or a budget for income and expenditure, that plan or estimate or budget, or a summary thereof, shall be submitted with explanatory notes to the Works Council and be included in the discussion. Paragraphs (3) and (4) shall apply mutatis mutandis.

8 If an auditor's report includes a negative opinion as referred to in Section 393(5)(h) of Book 2 of the Burgerlijk Wetboek, the auditor's report shall be sent to the works council by the auditor without delay.

Article 31b

1 At least once a year, for the purposes of discussing the general operation of the enterprise, the entrepreneur shall provide the Works Council with general information in writing concerning the number of persons working in the enterprise, the various groups thereof and their size, and the social policy pursued in respect of the said persons during the preceding year, in particular with regard to the matters mentioned in Articles 27, 28 and 29. This information shall be sufficiently specific in terms of numbers to show the effect various aspects of social policy have had on individual parts of the enterprise and individual job groups.

2 The entrepreneur shall also give notice, orally or in writing, of his expectations with regard to staffing developments in the coming year and of the social policy he will pursue in that year, in particular with regard to the matters mentioned in Articles 27, 28 and 29.

3 At least once a year, partly for the purposes of discussing the general operation of the enterprise, the entrepreneur shall provide the Works Council with general information in writing concerning the number of persons working in the enterprise on the basis of a temporary employment agency contract. At the same time, the entrepreneur shall also give notice, orally or in writing, of his expectations with regard to the number of persons working on the basis of a temporary employment agency contract in the coming year.

Article 31c

The entrepreneur shall notify the Works Council as soon as possible of any intention

on his part to commission an outside expert to make recommendations on any of the matters mentioned in Article 27.

Article 31d

1 At least once a year, as part of the information provided for the purposes of discussing the general operation of the enterprise, the entrepreneur shall provide the Works Council with information in writing concerning the provisions (including the amounts involved) of the schemes and agreements made regarding terms of employment for the various groups of employees within the enterprise.

2 At the same time, the entrepreneur shall also provide information in writing concerning the provisions (including the amounts involved) of the schemes and agreements made regarding terms of employment with the management representing the legal entity, and the total remuneration paid to the supervisory body mentioned in Article 24, paragraph (2).

3 The information to be provided pursuant to paragraphs (1) and (2) shall clearly indicate in percentage terms how the schemes and agreements regarding terms of employment compare to each other and to those of the preceding year.

4 If a group as mentioned in paragraph (1), the management or the supervisory body mentioned in paragraph (2), should consist of fewer than five persons, two or more functions may be combined for the purposes of the application of these paragraphs, so that a group of at least five persons is created.

5 The entrepreneur is obliged to inform the Works Council as soon as possible of any significant changes made to these schemes

and agreements.

6 This Article applies only to enterprises that normally have at least 100 employees.

Article 31e

Article 31 (d) does not apply to:

- a A private limited liability company in which one of the managers or supervisors is a natural person with a direct or indirect interest in the legal entity, pursuant to Article 4.6 of the Income Tax Act 2001 [Wet inkomstenbelasting 2001], or
- b A legal entity to which Article 396 or 397 of Title 9 of Book 2 of the Dutch Civil Code apply.

IV-C Additional powers of the Works Council

Article 32

1 Powers in addition to those mentioned in this Act may be granted to the Works Council or Works Councils of the enterprise or enterprises party to that collective agreement or arrangement by means of a collective labour agreement or an arrangement relating to terms of employment laid down by a body under public law.

2 Powers in addition to those mentioned in this Act may be granted to the Works Council as well as additional stipulations concerning the application of provisions of or pursuant to this Act by means of an agreement in writing between the entrepreneur and the Works Council. The entrepreneur shall send a copy of the agreement to the Joint Sectoral Committee.

3 If, on the basis of this Article, the Works

Council is granted advisory powers or the right to endorse decisions, the advice or endorsement of the Works Council shall not be required insofar as the substance of the matter has already been regulated for the enterprise in a collective labour agreement or in an arrangement relating to terms of employment laid down by a body under public law.

4 If, in such an agreement, the Works Council is granted the right to render advice on or to endorse proposed decisions by the entrepreneur, other than those mentioned in Articles 25 and 27 respectively, then Article 26 and Article 27, paragraphs (4), (5) and (6), shall apply respectively, *mutatis mutandis*.

V Central Works Councils and Group Works Councils

Article 33

1 Any entrepreneur who has established two or more Works Councils shall also establish a Central Works Council [Centrale Ondernemingsraad] for a number of the enterprises carried on by the entrepreneur, if this is in the interests of the proper implementation of this Act in respect of those enterprises.

2 Any entrepreneur who has established two or more Works Councils shall establish a Group Works Council [Groepsondernemingsraad] for a number of the enterprises that he carries on, if this is in the interests of the proper implementation of this Act in respect of those enterprises.

3 Paragraphs (1) and (2) shall apply *mutatis*

mutandis to a group of entrepreneurs who have established two or more Works Councils jointly. The said group of entrepreneurs shall appoint one of their number to act on their behalf as entrepreneur for the purposes of this Act with respect to the Central Works Council or Group Works Council.

Article 34

1 A Central Works Council shall be made up of members elected by the relevant Works Councils from among the members of each of the said Works Councils. For each member, a deputy may be elected who shall enjoy the same rights and obligations as the member for whom he deputises.

2 If one or more Group Works Councils have been established, the Central Works Council may lay down in its Rules of Procedure that the Central Works Council, contrary to the provisions of paragraph (1), shall, in whole or in part, be made up of members elected by the relevant Group Works Councils from the members of the said Group Works Councils. For each member so elected, a deputy may be elected who shall enjoy the same rights and obligations as the member for whom he deputises.

3 The Rules of Procedure of the Central Works Council shall specify the number of members who may be elected from each Works Council or Group Works Council. The Rules of Procedure shall also contain provisions to the effect that the various groups of persons working in the enterprises in question shall as far as possible be represented on the Central Works Council. The Works Councils or Group Works Councils concerned shall be consulted about the establishment of such provisions in the Rules

of Procedure.

4 A Central Works Council may also lay down in its Rules of Procedure that, in addition to the members mentioned in paragraph (3), the Central Works Council may also comprise representatives of enterprises which are operated by the entrepreneur or entrepreneurs mentioned in Article 33 but with respect to which they are not obliged to establish a Works Council. The Central Works Council shall specify in its Rules of Procedure the number of such representatives and the manner in which they are to be elected.

5 If a member of a Central Works Council or his deputy ceases to be a member of the Works Council or Group Works Council by which he has been elected, his membership of the Central Works Council shall terminate automatically. The same shall apply if a representative of an enterprise as mentioned in paragraph (4) ceases to work in the enterprise in question. Any exclusion as mentioned in Article 13 of a Works Council member or Group Works Council member who is also a member of a Central Works Council shall also entail exclusion of the person in question from participation in the activities of the Central Works Council.

6 The following Articles shall apply *mutatis mutandis* to the Central Works Council: 7; 8; 10; 11; 12; 13; 14; 15, paragraphs (1), (2), (4) and (5); 16; 17; 18; 19; 20; 21; and 22.

7 The preceding paragraphs, with the exception of paragraph (2), shall apply *mutatis mutandis* to a Group Works Council.

Article 35

1 Articles 22a up to and including 32, with the exception of Articles 23c and 24, paragraph (3), shall apply *mutatis*

mutandis to Central Works Councils and Group Works Councils, with the proviso that the said Councils may deal only with matters of common interest to all or most of the enterprises for which they have been established, regardless of whether individual Works Councils may exercise powers in relation to such matters. **2** If individual Works Councils may exercise powers in relation to such matters as mentioned in paragraph (1), the said powers shall be transferred to the Central Works Council or Group Works Council, with the proviso that Group Works Councils shall not deal with matters that are dealt with by the Central Works Council.

V-A Employee participation in small enterprises

Article 35a

(No longer in force)

Article 35b

1 In the case of an enterprise in which there are normally at least 10 and fewer than 50 persons working and for which no Works Council or employee representative body has been established, the entrepreneur shall give the persons working in the enterprise an opportunity of meeting with him at least twice each calendar year. He shall also convene a meeting with the persons working in the enterprise when at least one quarter of them submit a request to this effect together with a statement of their reasons for making the request.

2 At the meetings mentioned in paragraph

(1), any matters concerning the enterprise that the entrepreneur and the persons working in the enterprise deem it desirable to discuss may be raised. Any person working in the enterprise may make proposals concerning such matters and to express a point of view on them.

3 If the entrepreneur does not manage the enterprise himself, consultation meetings shall be conducted for him by the director of the enterprise. If the entrepreneur or the director are unable to attend, they may arrange for a person working in the enterprise who is authorised to conduct consultation meetings with employees on behalf of the entrepreneur to deputise for them.

4 The general operation of the enterprise shall be discussed at least once a year at the meetings mentioned in paragraph (1). To this end, the entrepreneur shall provide, orally or in writing, general information about the activities and the financial results of the enterprise in the preceding year and about his expectations regarding the same for the coming year. Insofar as the entrepreneur is obliged to make his annual accounts and annual report available for public inspection, copies of these annual documents in Dutch shall be submitted for discussion to the persons working in the enterprise. The entrepreneur shall also provide, orally or in writing, general information about the social policy that he has pursued and intends to pursue with regard to the persons working in the enterprise.

5 The entrepreneur shall give the persons working in the enterprise an opportunity, in a meeting as mentioned in paragraph (1), to render advice about any proposed decision on the part of the entrepreneur that may lead

to a loss of jobs or to major changes in the terms of employment or working conditions of at least one quarter of the persons working in the enterprise. This advice shall be sought at a time when it can still significantly affect the decision to be taken. The obligation mentioned in the first sentence shall not apply if and insofar as the substance of the matter has already been regulated for the enterprise in a collective labour agreement or in an arrangement relating to terms of employment laid down by a body under public law.

6 The obligations mentioned in the preceding paragraphs shall not apply to persons who have been working in the enterprise for less than six months. The said obligations shall not apply if the entrepreneur has established a Works Council in accordance with Article 5a, but shall reapply when the said Works Council automatically ceases to exist pursuant to Article 5a, paragraph (1), or is dissolved pursuant to Article 5a, paragraph (2).

Article 35c

1 In the case of an enterprise in which there are normally at least 10 and fewer than 50 persons working and for which no Works Council has been established, the entrepreneur may set up an employee representative body [personeelsvertegenwoordiging] consisting of at least three members who are elected directly by secret written ballot by and from among the persons working in the said enterprise.

2 At the request of the majority of the persons working in the enterprise, the entrepreneur shall set up an employee representative body as mentioned in

paragraph (1).

3 If paragraph (1) has been implemented, Article 5a, paragraph (2), third and fourth sentences, shall apply mutatis mutandis. The following articles shall also apply mutatis mutandis: 7; 13; 17; 18, paragraphs (1) and (2); 21; 22, paragraphs (1), (2) (insofar as legal costs are concerned) and paragraph (3) and (4); 22a; 27, paragraph (1) (b) (insofar as an arrangement on working hours is concerned), paragraph (1) (d), and paragraphs (3), (4), (5) and (6); 31, paragraph (1); 32; 35b, paragraphs (4) and (5) (with the exception of the working conditions mentioned in the latter paragraph); and 36.

4 The entrepreneur shall submit in writing to the employee representative body any proposed decision as mentioned in Article 27 paragraph (1) (b) (insofar as an arrangement relating to working hours and rest periods is concerned) and (d). The entrepreneur shall include a summary of the grounds upon which his decision is based and the consequences it may be expected to have for the persons working in the enterprise. The employee representative body shall not take a definitive standpoint on the proposal until it has been discussed with the entrepreneur at least once at a consultation meeting. As soon as possible after the said consultation meeting, the employee representative body shall notify the entrepreneur in writing of its standpoint, stating the grounds upon which the standpoint is based. As soon as possible after the employee representative body has made its standpoint known, the entrepreneur shall inform the representative body of the decision he has taken and the date upon which this decision will take effect.

5 The employee representative body may,

with the permission of the entrepreneur, institute committees or invite experts. With regard to the invitation of experts, if the expert receives no remuneration or if any costs incurred are paid by the employee representative body from the sum mentioned in Article 22, paragraph (3), the entrepreneur's permission shall not be required. In the event that the entrepreneur gives permission for an expert to be consulted, any costs thereby incurred shall be borne by the entrepreneur.

6 Information and data submitted to the employee representative body that in accordance with Article 31, paragraph (1), should be provided in writing may also be provided by the entrepreneur orally.

Article 35d

1 In the case of an enterprise in which there are normally fewer than 10 persons working and for which no Works Council has been established, the entrepreneur may set up an employee representative body as mentioned in Article 35c, paragraph (1).

2 The following articles shall apply mutatis mutandis: 5a, paragraph (2), third and fourth sentences; 7; 13; 17; 18, paragraphs (1) and (2); 21; 22, paragraphs (1) and (3), and (insofar as legal costs are concerned) paragraph (2); 22a; 27, paragraph (1) (b) (insofar as an arrangement relating to working hours and rest periods is concerned) and (d), paragraphs (3), (4), (5) and (6); 31, paragraph (1); 32 and 36.

3 Article 35c, paragraph (4), shall apply mutatis mutandis; and Article 35c, paragraphs (5) and (6), shall apply.

VI Rules of arbitration

Article 36

1 Any party with a legitimate interest may petition the judge of the sub-district sector to rule that the entrepreneur or the Works Council must comply with all requirements stipulated in or pursuant to this Act relating to the establishment and maintenance of a Works Council, the drawing up of provisional or definitive Rules of Procedure for the Works Council, the nomination of candidates for and election of members to the Works Council, and also relating to the publishing of the agendas and minutes of its meetings, insofar as the entrepreneur or the Works Council are responsible for such matters.

2 The Works Council and the entrepreneur may petition the judge of the sub-district sector to rule that the entrepreneur or the Works Council must comply with the requirements stipulated in or pursuant to this Act, insofar as the entrepreneur or the Works Council are responsible for such matters.

3 A petition to the judge of the sub-district sector to order compliance with Article 25, in relation to a decision as mentioned therein, shall be declared inadmissible if it transpires that the Works Council, either before or after submitting such a petition, has submitted an appeal against the said decision to the Enterprise Section at the Amsterdam Court of Appeal.

4 A petition to the judge of the sub-district sector on the basis of Article 27, paragraphs (4) and (6), shall be inadmissible if a requirement as mentioned in the Working Conditions Act [Arbeidsomstandighedenwet] has been made in respect of the same matter.

5 In his ruling, the judge of the sub-district sector may order the entrepreneur or the Works Council to perform or refrain from performing certain actions. The entrepreneur is forbidden not to abide by any such order. If the Works Council fails to abide by any such order, the judge of the sub-district sector may dissolve the Works Council, imposing upon it the obligation to arrange for a new Works Council to be elected. If the Works Council remains in default, the judge of the sub-district sector may authorise the entrepreneur to arrange for a new Works Council to be elected.

6 The previous paragraphs shall apply mutatis mutandis to compliance with the requirements in or pursuant to this Act in respect of Central Works Councils or Group Works Councils.

Article 36a

Any person working in the enterprise, with the exception of persons as mentioned in Article 35b, paragraph (6), and any employees' organisation whose membership includes at least one person working in the enterprise and whose object according to its Articles of Association is to protect the interests of its members as employees and which operates as such in the relevant enterprise or industrial sector, and which moreover has had full legal competence for at least two years may request the judge of the sub-district sector to rule that the entrepreneur must comply with the provisions of Article 35b.

VII Joint Sectoral Committees

Article 37

1 For groups of enterprises, the Council (SER) shall set up committees, called Joint Sectoral Committees, to deal with matters relating to the Works Councils, the Central Works Councils and the Group Works Councils of these enterprises, the employee representative body and the meeting as mentioned in Article 35b.

2 A Joint Sectoral Committee shall have an even number of members, but no less than six, to be determined by the Council (SER) after consultation with the organisations of entrepreneurs and employees as mentioned in Article 38, and an equal number of deputy members.

Article 38

1 One half of the members and the deputy members of Joint Sectoral Committees shall be appointed by the representative organisation or organisations of entrepreneurs designated by the Council (SER). The other half shall be appointed by the representative organisation or organisations of employees designated by the Council (SER).

2 The Council (SER) shall determine the number of members and deputy members that each designated organisation may appoint.

Article 39

1 The Council (SER) shall decree additional rules governing the composition of the Joint

Sectoral Committees and their procedures. These rules shall empower such Committees to establish subcommittees, either from their number or otherwise. A Joint Sectoral Committee may empower its subcommittees so established to exercise the powers of the Joint Sectoral Committee.

2 In addition, the Council (SER) shall lay down rules governing the chairmanship of the Joint Sectoral Committees. These rules shall empower any Joint Sectoral Committee to elect a chairman, with or without voting rights, from outside their number.

Article 40

1 Each Joint Sectoral Committee shall submit an annual report to Our Minister and to the Council (SER) of its activities during the preceding calendar year.

2 Our Minister may lay down rules with regard to the compilation of the report.

Article 41

1 The costs of a Joint Sectoral Committee shall, insofar as no other provision has been made, be borne by the organisations of entrepreneurs and employees mentioned in Article 38 in proportion to the number of members appointed by each.

2 If an organisation fails to pay its contribution towards the costs of the Joint Sectoral Committee within the period set by the Joint Sectoral Committee, the Council (SER) may, without prejudice to the organisation's liability for its share of the costs already incurred, withdraw the designation of the organisation. In consequence of this withdrawal of designation, the membership of the members and deputy members of the Joint Sectoral Committee who have been

appointed by the organisation in default shall lapse, starting from the time at which notification of the Council (SER)'s resolution reaches the Joint Sectoral Committee.

Article 42

Article 20, paragraphs (1) and (6), shall apply mutatis mutandis to the chairman, members and deputy members of the Joint Sectoral Committees and also to those persons responsible for operating the secretariat of the Joint Sectoral Committee.

Article 43

If, in the case of a group of enterprises, a central industrial board [hoofdbedrijfschap] or an industrial board as mentioned in the Organisation of Business and Industry Act [Wet op de Bedrijfsorganisatie, Staatsblad 1950, K 22] exists, the Council (SER) may designate the management of the said central industrial board or industrial board as a Joint Sectoral Committee in the sense of the present Act. In such a case, Articles 37, 38 and 41 shall not apply, nor shall the provisions of or pursuant to Article 39 apply insofar as they relate to the composition and chairmanship of Joint Sectoral Committees.

Article 44

(No longer in force)

Article 45

(No longer in force)

Article 46

1 If more than one Joint Sectoral Committee is authorised to deal with matters relating to a given Works Council, Central Works Council, Group Works Council, employee

representative body or meeting as mentioned in Article 35b, the Council (SER) shall designate one of the said Joint Sectoral Committees to act as the committee authorised under the terms of this Act to deal with the said matters.

2 If an entrepreneur or a group of associated entrepreneurs runs two or more enterprises with respect to which more than one Joint Sectoral Committee is authorised, the Council (SER) may set up for the said enterprises a separate Joint Sectoral Committee or may designate one of the said Joint Sectoral Committees committee to act as the committee authorised under the terms of this Act to deal with matters relating to the Works Councils, employee representative bodies and meetings of the said enterprises as mentioned in Article 35b.

VII-A Special duty of the Social and Economic Council

Article 46a

Without prejudice to the duties and powers allotted to the Council (SER) in this Act and the related provisions, it is the duty of the Council (SER) to encourage employee participation in enterprises.

Article 46b

(No longer in force)

Article 46c

(No longer in force)

VII-B Special provisions for Works Councils in the Public Sector

Article 46d

In the case of an enterprise in which work is carried out exclusively or almost exclusively on the basis of a public-law employment contract, the following special provisions shall apply:

- a For the purposes of this Act, the term 'director' shall not include the following:
- 1°. In the case of a ministry: The Minister or a junior minister [staatssecretaris];
 - 2°. In the case of a province: The Queen's Commissioner, a member of the Provincial Executive or a Provincial Councillor;
 - 3°. In the case of a municipality: The Mayor, a member of the Municipal Executive or a Municipal Councillor;
 - 4°. In the case of a water board: The Chairman, a member of the Executive Committee or a member of the Board of Management;
 - 5°. In the case of either house of the Dutch parliament: The Speaker or a Member of Parliament;
 - 6°. In the case of the Council of State: The Vice-President or a member;
 - 7°. In the case of the Netherlands Court of Audit: The President or a member of the Court of Audit;
 - 8°. In the case of the office of the National Ombudsman: The National Ombudsman or a Deputy Ombudsman.
- b In applying Article 23, paragraph (2), 'matters relating to the enterprise' shall not

include the establishment of tasks of public bodies or parts thereof by public law, nor policy relating to or the implementation of the said tasks, except insofar as the same have consequences for the activities of the employees.

c In any application of (b) in the district courts, courts of appeal, the Central Appeals Tribunal [Centrale Raad van Beroep] and the Trade and Industry Appeals Tribunal [College van Beroep voor het bedrijfsleven], 'matters relating to the enterprise' shall not include policy with respect to the implementation of the judicial duties mentioned in Article 23, paragraphs (2) and (3), of the Judiciary (Organisation) Act [Wet op de rechterlijke organisatie] except to the extent that they relate to consequences thereof for the activities of the persons working in the enterprise.

d The powers vested by this Act in the Council (SER) as mentioned in Articles 5, 8 paragraphs (2) and (3), Articles 37, 38, 39 and 41, paragraph (2), shall be exercised by the Minister of Internal Affairs.

e In applying Article 38, paragraph (1), one or more Ministers may be designated in addition to a representative organisation or employers' organisations.

f Apart from the power mentioned in Article 46a, the powers of the Council (SER) to issue decrees, shall not extend to enterprises in which work is carried out exclusively or almost exclusively on the basis of a publiclaw employment contract.

g If, pursuant to (d), the Minister of Internal Affairs has set up a Joint Sectoral Committee, this Committee shall, without prejudice to the provisions of Article 40, paragraph (1), submit an annual report to the Minister of

Internal Affairs. The Minister of Internal Affairs shall submit the said report to the relevant employers or employers' organisations and those central organisations for public sector personnel that fall within the Council for Public Sector Personnel Policy.

h Petitions as mentioned in Articles 27 and 36 pertaining to a court of law may be heard and ruled upon by the judge in the sub-district sector of the following court of law:

1°. pertaining to the court of law

Amsterdam: the court of law Noord-Holland;

2°. pertaining to the court of law Den Haag: the court of law Rotterdam;

3°. pertaining to the court of law Gelderland: the court of law Overijssel;

4°. pertaining to the court of law Limburg: the court of law Oost-Brabant;

5°. pertaining to the court of law Midden-Nederland: de rechtbank Noord-Nederland

6°. pertaining to the court of law Noord-Holland: the court of law Amsterdam;

7°. pertaining to the court of law Noord-Nederland: the court of law Midden-Nederland;

8°. pertaining to the court of law Oost-Brabant: the court of law Zeeland-West-Brabant; 9°. pertaining to the court of law Overijssel: the court of law Gelderland;

10°. pertaining to the court of law Rotterdam: the court of law Den Haag;

11°. pertaining to the court of law Zeeland-West-Brabant: the court of law Limburg.

i Any appeal as mentioned in Article 26, paragraph (1), pertaining to the Court of Appeal Amsterdam, shall be submitted to the Court of Appeal The Hague.

Article 46e

1 The powers granted to the Minister of Internal Affairs mentioned in Article 46d shall be exercised only after consultation with the relevant employers or employers' organisations and the central organisations for public-sector personnel that fall within the Council for Public Sector Personnel Policy [Raad voor het Overheidspersoneelsbeleid].

2 In consultations as mentioned in (1), central organisations for public-sector personnel policy shall command the same number of votes as the relevant employers or employers' organisations.

3 A decision by the Minister of Internal Affairs on matters as mentioned in Article 8, paragraphs (2) and (3) and Article 39 of this Act shall require the endorsement of two thirds of the participants in a meeting as mentioned in paragraph (1). A decision by the Minister of Internal Affairs on matters as mentioned in Articles 5, 37, 38 and 41, paragraph (2), shall require the endorsement of a majority of the participants in a meeting as mentioned in paragraph (1).

VIII Transitional and final provisions

Article 47

Further rules may be laid down by or pursuant to an Order in Council in the interests of the proper implementation of this Act.

Article 48

1 Any entrepreneur who is under an obligation to establish a Works Council shall, insofar as necessary, establish by

provisional Rules of Procedure provisions that properly fall under the powers of the Works Council until such time as the Works Council exercises these powers itself. The views of the employees' organisation or organisations as mentioned in Article 9, paragraph (2)(a), shall be sought with regard to the said provisional Rules of Procedure.

2 Article 8, paragraph (1), first and second sentences, and paragraph (2) shall apply mutatis mutandis to the said provisional Rules of Procedure. The provisional Rules of Procedure shall cease to be effective from the moment the Works Council has established

3 The preceding paragraphs shall apply mutatis mutandis to any entrepreneur or entrepreneurs who has or have established a Central Works Council or a Group Works Council.

Article 49

1 Any entrepreneur who is under an obligation to establish one or more Works Councils and the said Works Council or Works Councils shall, upon request, supply information about the establishment and functioning of the said Works Council or Works Councils to one of Our Minister's officials, designated by him.

2 Paragraph (1) shall apply mutatis mutandis to any entrepreneur or entrepreneurs who has or who have established a Central Works Council or a Group Works Council, and to the said Central Works Council or Group Works Council.

Article 49a

(No longer in force)

Article 50

For the years 2006 and 2007, 'Article 40, introductory words and paragraph (1) (b)' in Article 25, paragraph (1) (m) shall be read as 'Article 122d, paragraph (2)'.

Article 51

Any Joint Sectoral Committees set up by the Council (SER) by virtue of the Works Councils Act 1950 [Wet op de ondernemingsraden, Staatsblad, 1950, K 174] shall be deemed to have been set up by the Council (SER) by virtue of the present Act.

Article 52

(No longer in force)

Article 53

1 The present Act shall not apply to the public teaching hospitals, the Royal Netherlands Academy of Arts and Sciences, the Royal Library, or the Netherlands Organisation for Scientific Research, mentioned in the Higher Education and Research Act [Wet op het hoger onderwijs en wetenschappelijk onderzoek]. The Act establishes rules governing the decision by the board of a publicly funded institution for higher education, as mentioned in Article 1.2, part a, of the Higher Education and Research Act, as to whether the said Act, with the exception of Section VII B, is or is not applicable to the said institution.

2 Upon the recommendation of the Minister of Education, Culture and Science, it may be decreed by Order in Council that the exception mentioned in paragraph (1), first sentence, shall not apply to one or more of the institutions listed. It may additionally be decreed that Chapter VII-B of the present Act shall not apply.

3 Section VII-B shall not apply to public institutions mentioned in the Adult and Vocational Education Act [Wet educatie en beroepsonderwijs].

4 (Contains amendments to the Higher Education and Research Act [Wet op het hoger onderwijs en wetenschappelijk onderzoek] and to the Netherlands Organisation for Scientific Research Act [Wet op de Nederlandse organisatie voor wetenschappelijk onderzoek].)

Article 53a

This Act shall not apply to the Ministry of Defence and any departments, enterprises or institutions that fall under it.

Article 53b

This Act shall not apply to judicial officers of the Supreme Court.

Article 53c

This Act shall not apply to:

- a Members of the Council of State;
- b Members of the Netherlands Court of Audit;
- c The National Ombudsman and his deputies.

Article 54

1 This Act may be cited as the Works Councils Act [Wet op de Ondernemingsraden].

2 The Act shall come into force on a date to be determined by Us.



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The Works Councils Act

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