

Works council elections in the Netherlands

Robbert van het Kaar

AIAS, University of Amsterdam

Establishment of works councils

Employer is obliged to install the works council

Individual employees and unions can take the initiative if the employer is negligent or opposed

No system of fines or other direct sanctions in case of non compliance

However: indirect sanctions may occur. Examples.

Establishment (2)

Threshold: 50 employees

Possibility to install Personalvertretung (PVT) in smaller companies (10-50), either on initiative of the employer, or the majority of the employees. Voluntary works council allowed. Less rights than works council.

If neither works council nor PV, then obligation to hold bi-annual personnel meeting (Personalversammlung, PV)

Possibility to group related companies < 50 together to create a works council

Elections

No national elections (only in the local government sector).

Discussions in 2005 have brought no change.

Elections in principle every three years; four or two years and rotating system allowed.

Candidates can be put forward by unions and (since 7 July 2013) by every individual employee

Right to vote after six months, right to be elected after 12 months

Works council may deviate from these thresholds

General prescription: composition should be balanced

No reserved seats (for unions, women, minorities, young etc.)

No distinction between blue and white collar, or for *leitende Angestellte*

Elections (2)

Turnout at elections (2011):

% Votes	% Elections
0-19%	12%
20-39%	10%
40-59%	14%
60-79%	27%
80-100%	37%

No elections in 28% of the organisations due to lack of candidates

Compliance with the law

71% of the 50+ organisations has established a works council. Latest research 2011.

In 10-50 firms: 16% works council, 12% PVT (more often voluntarily than on request of personnel), 53% PV. Figures are stable over time.

Compliance increases with size and varies across sectors (low in construction, trade, catering).

Very few court cases

Main reason given (by the employer!) for non compliance: “no interest among personnel”. Research planned by Ministry on views of the employees on this issue.

Exemptions

Legislation allows for exemption for the obligation to establish a works council.

This possibility is hardly being used and exemptions given are even more rare

Flexible workers

Flexible workers (temp agency workers) have works council rights in the *temp agency*, and after 24 months (!), also in the firm where they actually work.

This is very much an issue in the Netherlands, due to the fast rising proportion of flexworkers.

No debate (yet) on (bogus) self-employed

Protection of works council members

Works council members (including former members, committee members, and employees having taken the initiative to establish a works council) are protected against dismissal and unfavourable treatment

Dismissal protection not absolute, especially in cases of restructuring.

Court cases however more or less balanced.
Burden of proof for employer.

Discussion

The aim /purpose of the works council in the Netherlands is two-fold (art. 2 WOR):

1 Improving the performance/functioning of the organisation;

2 Representing the employees

(1) suggests that the employer should be obliged to take the initiative to establish a works council;

(2) suggests that the initiative should rest with the employees

Discussion (2)

Danger of manipulation (yellow works council) by the employer is no (big) issue in the Netherlands.

More generally: no heated debates on worker involvement or worker participation (board level representation, *Mitbestimmung*).

Debates take mainly place on relatively practical issues (like duty of confidentiality, training and education rights)