

# Corporate Governance and Workers' Participation

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This paper analyses and describes the possible role and responsibility of workers (via their representatives) in the process of strategic decision-making at corporate level, especially in the Netherlands where the Works Council (Ondernemingsraad) has achieved a certain degree of maturity in the last decade. It is a reaction to the lack of attention to workers' participation in the actual debate on Corporate Governance. From our point of view workers also have to be seen as equal 'stakeholders' and partners in decision-making.

In several Dutch companies forms of partnership in corporate governance are starting to develop. But also in other countries (like Germany) and at European level Works Councils are starting to discuss strategic topics with the Board of Directors.

After describing the position and role of the most important boards and stakeholders at corporate level (the Board of Directors, the Supervisory Board, the shareholders, the trade unions and the works councils), the paper presents a stakeholder model in which also the workers participate and exercise influence on strategic decision-making.

Finally it gives practical suggestions for the improvement of the position of workers' participation in corporate governance. These suggestions and recommendations are mainly based on experiences in Dutch companies.

## Introduction

In the last few years a new debate on Corporate Governance has started, world wide. The renewed debate began in the USA as a response to a raft of corporate collapses in the late '80s, ascribed to the failure of governance mechanisms to control directors. Especially shareholders pressed for action and claimed a stronger position for themselves in the boards.

Since then several codes about governance, supervision and responsibility within enterprises have been developed in the USA, in Europe but also in Japan, Australia etcetera. These codes are largely based on the well-known Anglo-Saxon code of Sir Adrian Cadbury (1992).

Because of the differences in context, culture and governance models, for example between Anglo-Saxon countries (USA, United Kingdom) and countries in a Rhineland context (as Germany and The Netherlands),

codes cannot easily be copied. In the American and British one-tier-board model the board consists of both executives and non-executives with the same responsibility. While in the German or Dutch corporate governance model (the two-tier-board model) there are separate boards for directors and supervisors.

In the Netherlands a special committee Corporate Governance made 40 recommendations for improving the functioning of the boards and the relations between the boards and the shareholders (1997). In the mean time the early results have been monitored (1998, 1999). It appears that – in several companies – there is a growing attention to the functioning of the Supervisory Board (a development from 'old boys network' to a more professional board).

It is very remarkable however that – even in Rhineland-countries – there has been a great lack of attention to workers' participation in the debate on Corporate Governance until now. Also in The Netherlands the Committee

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Corporate Governance paid hardly any attention to the position of the trade unions and the works councils in corporate governance. Only one short remark has been made about the relation between the Works Council and the Supervisory Board: "The Supervisory may consider if it is desirable to make a formal appointment about his relation with the Board of Directors, the Works Council and the shareholders" (recommendation 14). Most attention has been paid to the position of the shareholders and the functioning of the Supervisory Board.

In this paper therefore we present a stakeholder-model (instead of the shareholder-model) in which the workers' representatives also play an active role – as participants – in corporate governance, in the strategic decision-making process at corporate level. In this model the workers are recognized as equal stakeholders. We consider the roles and responsibilities of both the boards, the shareholders, the trade unions and the works councils. The paper especially describes and analyses the possible role of the works council in corporate governance, and his relation with the Board of Directors and the Supervisory Board. In this triangle (Board of Directors, Supervisory Board, Works Council) the Works Council can develop to an important player and partner in the strategic decision-making process. Much research-work already has been done in this field, and experiences in Dutch enterprises can teach us about the way to develop workers' participation at corporate level.

### **A characterisation of positions at corporate level**

The corporate governance debate deals with the way in which companies are being managed and how management's performance is supervised. There is an increasing demand for a better organization of management, supervision and accountability within companies. Both the Anglo-Saxon and the Rhineland model are under discussion.

A great deal of attention is given to strengthening the position of the shareholders. The specific orientation on shareholders' interests (and shareholder value) carries the risk of a too one-sided focus on – mainly short term – results and the value of the shares. The shareholder model does not allow enough for other interests such as those of the employees or the environment. A one-sided focus on profitability may adversely affect the attention for the longer term policy and the company's future, not to mention the social responsibility of the company.

That's why, in this paper, we want to advocate a management model which allows for all stakeholders: all groups and individuals who are seriously involved in the activities of the company (the stakeholder model). The underlying principle is that those who are seriously involved in a company – not incidentally but for a longer period – are actually needed for the sound and proper functioning of that company and are entitled to have a voice in matters.

The position of the employees must not be neglected here. In the Netherlands but also in other West-European countries (where the Rhineland model dominates) consultation and participation of employees at corporate level (via trade unions, works councils, supervisory board) has sufficiently proved its value by now.

In the Dutch model of workers' participation the Works Council (Ondernemingsraad) can participate in the process of (strategic) decision-making while the trade unions (vakorganisaties) have the position to negotiate about the working conditions. Besides that the Works Councils (and also the shareholders) have the right to recommend members for the Supervisory Board (Raad van Commissarissen). Works Councils can recommend members with special attention to the position of the workers within the company. While in Germany for instance the Supervisory Board (Aufsichtsrat) is made up of equal numbers from each 'side' (for an evaluation of both the models, see Gelauff/Den Broeder, 1996).

In our stakeholder model (Goodijk, 1998) we distinguish – in addition to the boards – all the different stakeholders: the shareholders, banks, suppliers, customers, government, workers, trade unions, external interest groups etcetera.

This paper describes the five most important positions (boards and stakeholders) in the strategic decision-making process at corporate level: the Board of Directors, the Supervisory Board, the shareholders, the trade unions and the works councils (the so-called pentagon of important stakeholders at corporate level), based on experiences in Dutch companies.

#### *a) The Board of Directors*

For some time now, world wide, more attention has been given to the functioning of the Board of Directors and to decisions taken at boardroom level (GITP, 1997). This is especially due to some dubious boardroom decisions and forms of mismanagement which were in the news because of the far reaching consequences (bankruptcies,

massive redundancies, environmental scandals, abuse of inside information etcetera).

During the last few years there has been an increase in criticism coming from society (via external interest groups) and the trade unions, but also from the shareholders who think that their financial interests are not being carefully looked after.

In the Netherlands the Corporate Governance Committee has recently recommended to improve the supply of information by the board (Peters, 1997). Boards of Directors can no longer operate from an 'ivory tower' but must prove themselves and answer for their actions under pressure of the various stakeholders. That requires a more transparent management model and closer supervision.

According to Neubauer (1997) the board should start to behave more like a 'learning organization' in which the chairman's performance in particular must be evaluated frequently. Criteria for such an evaluation could be for instance the preparation and efficiency of meetings, but also the communication with the stakeholders.

#### *b) The Supervisory Board*

Criticism on the functioning of the supervisors has also increased. And here as well, the criticism comes from very different circles. The shareholders criticise most severely however. They argue that their financial interests do not get enough attention in the boards, and they therefore demand more influence on appointments in the board and on important decisions.

Furthermore, many directors/entrepreneurs reproach the Supervisory Board with lack of involvement, lack of alertness and lack of knowledge about the organization and its market. The employees generally think that the Supervisory Board is too much of a continuation of the Board of Directors, too passive towards policy and too much of an 'old boys network'.

In several companies however, some changes in the attitude of supervisors can be noticed: from a reserved attitude towards a more pro-active attitude (research GITP, 1997). Their communication is also becoming more open: supervisors – like directors – are gradually more willing to answer to the stakeholders. They become more critical of the composition and performance of their own Supervisory Board, and enable stakeholders to exercise influence on these aspects.

In the Netherlands the Corporate Governance Committee has made several recommendations to improve the performance of the Supervisory Board, such as:

- the board draws up a profile and adjusts it from time to time,
- the board should be composed such as to enable its members to operate independently and critically, both in relation to each other and in relation to the Board of Directors,
- re-appointment of supervisors is always considered carefully and should not be an automatism,
- the division of tasks and the working-method of the board, as well as that of the chairman, are formulated in a code,
- at least once a year the board evaluates its own performance, its relation with the Board of Directors and the performance of the Board of Directors.

It is remarkable that the Committee does not pay any attention to the relationship between the Supervisory Board and the Works Council, i.e. the position of workers' participation in the triangle. In the Netherlands, but also in many other West-European countries, it is self-evident that employees (via their representatives) have a voice in the composition and functioning of the Supervisory Board through the right of recommendation and objection (as in the Netherlands) or through the system of direct appointments (as in Germany). Last few years there has been a growing communication between workers' representatives and the Supervisory Board, especially in case of mergers and big reorganizations.

#### *c) The shareholders*

At the moment it is the shareholders who make themselves heard. Major shareholders in particular raise the alarm more often and demand a stronger position within the Supervisory Board. In the Netherlands the Association of Shareholders (Vereniging Effectenbezitters) has for many years advocated a higher degree of control for shareholders in the Supervisory Board. According to that association this better control could be realised by having a part of the board appointed directly by the shareholders, instead of the current right of recommendation and objection.

The Dutch Corporate Governance Committee also made the following recommendations:

- the annual general meeting of shareholders should be the forum where the Board of directors and the Supervisory Board report on, and account for the way in which they have performed their duties;
- the Board of Directors and the Supervisory Board must enjoy the confidence of the

shareholders; when proposing someone for appointment, this must be taken into account.

Also at European level – in draft guidelines aiming at more uniform regulations in the area of corporate law (for instance the draft Fifth EU-Directive) – considerable pressure is being exerted to lay down rules for a better control of the shareholders within the Supervisory Board.

In short, the pressure on company boards to allow for the interests of shareholders is increasing, partly as a result of the advancing internationalization and the growing influence of the Anglo-Saxon management model. This development seems to undermine the influence of the employees.

#### *d) The trade unions*

As referred to before, the corporate governance debate does not pay much attention to the position of the workers or their representatives such as the trade unions and the works councils. While these parties have played an important role in the West-European Rhineland model until now: trade unions more as negotiators and works councils more as participants.

In the Netherlands the position of the trade unions at corporate level has never been very strong. While the role of the works councils has increased.

During the last few years the Dutch unions have focussed their attention more on the works councils to seek cooperation (to join forces) but also to strengthen their own position at corporate level.

And because of the European integration and the rather weak position of the mainly nationally oriented trade unions in the decision process at European level, the need for cooperation at European level has also become stronger in the past years. Joint action of trade unions is thought to be necessary in order to be an equal negotiation partner for (the benefit of) the workers. That consultation, those negotiations at European level are gradually getting started in the tripartite contact between the ETUC, the UNICE and the European Commission.

At this moment the trade unions are facing the challenge to exercise influence on, and play a meaningful role as negotiators in the decision-making process at both national and international corporate level.

#### *e) The works councils*

In the Rhineland-countries the works councils developed (mainly after the Second world

War) in addition to the already existing trade unions: the so-called Ondernemingsraad in the Netherlands, the Betriebsrat in Germany, the Comité d'Entreprise in France, etc. Especially now that government interference is decreasing and the role of the individual companies is getting more important, the responsibilities are increasingly shifting to the corporate level and the importance of the works council is growing.

In the Netherlands the works councils have by now acquired an accepted position within the enterprises. It is true that they operate very differently, but in general they make a considerable contribution to the decision-making. The facilities have increased, the information supply has gradually been improved and the involvement in strategic decision-making has grown (Goodijk, 1995). This positive attitude towards the works councils in The Netherlands is also a result of the harmonious relationships which characterize the consultative climate in the Netherlands, especially at this moment (the so-called Poldermodel).

This description of the (development of the) works councils shows that the corporate governance debate can no longer ignore the position of the works council. What's more: the debate about realizing a more transparent management model can benefit from further discussion on the specific role of the works council – and recently also the European Works Council – in the management of companies.

In this paper we will elaborate on the possible position (role and responsibility) of the works council within the stakeholder model. This direction of development does indeed make higher demands on the quality of the work and method of the works councils (compare the criteria of professionalism in Goodijk, 1993 and 1995). For until now the average works council fails in its role as strategic consultation partner. Many works councils mainly occupy themselves with operational matters and short term problems.

### **The desired stakeholder model**

At this moment we observe that the shareholders especially claim a stronger position and that insufficient light is shed on the position of the workers (and their representatives) in the corporate governance debate. While in the past few years we seemed to be gradually moving towards a stakeholder-economy, an economy which allows for the influence and the interests of all parties concerned: the executives themselves, the

supervisors, the shareholders, the providers of borrowed capital, the suppliers, the consumers but also the trade unions, the works councils, people living in the neighbourhood, ecology groups.

Our choice, our plea for the stakeholder model is based on the following principles of good management:

- decision making in consultation,
- a broad and responsible weight of interests,
- countervailing power and competition of ideas,
- a certain/minimum balance of power in relations,
- an open dialogue and continuous feedback,
- ability and power to learn, creating adaptability and flexibility,
- not only short term problemsolving but also longer term orientation,
- durable commitment,
- shared responsibility,
- societal legitimacy,
- visions and values, based on debate,
- performance-measurement and ethical auditing.

Because of these principles we plea for an active role and involvement of the stakeholders.

The stakeholder model as presented below (see figure 1), considers the interests and

possible contributions of all relevant stakeholders in strategic decision-making at corporate level. In this model we define strategic decision-making as a continuous and cyclic planning process: a process of analyzing external and internal key-factors, making strategic choices, drawing up policy plans, implementation, testing and if necessary adjusting plans. Stakeholders must be able to participate in the decision-making (each from his own position and responsibility and in relation to each other) and hold the (top of the) company accountable where strategic choices, investments, reorganisations, dividend policy etcetera are concerned.

In each phase of the strategic decision-making process various considerations and decisions are made on which the stakeholders – separately or jointly – can exercise influence. Real influence on the corporate strategy, an essential role in corporate governance is based on the assumption of an early involvement: not waiting passively but operating pro-actively. Various Dutch studies (such as Looise, 1987) have shown that the strategic influence of the works councils is bigger when the council is consulted sooner (in an earlier stage) and involved more actively in the decision-making process.

Naturally, the Board of Directors bears the ultimate responsibility for the company results. But the Board informs the Supervisory

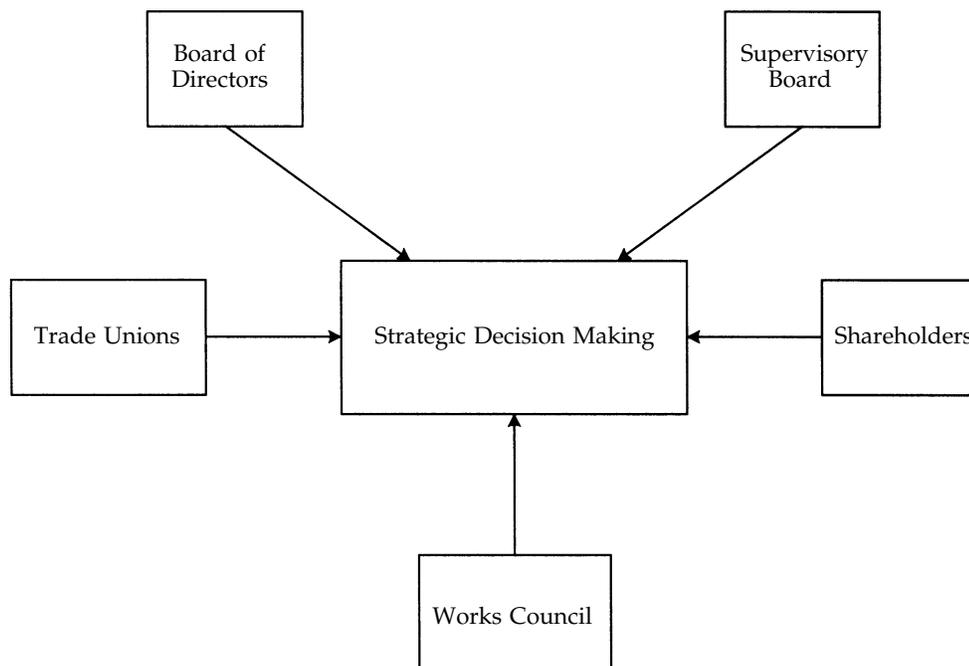


Figure 1. The stakeholder-model (a simplified model in which other relevant stakeholders such as suppliers, consumers, external interest groups etc. are left out of consideration).

Board and the relevant stakeholders in an early stage about important developments, involves them in the development of the corporate strategy, requests permission for important policy plans and accounts for the policy pursued. The Board, of course, explores markets, takes initiatives, draws up policy and plans. But the Board develops the corporate strategy in close interaction with the others: consulting the Works Council, negotiating with the trade unions, being accountable to the supervisors, presenting the company results to the stakeholders, interacting with customers and external pressure groups.

The Supervisory Board supervises the corporate strategy and provides advice to the Board of Directors, but also judges and actively influences the direction to be pursued, and makes contact with other stakeholders such as the Works Council.

The shareholders provide the necessary capital based on the corporate plans and expectations for the future, but become more involved in the corporate strategy as they have a more permanent and stronger relationship with the company and are serious concerned about (entrusted with safeguarding) the company's future.

The Works Council as consultation partner becomes involved in an early stage of the decision-making, is willing to give input and bear responsibility and creates a stronger position by networking (compare the ten criteria of professionalism in: Goodijk, 1993 and 1995). While the Trade Unions – behaving more like negotiating partners – mainly concentrate on the social consequences and the societal conditions of the strategic policy plans.

### **Suggestions for the improvement of workers' participation**

So far we have dwelt on the positions and mutual relationships of the five most important partners (boards and stakeholders) in the corporate governance debate.

In this 'pentagon' there still is a lack of openness, equality and partnership. The Board of Directors mostly takes a dominant position and – in general – acts too much in isolation. The Supervisory Board is – again in general – too passive and still too much 'old boys network'. The shareholders claim more influence on how the company is being managed. The workers on the other hand have not succeeded in creating a serious position at corporate level until now. There is a growing disbalance in power. That's why it is argued

in this paper that workers' participation (via unions and works councils) has to be developed and professionalized further.

The position of workers' participation in corporate governance could be improved in several ways, reflecting the situation in the Netherlands.

Especially in the Dutch system (and climate) of industrial relations – characterized by consultation, the two-tier board management model, the system of cooptation (the Supervisory Board appoints its own members; the shareholders and workers have the right of recommendation and objection) etcetera – the following improvements could naturally be made:

#### *a) Improvement of the position of the Works Council in the 'triangle'*

In the so-called 'triangle' Board of Directors/Supervisory Board/Works Council there are several possibilities for improving the position of the Works Council, for example through:

- Qualitative improvements in the consultation between the Works Council and the Board of Directors: aiming not only at short term results but especially at developing a good (strategic) consultative relationship and learning how to hold discussions on matters of strategy.
- Periodic tripartite discussions between (a delegation of) the Works Council, the Board of Directors and the Supervisory Board. Organizing frequent tripartite discussions offers the possibility to keep each other informed of insights and ideas, and to realise timely involvement in strategic developments. Experiences in The Netherlands have proved that such meetings are very useful provided that they are well prepared.
- A bigger involvement of the Works Council in formulating job descriptions of the (members of the) boards, and making better use of the right of recommendation and objection with the appointment of supervisors. In the case of an appointment or re-appointment it is logical to examine by which change or addition the board can benefit most: how is the board actually composed at this moment, and what kind of changes are desired?
- Frequent exchange of information and consultation between the Works Council and the Supervisory Board. In addition to the periodic tripartite discussions in which the Board of Directors

also takes part, other forms of contact, exchange and consultation between the Works Council and the Supervisory Board may be possible, such as contacts by telephone, written exchange of information, attending each other's meetings etcetera.

The strategic debate about the future of the company should be held especially in this triangle. In the past Works Councils often focussed on reacting defensively to intended decisions. Since the beginning of the 80's the Dutch Works Council has grown to more maturity and operated more actively. In some situations, of course, a reactive and defensively attitude may be necessary and the best choice from a strategic point of view, but then there can hardly be any real influence on matters of policy.

In the Netherlands we can now observe so-called best-practices in several – especially large – companies. Forms of partnership in corporate governance are starting to develop:

- In the case of some mergers or reorganizations the Works Council is actually involved in an early stage and is a serious discussion partner to the Board of Directors.
- In several companies tripartite discussions are being held and visions are being shared.
- And more often than before joint meetings are being organized to determine the strategic direction of the company.

Also at European level Works Councils that are able to discuss strategic topics with the top-management once or twice a year, are starting to develop. And consultations between employers' organisations (like UNICE) and trade unions (like ETUC) are taking place more frequently.

#### *b) Improvement of the cooperation between Works Councils and Unions*

The improvement of the cooperation between Works Councils and Trade Unions is crucial to the future position of workers' participation in corporate governance.

There are opportunities to deepen the mutual relationships, to take advantage of each other's specific strengths and to use each other as platform and sounding-board.

In the Netherlands both organized and unorganized workers take part in the Works Council, and an alliance between the works council and union is not something natural. Often there has been competition (who negotiates with the management on the terms of working conditions and employment?), especially since the works councils grow to more maturity and the unions are trying to

strengthen their position at corporate level because of the decentralization trend.

In the last few years we observed changes in the relationship. The many discussions on this subject in the past years (see for instance Looise, 1989) have made clear that the original (traditional) division of tasks between unions and works councils needs to be reconsidered.

There are chances for workers' participation at corporate level if the works councils and unions organize their tasks and activities in such a way that their joint influence is at a maximum.

Doing so, it would be evident – especially in the Dutch context – that:

- the works council mainly focusses on exercising influence in the different stages of the decision-making process, by giving input, sharing visions and advising the Board of Directors,
- the unions have an important task in the area of the terms of working conditions and employment.

Joint agreements on a strategy to be pursued in the case of a merger or reorganization, can really strengthen the position of the workers.

#### *c) Shaping the participative company*

A final option would be to further develop the participative company. There is an increasing interest in all kinds of forms of Direct Workers' Participation (compare European Foundation, 1997): new forms of operational meetings, quality circles, improvement teams, self-guiding teams etcetera. They are management-instruments trying to involve workers – either individually or as a group – in the implementation of policy, the design of the working place and the improvement of the work processes. So direct participation has nothing to do with Workers' Participation in the strategic decision-making at corporate level, but can indeed function as an important basis for the contribution of workers – through their representatives – to the corporate strategy. Direct participation and indirect/representative workers' participation at corporate level may complement each other. A participative company in which direct participation is highly developed, may be an important basis for the further development of workers' participation at corporate level.

## Conclusions

In this paper we have considered the possible improvement of workers' participation in

strategic decision-making at corporate level, based on experiences in Dutch companies. The plea for the stakeholder model in which also the workers (through their representatives) participate, is a reaction to the lack of attention that is given to workers' participation in the debate about corporate governance until now.

Dutch experiences show that works councils can strengthen their position at corporate level. Works Councils are more and more able and willing to participate in the decision-making, share their visions and bear responsibility. And at the same time more and more Board of Directors are willing to give the Works Council the opportunity to get involved in an early stage of the decision-making, since they discovered that a (pro-) active role – and a less defensive attitude – of the Works Council in generally works positive to the company: less polarization and conflicts, more basis for changes, better use of human talents etcetera.

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## Bibliography

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### Book Note

#### **Business Early Warning Systems – corporate governance for the new millennium; Patrick J Caragata; Butterworths, 1999**

Drawing lessons from industrial disasters of the 20th century, the author develops what is, essentially, a crisis management guide, arguing the case for transparency, accountability and performance measurement. Crisis management is not an optional extra. "Good crisis management is good business management." The eight common structural and behavioural "footsteps to disaster", according to the author, are: poor quality information and ineffective electronic monitoring, inadequate back-up and fail-safe systems, inadequate funding for fail-safe systems, weak risk management, ignoring risk thresholds, ignoring early warning signs, inadequate advance screening and the absence of clear signals. The book offers a practitioners' guide, which is likely to provide some valuable insights to issues raised by the 1999 UK Turnbull Report. The author is an expert in corporate risk and risk management, practicing in Canada and New Zealand.