

Conclusions and recommendations

The results of this study show that there is a gap between the legal possibilities that works councils have to influence the CSR plan of the management and the existing role and ambition of Dutch works councils with regard to CSR. In this paragraph I will address six factors that cause this gap, and for each factor I will give recommendations on how the role of works councils in CSR could be stimulated.

Factor I: CSR reporting as a unilateral top-down management-led process

Factor I: Conclusions

Most interviewed works councils reported that CSR has become more important to their company during the last few years. Reasons mentioned by the interviewees for the increased relevance of CSR are amongst others: the high demands by consumers for companies to address social and environmental issues (e.g. the consumers' wish for green coffee at *Jacobs Douwe Egberts*), the role of sustainability and CSR in public procurement (*BAM*), and young employees who want their employers to do business in a more socially responsible manner (*Ricoh*). The increased relevance of CSR is confirmed by the fact that most multinational companies – affiliated with *Stichting MNO* – now publish a (yearly) CSR plan outlining the envisaged CSR strategy or report on CSR in the management report.

Creating possibilities for the works council to use its right to discuss the CSR plan in the Article 24-meeting or to render advice – pursuant to Article 25 of the Dutch Works Council Act – on the board's proposed CSR plan is considered a key best practice by the *Model Code on co-determination and CSR*. Only half of the interviewees (*IKEA*, *Van Oord*, *CGI*, *BAM*, *Achmea*) reported that they discuss the company's CSR report or a report on CSR achievements integrated in the management report with the management. Furthermore, the works council members of *Achmea* and *CGI* explained they primarily examine the financial part, and not the non-financial sustainability part, of the integrated CSR report. Thus, only a minority of three works councils (*IKEA*, *Van Oord* and *BAM*) discuss the actual CSR aspects of the report. Moreover, none of those three reported participation in the preparation of the sustainability report.

In all companies under investigation CSR is mainly considered an issue at the corporate level, which is strategically determined by the management. The works councils

interviewed do not seem prominently involved in the development of reporting systems. Consequently, sustainability reporting seems mainly to be a managerial prerogative, although involving employee representatives in non-financial reporting on sustainability-related issues could demonstrate that CSR is taken seriously by the company and not just hollow rhetoric.

Particularly relevant here is the recent discussion revolving around the *EU Directive 2014/95/EU*. The last part of this directive was implemented in the Netherlands through the ‘*Disclosure of Non-Financial Information Decree*’ (see section 2). From 2017 onwards, listed companies, credit institutions, and insurance undertakings should prepare a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters, and the due diligence processes implemented. The non-financial statement should also identify, prevent and mitigate existing and potential adverse impacts. Amongst others *SBI Formaat*, a training fund for works councils, and *Stichting MNO* participated in the online public consultation for the implementation of this directive in the Netherlands. *SBI Formaat* argued that the views of works councils were missing in the implementation proposal, and suggested that Article 3 of the *Disclosure of Non-Financial Information Decree* should be amended so as to include that the content of the non-financial reporting should be discussed with the works council – pursuant to Article 24 and 31 DWCA – and, if appropriate, agreed with the works council before its publication.¹ Furthermore, *Stichting MNO* proposed to give the works councils a right to render advice about the non-financial reporting.² The views of *SBI Formaat* and *Stichting MNO* were rejected, however, in the ‘Explanatory Memorandum’ (*Nota van Toelichting*), as the legislator opted for a minimal implementation of the directive.³

Factor I: Recommendations

Firstly, the findings of the empirical perspective of this research paper would support the position of *SBI Formaat* and *Stichting MNO*. I would advise that the legal framework for reporting on CSR and non-financial issues should provide a more satisfactory legal

¹ *SBI Formaat, Internetconsultatie: Bekendmaking niet-financiële informatie door organisaties van openbaar belang*, available at: https://www.internetconsultatie.nl/bekendmaking_niet_financieel_informatie/reacties/datum.

² *Nota van Toelichting, Besluit bekendmaking niet-financiële informatie*, available at: <https://zoek.officielebekendmakingen.nl/stb-2017-100.html>.

³ *Nota van Toelichting, Besluit bekendmaking niet-financiële informatie*, available at: <https://zoek.officielebekendmakingen.nl/stb-2017-100.html>; “Aangezien het besluit uitsluitend ter uitvoering van de richtlijn strekt, is het niet wenselijk om aanvullende nationale maatregelen te treffen. Dit laat onverlet dat de rechtspersoon over zijn beleid ten aanzien van onderwerpen die niet specifiek in de richtlijn worden genoemd kan rapporteren”.

underpinning in order to give a mandatory character to the involvement of the works councils with the CSR plan. The mere information right on the management report the works council presently has through Article 31a of the DWCA does not suffice, as this research shows the CSR plan still escapes the attention of the works council members and remains a unilateral management process. Thus, a more robust legal framework is required allowing works councils – in the first place, the works councils of listed companies, credit institutions, and insurance undertakings – to have a say in their company’s reporting on CSR issues. This can be done by amending Article 3 of the *Disclosure of Non-Financial Information Decree* and Article 31a DWCA to explicitly reflect that the right to receive information applies to the company’s non-financial reporting, or by including the non-financial reporting under the right of works councils to render advice in Article 25 DWCA (non-financial reporting can be considered a strategic issue just like the other issues listed in Article 25).

Secondly, since the involvement of works council members in CSR reporting seems generally a matter of their consent to concepts and reports already produced by the management, I would recommend that more skills and proactivity are required on the part of the works councils. In order to achieve this, *SOMz (Stichting Onderzoek Medezeggenschap)* and *SBI Formaat* could organise seminars for works council members to familiarise them with the examination of the content of CSR reporting.

Factor II: A disparity between works councils’ involvement in the internal dimension of CSR and their involvement in the external dimension of CSR

Factor II: Conclusions

This research report made a distinction between an *internal* and *external* dimension of CSR, following the Green Paper of the European Commission and the research of Zimpelmann and Wassermann.

All works councils were to a certain extent involved in projects belonging to the *internal* dimension of CSR. As discussed in section 2, Dutch works councils have substantial influence on their companies’ efforts in the area of internal CSR through the extensive right to render advice and the right of consent in the Dutch Works Councils Act. Especially when the companies’ efforts affect more ‘traditional’ co-determination themes at the workplace (such as socially responsible reorganisation, important measures regarding the management of the natural environment by the enterprise, and collective arrangements on training, skills and workforce development). Furthermore, extended rights of consultation have been granted to works councils in the field of health and safety. The interviews confirmed that the CSR areas

of HR, socially responsible reorganisation, health and safety and the natural environment of the enterprise are indeed the issues where the works councils are most involved in. Almost all works councils interviewed were associated with projects relating to lifetime employability (*duurzame inzetbaarheid*) and health and safety measures (most works councils are active in this area through the works council committee ‘VGWM’). Moreover, various works councils also participate in the management of environmental impact and natural resources in the establishment. Some works councils have a right of consent on the lease arrangement, and in several companies the works council’s opinion is frequently consulted by the management in initiatives to save energy or to reduce emissions in the workplace.

Nonetheless, the participation of works councils in the *external* dimension of CSR is low. During the interviews only a few examples were mentioned:

- i. The central works council of *BAM* is building up trade union and works council networks on a European level in order to address the issue of safety throughout the supply chain in the construction sector.
- ii. The central works council of *Arcadis* has voiced its concerns in the Article 24 meeting on global environmental issues to the management and has asked the management to what extent the company should keep participating and advising in projects that are connected to fossil fuels.

Several works council members explained that the employees they represent are primarily interested – and the most likely to participate – in local causes and CSR initiatives close to their companies’ operations (*breakout session: group 1*), for example by thinking of ideas for saving energy in the workplace (*IKEA, KLM*), or by participating in projects of philanthropy and community engagement such as employee volunteering (*Ricoh, IKEA, Capgemini*). Some councils members stated that many employees see the classic co-determination issues such as employment or the safeguarding production sites as the primary tasks for the works council, and do not consider the external dimension of CSR directly relevant (*breakout session: group 3/5*). Moreover, in some cases it is the management board that considers the external dimension of CSR not a topic of concern for the works council (*breakout session: group 5, Jacobs Douwe Egberts*). All in all, the extent to which the concerns of works councils have changed – from a particular concern of one stakeholder to a more universal concern with sustainability – seems limited. Even though there are leads in the Dutch Works Council Act that allow for works councils to get involved with the external dimension of CSR, they do not seem to be used by the works councils interviewed. For instance, following Article 28 (4) DWCA the works councils could also consider the global environmental aspects of the

companies' activities as advised by the *Model Code on co-determination and CSR*. However, the breakout session and interviews show that the works councils (except the works council of *Arcadis*) seem to limit their environmental impact mainly to the Dutch environment.

Factor II: Recommendations

The yearly CSR '*trainingsdag*' (training day) for members of works councils of international enterprises – organised by the *Netherlands National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises* – could play an important role in making works councils aware of the importance of their involvement in the external dimension of CSR. During the training day of 16 November 2016 various topics belonging to the external dimension of CSR were addressed, and several speakers discussed how the *OECD Guidelines* provide concrete resources to works councils for expressing concerns to their management about issues such as human rights violations or corruption.

Moreover, the SER stated in its 2011 advisory report '*Afspraken over de rol van de OR bij (I)MVO*' / '*Agreements about the role of the Works Council in (International) Corporate Social Responsibility*' that works councils "can also play a role in ensuring support for the international aspects of CSR and of responsible supply chain management by companies" (see paragraph 2.3.).⁴ Therefore, it could be seen as a task for the SER's *Committee to Promote Employee Participation* ('*Commissie Bevordering Medezeggenschap*') to provide further guidance to works councils on how to be involved with the international aspects of CSR for example through recommendations, practical tips, and suggestions on their website.

Factor III: The works councils' tendency to address certain CSR issues without explicitly relating them to the concept of CSR

Factor III: Conclusions

Most works councils interviewed seem to have adopted a position that involves actively addressing certain CSR issues without explicitly relating them to the concept of CSR. For these works councils the concept of 'CSR as such' is not a topic on the agenda at meetings with the management or the supervisory board, yet the topics underlying CSR are regularly discussed at these meetings. In general, works councils seem to lack a consistent overall CSR-

⁴ SER advies 2011/11, *Medezeggenschap en (I)MVO*, p. 16; *Voorbeeldreglement Ondernemingsraden*, 2015, Appendix D, p. 136.

strategy. This can be due to the strain of dealing with other issues (*breakout session: group 4*), the use of primarily Anglo-Saxon concepts (for instance the Dutch-speaking *BAM* central works council finds it difficult to communicate with the British sustainability manager of the company because of the language barrier), and the high level of abstraction of the CSR debate.

Which particular aspect of CSR the works councils are involved in, mostly depends on the area in which the company is active. For example, in the furniture industry the environmental aspects of CSR are relevant (*IKEA*), and in construction work safety is the most important CSR action area for the works councils (*BAM*). The issue of international standards and human rights can play a role for the works councils when the company has employees carrying out work in countries which are characterised by low social and human rights standards (*Van Oord*).

Factor III: Recommendations

In order to take CSR seriously, it is insufficient if the works councils act only on several operational fields of action that fall under CSR; works councils should also be involved with the overall CSR strategy. The whole is greater than the sum of its parts, and a more holistic approach of works councils to CSR would increase the effectiveness of the works councils' monitoring of their companies CSR strategy. At this point, I would also recommend that seminars should be organised for works council members to familiarise them with the CSR debate, and provide further background information on CSR concepts and terminology.

Factor IV: The position of Dutch works councils in international concerns

Factor IV: Conclusions

The participation of the works councils is strongly influenced by the co-determination culture prevailing at the company's headquarters. The involvement of works councils is less likely where there are no works councils structures at the seat of the multinational company. This is particularly a problem with the companies that have their headquarters in Anglo-Saxon countries less familiar with co-determination (*breakout session: group 1, CGI*).

Moreover, for works councils it is difficult to influence the CSR policy when the company is part of a multinational group which mainly develops the strategy at the highest international group level. In addition, if a Dutch parent becomes an international holding company, it can restructure the group so that the Dutch parent is fully exempted from co-

determination, whilst the Dutch subsidiary is subject only to mitigated co-determination (the so-called Netherlands-construction).

Therefore, often on the highest enterprise level there is no labour participation, whilst the Dutch works councils only functions on Dutch sub-holding level. Considering that decisions about the CSR strategy are frequently taken at the highest level and not at Dutch sub-holding level, these decisions remain outside the reach of the works council (*breakout session: group 4, Ricoh*).

Factor IV: Recommendations

It is recommended that the Dutch works councils of multinational organisations should work closely together with the European Works Councils of the company on CSR issues in order to get a grip on the higher-level decision-making. Useful in this regard could be the recommendation of the 2010 SOMO study ‘*European Works Councils and Corporate Social Responsibility*’ (see paragraph 3.2.2.) that CSR issues should be explicitly included in the negotiated EWC agreements in order to have a clear mandate for the EWC to discuss CSR-related concerns. Such an agreement could make it easier for employee representatives to use their influence on the higher-level CSR decision-making.

Furthermore, the concern that works councils seem hampered on participating in the company’s strategy in international concerns has also caught the attention of *Stichting MNO*. Research on the position of Dutch works councils in international concerns is currently performed by Marcus Meyer in association with *Stichting MNO*. Meyer’s PhD dissertation ‘*De positie van Nederlandse ondernemingsraden in internationale concerns*’ is conducted both by means of quantitative as well as qualitative research methods, consisting of a survey among Dutch central works councils and 58 follow-up interviews. The dissertation will provide more recommendations to works councils on how to strengthen their position in international concerns. These recommendations will most likely also be relevant to the involvement of works councils of international concerns in the CSR strategy. This dissertation is forthcoming in 2018.

Factor V: The frequent changes in the composition of works councils

Factor V: Conclusions

Since the publication in 2011 of the *Model Code on co-determination and CSR*, the composition of most of the works councils that are members of *Stichting MNO* has changed due to the circulation of its members. The individuals that have a seat on the works councils

change frequently. The *Model Code on co-determination and CSR* has been published in 2011, and since then, the composition of most of the works councils that are members of *Stichting MNO* has changed due to the circulation of its members. The original members with a seat on the works councils in 2011 have largely been replaced by their successors through elections. In some cases, the circulation of members seems to have led to the loss of knowledge and expertise on the issue of CSR and the role works councils can play. For example, only four out of the ten works councils interviewed (*IKEA, Capgemini, KLM* and *Achmea*) had heard of the Model Code already before the *Stichting MNO* quarterly meeting of 20 March 2017. Most works council members admitted in the interviews and the breakout session that the Model Code was new to them.

Factor V: Recommendations

It would be recommended that *Stichting MNO* should pay attention to the role of works council's in CSR on a more regular basis in the quarterly meetings so as to keep the newly elected works council members informed on the importance of this issue. Furthermore, frequent assessments of how members of *Stichting MNO* use elements of the Model Code, and discussions about their best practices regarding the subject, can create renewed attention to the theme of CSR amongst the members (the last assessment was in 2013, and this seems too long ago).

Factor VI: The willingness of works council's to form coalitions with other CSR stakeholders

Factor VI: Conclusions

The interviewed works councils do not usually rely on other stakeholders in the CSR field of action, such as trade unions or NGO's. In their 2012 study '*Mitbestimmung und Nachhaltigkeit – Widerspruch oder Chance*', Zimpelmann and Wassermann describe strategic coalitions with NGOs and trade unions as a best practice, considering these coalitions would provide the German works councils with expert input and detailed knowledge on social, environmental, human rights, and development issues. However, amongst the interviewed works councils the practice of forming coalitions is less common. Only the central works council of *BAM* explicitly mentioned the trade unions as a partner in addressing CSR issues.

Factor VI: Recommendations

In order to stimulate coalitions between trade unions and works councils in the area of CSR, *Stichting MNO* could for example to work together with the '*Christelijk Nationaal Vakverbond*' (National Federation of Christian Trade Unions in the Netherlands; CNV) on this subject, as the CNV has shown interest in the past in the topic of how trade unions could be more involved in CSR, for example in its 2015 manual '*CNV and CSR – Towards fair supply chains – A practical CNV guide to the Ruggie Principles*'.⁵

⁵ CNV Internationaal, '*CNV and CSR – Towards fair supply chains – A practical CNV guide to the Ruggie Principles*', 2015, available at: <https://www.slideshare.net/Vakbond/cnv-and-csr-towards-fair-supply-chains-a-practical-guide-to-the-ruggie-principles-how-to-address-human-rights-violations-within-your-company-or-branch>.