

Het Arbo-effect van medezeggenschap

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The OHS effect of worker participation

Summary

In 1996, the Dutch government launched a 'reorientation' of its occupational health & safety (OHS) policy and of the Working Conditions Act. This reorientation aimed to decentralise OHS policy from state regulation to self regulation at a company level. The main assumption in this strategy was that increased latitude at a company level would enhance OHS initiatives on the part of employers. The shift towards a company level, however, also entailed greater emphasis on worker participation as a form of countervailing power. According to government: "Mobilisation of the expertise of employees is an important prerequisite for good OHS policy. Active involvement of employees is a qualitative stimulus and also secures a balance between the interests of employers and employees." In the Dutch setting, 'worker participation' in OHS policy mainly implied the involvement of works councils. The government contended that the increased importance of worker participation did not imply that the position of the works council needed to be strengthened in relation to OHS. "In general, the position of the works council in both the Works Councils Act and the Working Conditions Act may be deemed adequate."

This PhD thesis examines some of the above assumptions. The two main questions are:

1. Does worker participation, especially by works councils, lead to better working conditions?
2. Are works councils indeed sufficiently equipped to successfully fulfil their assigned role in the field of occupational health & safety (OHS)?

A third, more implicit research question is

3. Does *self regulation* lead to better working conditions?

A short history of OHS regulation (Chapter 2)

The regulation of occupational health & safety (OHS) has come a long way since the end of the 19th century. Until 1874, no legislation whatsoever existed in this field. The protection of health & safety was deemed a joint responsibility of the employer and the workers. In 1874, however, the first piece of legislation was issued, mainly aimed at protecting women and children – the so-called *personae miserabiles*. Working men, according to the then dominant market-liberal ideology, did not require protection by the state. They were considered to aptly fend for themselves. This ideology, however, contrasted sharply with the harsh reality at a shop-floor level. Most employers did not assume their responsibility, and the workers did

not have the power to enforce protection. Mainly due to the weak position of the Dutch trade unions, it was not until 1919 that male workers were brought under the protection of state issued regulations (mainly in the field of working hours). The 1919 Labour Act meant a breakthrough in principle, stating for the first time that *all* workers had a statutory right to decent work. After this breakthrough, an ongoing stream of state regulations were issued in the field of OHS, regulations enforceable by public authority (Labour Inspectorate).

Since the 1970s though, doubt has been cast as to the effectiveness of state regulation. This resulted in a paradigm shift in OHS policy, away from so-called 'command and control' interventionism towards self regulation. A landmark in this shift was a report published by the Robens Committee (1972), stating that "the primary responsibility lies with those who create the risk[s] and those who work with them [...] There is a role for government action, but [that] role should be predominantly concerned with influencing attitudes and creating a framework for better health and safety organisation and action by industry itself." This theoretical framework was embodied in the UK 'Health & Safety at Work Act' (1974) and also echoed in the Dutch Working Conditions Act (WCA, 1980). Both pieces of legislation imposed a general duty of care upon employers, and also a duty to outline an OHS policy. Furthermore, the Dutch WCA bestowed a right of co-determination upon the workers (notably the works council).

Despite some amendments in the WCA since 1980 (such as an obligation to carry out a risk assessment and the introduction of OHS Services in 1994), this framework of a general duty of care on the employer's side and co-determination on the other side still holds at the end of the 20th century. Both parties are believed to jointly develop a policy to protect health & safety at work. This may appear to be a return to the pre-1874 period, in which the protection of health & safety was also considered a matter of free deliberation between employer and employees. There is a clear distinction between these two periods, however, as the workers (notably the works councils) are presently much better equipped with legal rights – mainly on the basis of the Works Councils Act.

The statutory position of works councils (Chapter 3)

The first version of the Works Councils Act (1950) hardly addressed the field of health & safety. The works council only had the task of monitoring company compliance with all legal OHS standards. In 1971, this supervisory task was transformed into the task to 'stimulate' compliance. More importantly, the 1971 Works Councils Act bestowed a right of approval upon the works council in matters concerning OHS as well as advisory powers concerning various topics of a more strategic character. The scope of such powers was broadened gradually in subsequent versions of the Works Councils Act. The 1980 Working Conditions Act and its amendments in 1994 and 1998 fleshed out the more general framework laid down in the Works Councils Act.

At the end of the 1990s, the range of statutory powers enjoyed by works councils in the field of OHS was actually quite broad:

- a consultative right in general and specific consultative rights in the field of OHS;
- a general right to information in all fields and specific rights in the field of OHS;

- a general right to make proposals;
- various facilities, such as time off work and a right to specific training;
- a right to set up an OHS commission;
- legal protection against specific negative consequence (notably dismissal);
- a right of approval concerning specific rulings in the field of OHS (such as a contract with an OHS service);
- advisory powers pertaining to economic and strategic policy, that may also serve to mitigate the (negative) OHS side effects of these policies;
- a right to consult the Labour Inspectorate.

The use of statutory powers (Chapter 4)

But, even if works councils are well endowed with statutory powers, they seldom succeed in applying them effectively in practice. The most basic rights – to be consulted and informed – are observed properly: in 86% of all companies, the works council is consulted regularly and, in 82%, the flow of information may be labelled 'adequate'. Still, over 10% of all works councils are denied even these most basic rights (adding here that some 15% of all 50+ companies have not installed a works council at all). The most noteworthy right in the field of OHS – the right of approval – is violated more often than not. Only in 37% of the companies, is the right of approval fully respected. In 39% of the companies, the works council is systematically bypassed. Moreover, analysis shows that most works councils do not even notice that their rights in this field are being violated and, if they do, they seldom stand up to the employer.

In general, the performance of works councils lacks vigour. Over a period of two years, only one in eight exercised the right to submit proposals. One of the main explanations is that no less than 92% of the respondents in the survey state that the works council is overburdened and lacks sufficient time (61%). Also, many works councils lack specific expertise in the field of OHS (and the level of expertise has not risen in comparison to a 1986 survey among works councils). Finally, some 50% of all works councils hardly ever have contact with the Labour Inspectorate. The labour inspectors themselves are not positive about the performance of works councils either: only some 60% of all works councils are deemed to be knowledgeable (no more than 10% perform 'well'). Nonetheless, 46% of all responding inspectors generally see the works council as a useful partner. Only 11% of all inspectors state that the works council does not contribute to OHS at all.

Analysing the background factors that may be of significant influence on the performance of the works council, three factors come to the fore. First, works councils that are prepared to take a more active stance appear to be taken more seriously by their employer – they are less likely to be bypassed and they receive better information. The same holds for works councils that maintain relatively close contact with trade unions. However, these more syndicalist types of works councils only constitute a small minority. Second, co-determination by works councils is clearly more effective in larger firms. This does not relate primarily to the qualities of the larger works councils themselves (they are no less overburdened than smaller ones), but it is clear that in larger firms consultative policy making is more developed than in smaller enterprises. The third and most salient conclusion is that the effective-

ness of worker participation in OHS is very much dependent on management style and the employers attitude towards co-determination. If the employer is sceptical or even condescending about co-determination, the works council will achieve little. This last, not altogether surprising, conclusion raises a question of a more fundamental nature: if worker participation is thought to strengthen OHS policy and thereby contribute towards the protection of health & safety at work (even though in some companies worker participation does not get off the ground), this implies that in the latter case health & safety may be more at risk – resulting in inequality in the protection of fundamental human rights. Therefore, experiments in the area of self regulation may be at loggerheads with fundamental principles of the constitutional order. The answer to this question, however, is to be postponed until it has established whether or not worker participation does indeed lead to better working conditions.

The OHS effect of worker participation (Chapter 5)

Since 1998, the Dutch Labour Inspectorate has carried out an annual OHS Monitor involving some 1,600 companies in order to assess the current state of OHS and OHS policy in the Netherlands in general. On the basis of a secondary analysis of the 2001 findings, it has been possible to estimate the effect of worker participation (by works councils) on matters related to OHS. The quality of OHS may be operationalised by means of various indicators, such as:

1. The quality of OHS policy (risk assessment, plans of action, contract with an OHS service);
2. Actual working conditions (physical and mental burden, repetitive strain injuries, noise, dangerous substances);
3. The negative effects of poor working conditions (absenteeism, incapacity for work, occupational accidents).

The findings of the OHS Monitor indicate that there is a clear connection between the presence of a works council on the one hand and the presence and quality of both a risk assessment and a plan of action on the other hand. One in five companies (50+ employees) without a works council, has also failed to carry out a risk assessment. In companies that do have a works council – this is more than 6% – pertaining to the presence of a plan of action, the difference is not significant. Plans of action that have not been discussed with the works council, however, are of a significantly poorer quality (according to the inspectors). Also the quality of both OHS instruments increases with the frequency of consultation and the influence of the works council. OHS services also appear to benefit from the influence of the works council. The scope of the contract with the OHS service is significantly more encompassing in companies with a works council than in their counterparts without worker representation. Also, the focus is more on preventive activities than merely absenteeism. Findings from another survey also indicate that the *impact* of OHS services is stronger in companies in which the works council had been involved in contracting the OHS service.

Regarding the actual working conditions, the presence of a works council seems to be beneficial. The mere presence of a works council does not, obviously, have a great impact on the presence of OHS risks. These go hand in hand with the nature

of production. Companies in which OHS is a recurrent theme of consultation, however, have significantly more often taken measures to reduce the risks (93%) than companies that hardly ever discuss OHS matters with the works council (78%). Also, the measures are embedded more thoroughly in the former companies (84%) than in the latter (49%).

A third indicator of the positive effect of worker participation may be that companies in which the works council has not been involved in the process of contracting an OHS service, absenteeism is at a higher level. Absenteeism appears to correlate significantly with the type of OHS policy, and the works council may to some extent influence the type of policy of both the OHS service and of the employer.

The type of influence (Chapter 6)

It can therefore be concluded that both the presence and involvement of works councils have a positive effect on OHS in companies. In order to acquire a better picture of the precise nature of the influence of the works council, case studies were carried out in two contrasting branches – the construction industry and the financial services sector (banks and insurance companies). The findings of these case studies do not provide cause for great enthusiasm. Works councils show little initiative, they mainly respond to policy proposals of the employer or OHS staff. Their expertise is meagre, with respect to both the field of OHS and the ability to operate at a policy level. On close examination though, they play a valuable role in pointing out shop floor risks and communicating daily experiences to OHS staff and management. Also, some of the OHS experts stated that in their own policy they anticipate possible reactions of the works council.

Recommendations (Chapter 7)

On balance, it is beyond dispute that the involvement of works councils in the field of OHS does indeed have a positive effect – albeit marginal, especially in companies that already have established a professional OHS infrastructure (notably in the form of an OHS coordinator). In many companies, however, doubt may be cast as to the effectiveness of worker participation. In the concluding chapter, some ideas are put forward to strengthen the protection of health & safety at work. These ideas seek to address some of the weaknesses in the current system, mainly the lack of time and expertise on the part of worker representatives. The main idea is that all companies of, say, over 20 workers should be obliged to organise some sort of expertise in the form of internal OHS services or safety experts. Well-trained professionals at a shop floor level may be expected to boost both attention for OHS matters and effectiveness in terms of OHS policy. On the other hand, OHS should not, in my opinion, be left exclusively to the professionals. Professionalism does present the risk of one-sidedness, of an OHS policy in which the *shop floor experience* drifts beyond the horizon. Therefore, an active role must still be allotted to worker representatives. This role, it is argued, should not primarily be staged at a policy level but rather at a shop floor level. 'Invisible' OHS risks such as stress, organisational culture, and so on may best be brought to the surface by those who are trusted by their co-workers. Hence, a more active role should be played in the process of risk assessment to ensure that non-expert experience is properly included.