

Employees and corporate governance: the Dutch experience in the European context*

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1. Introduction

Industrial relations focus on the relationship between worker and employee, organised on an individual and a collective level. Employees and their organisations are able to influence the conditions surrounding this employment relationship. Most influence is given on the level of collective bargaining agreements: in nearly all European countries collective bargaining agreements only can be reached when both employers (or their organisations) and trade unions agree. Regulating terms of employment is seen as the predominant way to safeguard the interests of the employees. In the second half of the last century, and especially in the 50s, 60s and 70s, workers are given also influence within the company, on strategic level as well as on executive level. On strategic level this influence never exceeds a minority position or an advisory role. On executive level, works councils have most influence on personnel policy, where they have the right to uphold their agreement on a decision of the employer (Rogers and Streeck 1995).

It is important to notice that these after 1945 continental industrial relations - with its predominant focus on the employment relationship - are built in a period with a very moderate role for the capital market. Capital was seen as necessary for making investments, and investment decisions were made when the returns exceeded the cost of capital. In the seventies and eighties for example, high rents (partly as result of crowding out by governments) and high wages prevented firms to invest and thereby creating new employment opportunities. But at the end of the eighties, capital markets started to put a stronger pressure on firms. This is a global trend, stimulated by the liberalisation of the capital market, the very low global transaction costs of capital (contrary to the labour market and product markets), and the growing amount of private capital suppliers with a renewed interest for equity investment in combination with a lower demand on the capital market.¹ This all has led to lower rents but higher stock exchange rates. And this process culminated in the trend - or should I say hype - of shareholder value maximisation. This - for continental economies new - criterion has

* Prof. Jan Peter van den Toren could not participate in the RIALS special seminar on June 1st. This is a paper prepared by him for his presentation at the seminar.

¹ The EMU for example not only has led to lower government deficits but also to a smaller capital reserve at central banks because of limited currency risks.

some economic arguments, but mostly has come up in the slightly analysed interaction between directors and exchange analysts.

Nevertheless, the capital market has put a rather new and more and more global pressure on firms. In the political field this is accompanied by the growing attention for corporate governance. This attention originated as a consequence of a few conspicuous scandals as Maxwell, Metallgesellschaft and Crédit Lyonnais, but is also stimulated by a growing number of transnational mergers like Reed-Elsevier, Daimler-Chrysler, Fortis and recently Mannesmann-Vodafone. In Europe this debate is visible in national reports on corporate governance. These reports are all more or less influenced by the first one, the Cadbury *Code of best practise* in Great Britain. Although the reports advocate that independent directors should participate in the board to countervail shareholder power, Wymeersch (1999) sees a dominant view in these reports that a company primarily serves the interests of the shareholders, with the Dutch Peters report (see chapter 5) as most preserving other interests besides of the purveyors of risk bearing capital. Also in the debate within the OECD, the dominant point of view is that firms should be more open to their shareholders.

So economic and political trends point to a growing pressure of the capital market. These trends can also be seen as a growing Anglo-Saxon influence, also on economies who in their industrial relations, welfare state and corporate governance structure can be labelled as Rhineland or cooperative models. Continental industrial relations pre-suppose limited shareholder pressure. In comparative industrial relations the distinction between the Anglo-Saxon shareholder model and the Rhineland stakeholder model is introduced in the nineties (Albert 1991). In the US and the UK the high shareholder orientation not only is reflected in business dynamics but also in the industrial relations system. Long term commitment of employees to their firms is not seen as a socially or economically valuable asset. Employees have a higher chance to be dismissed, but at higher costs for the employer. A lower level of mutual trust in Anglo-Saxon industrial relations is reflected in more supervisory personnel, so higher supervisory costs. In Rhineland industrial relations employees have a more positive opinion on management, which also is seen to be looking after their interest. In Anglo-Saxon industrial relations works councils do not exist and trade unions and employers (organisation) operate in a more competitive and conflictive relationship, which also will effect mutual investment. The general expectation is that as a consequence of internationalisation and individualisation and changes in firm strategy and structure, shareholder capitalism will overrule the Rhineland model, even in continental industrial relations.

This leads to several questions. In what sense is this growing capital pressure a risk for Rhineland industrial relations? How do the parties in industrial relations react on this growing influence of the capital market? Are Rhineland institutions able to intervene to mitigate this growing shareholder pressure? Trade unions want to intervene, but what are employers associations doing? An important additional factor is that trade unions can regulate the labour market, but employers associations do not regulate the

participation of their members on the capital market. As Traxler (1993) states: 'business' most powerful resources remain outside its associations' control'.

This paper focuses on the Netherlands. Institutionalised co-determination and the ongoing interaction between management and representatives of employees in firms are at the first sight relatively well functioning and may be placed in a stakeholder model. But the question is raised on the stability of this stakeholder model. Hostile take-overs for example were unknown in the Netherlands and Germany till 1999. But in February 2000 the German Mannesmann concern was taken over by the British telephone company Vodafone, a merger that started with a hostile bid. Also in Netherlands, the dredge company Boskalis did a bid on the construction concern HBG. Dealing with the shareholders seems a risk for the long-term stability of the firm, one of the features of the Rhineland model.

On the field of corporate governance the Netherlands are an interesting case between Rhineland institutions and Anglo-Saxon influence. The Netherlands have a strong Rhineland tradition but also a high stock capitalisation, so a nation with a strong shareholder influence on strong institutions. In this paper I will give some figures on growing shareholder influence and its effects in the Netherlands, analyse the relationship with industrial relations on firm and national level and discuss (the role of the trade unions in) the actual corporate governance debate. The Netherlands form an interesting example of relatively strong organised trade unions in institutional decision making (sometimes called 'the Dutch Miracle'); but are they able to diminish or regulate growing shareholder pressure?

2. The Dutch miracle: a cooperative Rhineland tradition

In the summer of 1997, the Netherlands attracted much world-wide attention. Prime Minister Wim Kok was invited to tell the G7-leaders about the Dutch socio-economic experience. International magazines highlighted the 'Dutch miracle' and dubbed it the 'Tulip model'. Continental European magazines were enthusiastic, and saw the Dutch experience as an argument that social and economic goals can be realised together. American magazines, though, were more reserved about the possibilities for a 'Third Way' in Europe.

In 1997 and 1998 also more analytical approaches were made to analyse the 'Dutch miracle'. Visser and Hemerijck (1997) look at the historically founded socio-political institutions and the way they interact. Since the Second World War, Dutch industrial relations have been characterised by a close-knit network of advisory and consultation institutions at a central level, in which trade union federations and employers' organisations can consult with each other and with the government. In the Netherlands, self regulation is an important character of socio-economic policy-making. The most important institutions are the Social Economic Council (SER), an advisory body comprising representatives of the trade union movement and employers' organisations, as well as independent members appointed by the Crown, and the Labour Foundation, the bipartite institutions of the trade union movement and employers. In the

Netherlands, more than 85 per cent of employees are covered by a collective agreement. In practice, in most companies in the Netherlands, the primary conditions of employment are laid down in the collective agreement. The employer may further elaborate a number of the collective agreement provisions, as well as a number of conditions of employment of a secondary nature with the approval of the works council. In the Netherlands, the works council is an institution elected completely by and from the personnel. In the Netherlands, approximately 70 per cent of the works council members are also members of the trade union.

In addition to this institutional approach, Teulings and Hartog (1998) analysed these institutions on the labour market from an economic perspective. They proved, in theory as well as empirically, that these institutions can improve labour market efficiency. It is important to notice that the 'Dutch miracle' label is the result of the successes on the labour market and within social policy. In general, corporate governance is missing as a theme in this debate on the Dutch model. Of course, a lot of debate exists on corporate governance, but not in relation to industrial relations. Exemptions are Van den Toren and Vos (1997) and Van der Meer and Van den Toren (1999, both in Dutch) and a German-Dutch comparative study *Challenging neighbours* (CPB 1997, in English). At forehand already one relationship can be seen. Income growth that followed from Dutch economic success (paradoxically as a result of wage moderation) has led to growth of private demand on the stock market, so to growing exchange rates. This also favoured shareholder value thinking.

3. High market capitalisation and growing shareholder pressure.

Whereas the Netherlands are seen as an example *par excellence* of the Rhineland model, its stock market capitalisation reaches Anglo-Saxon values. Growth of stock market capitalisation is figured in table 1.

The Netherlands have a long stock exchange tradition. Amsterdam Exchanges' markets have a long history. The Amsterdam stock market is generally recognised as the oldest in the world and will celebrate its 400th anniversary in 2002. In terms of market value, the Amsterdam Exchanges stock market is among the top ten in the world. Many international companies have their headquarters in the Netherlands. Small and medium-sized Dutch companies also perform very well in comparison with other countries. Amsterdam is the home market for some of the world's biggest multinationals, including Royal Dutch (Shell), Unilever, Philips, ABN AMRO, ING Groep, AKZO Nobel, KLM, Ahold and Aegon.

But what do we know about growing shareholder pressure in continental economies? Or - analogue to Freeman and Medoff's *What do Unions do?*(1984) - What do shareholders do?

Table 1. Market capitalisation of listed domestic equity issues
As per cent of GDP at year-end

	1975	1980	1985	1990	1993	1994	1995	1996
Australia (Assoc. of SE)	22	40	37	37	71	67	70	80
Austria	3	3	7	17	16	16	14	15
Belgium	15	8	26	33	37	36	37	44
Canada (Toronto and Vancouver)	30	45	45	43	61	59	66	86
Denmark	11	8	26	30	31	34	33	41
Finland	-	-	-	17	28	39	35	49
France	10	8	15	26	36	34	32	38
Germany (Assoc. of SE)	12	9	29	22	24	24	24	28
Greece	-	-	-	-	-	-	14	19
Ireland	-	-	-	-	-	-	40	49
Italy ¹	5	6	14	14	15	18	19	21
Japan	28	36	71	99	68	77	69	66
Korea	-	-	-	43	42	50	40	29
Mexico	-	-	-	16	50	31	32	32
<i>Netherlands</i>	<i>21</i>	<i>17</i>	<i>47</i>	<i>42</i>	<i>58</i>	<i>67</i>	<i>72</i>	<i>95</i>
New Zealand	-	-	39	20	56	53	53	56
Norway	-	-	16	23	24	30	30	36
Spain	32	8	12	23	25	25	27	33
Sweden	3	10	37	40	58	66	75	95
Switzerland 2	30	42	91	69	114	109	129	136
Turkey	-	-	-	-	20	17	12	17
United Kingdom	37	38	77	87	122	114	122	142
United States(NYSE, Amex and Nasdaq) 3	48	50	57	6	81	75	98	114

1. Italy - All Italy on a net basis since 1985.
2. Switzerland - only Zurich through 1990.
3. United States - including foreign shares in 1975.

Source OECD (1998), *Financial Market Trends*, February.

First of all we see a growth of stock market capitalisation. In continental European economics this capitalisation rose from an average of 13 percent in 1980 to 53 per cent in 1996. In the Netherlands this growth was even faster, from 17 per cent to 95 per cent. This is an indication - although not more - of a relative growth of shareholder participation in national economies. In 1998 growth of shareholder value even amounted to more than private wage income in the Netherlands. Seen in a longer period of time, exchange rates were stable in the sixties and seventies, but became ten times higher in the eighties and nineties.

Not only market capitalisation is growing, turnover on the stock market is even

growing faster. From the end of 1995 to the end of 1998 turnover over the Dutch stock market became 4.1 times greater, whereas total market value of Dutch shares grew 2.3 times.² In 1998 turnover on the stock market exceeded total stock prices, so the *average* participation is less than one year!³ About 15 percent of the shares are held by commercial investment funds, which have to cope with a shorter time horizon of their participants (mostly individual households). Kersten (2000) has shown that this time horizon has been reduced from 15 year in 1994 to 5.5 year in 1999.

But growing stock market capitalisation and turnover does not necessarily mean that shareholders put a greater pressure on firms. It even can be seen as a decrease of the price of capital: it has become cheaper to get capital for investment. Shareholders have to reckon with relatively low dividends. Average dividends have become lower than rents on government bonds (the so called dividend yield ratio is globally higher than 3). Most shareholders try to gain from a rise in exchange prices._

This is also reflected in statements of firms and their presidents. They try to raise their shareholder value. When their shares are undervalued they risk a take-over. This recently also was a reason for some Dutch firms to withdraw from the stock market. But a general impression is that a growing number of firms explicitly mention that they are aiming at rising shareholder value. Research however that can prove this tendency over time is lacking. A Dutch researcher, Jeroen Weimer (1995), has done comparative research on the firm goals in 1993, but he only looked at corporate *financial* goals of US, German and Dutch managers. Making profit and being profitable proved to be important for managers in these three nations; in the Netherlands, the US and Germany growth of long term earnings per share and maximising the return to the stakeholders were the common denominators of the highest ranks of the financial goals of the managers. But Weimer also sees differences: it is interesting that US managers relatively strongly emphasise maximising and creating shareholder value, German managers on liquidity-related financial goals, whereas Dutch managers emphasise book value-based, profit(ability) related financial goals, but also 'giving earning forecasts to analysts, which are as accurate as possible'.

An indication of growing shareholder focus is the rising frequency of communication with shareholders. Nearly all Dutch firms produce figures every three months, besides of their annual report and their forecasts for the next year. So at least six times a year firms have to fulfil the high expectations of shareholders. Listed firms also have a department on investor relations and their presidents invest a lot of time in contacts with media and institutional and private investors. A Law on Prior Knowledge also stimulates this. Whereas in the eighties employees were informed on important and mostly painful decisions before these were made public, since this law, these type of statements are directly put in public. So employees sometimes hear about important

² Calculated on AEX-figures

³ There exist important differences between firms. Some AEX funds change owner average four times a year, other less than one time a year (in 1999).

mergers of their firm on television instead of being informed at forehand by their director.

A last indication - but also an explanation - of growing shareholder focus is the rising importance of options and shares as an (additional) bonus for members of the board of directors and lower managers. Especially when this options and shares can be realised directly after issue, this stimulates a short-term orientation of directors and managers. A recent and somewhat exceptional example is the British-Dutch publishing corporation Reed Elsevier, which reserved 345 million Euro for an option plan for its forty top managers. When the exchange rate of Reed (in London) and Elsevier (Amsterdam) has grown with 20 percent within 3 years, they will receive options to an amount of 10 till 25 times their yearly salaries. Most criticism came from the shareholders themselves. At the same time they were asked to reduce their dividend to invest in Internet. This Reed-Elsevier option plan not only forms an illustration of the shareholder focus of top management, also of the rather short time horizon of three years.⁴

4. The analytical debate: do shareholder-pressure and corporate governance reform influence firm results?

In general we can conclude that shareholder pressure and shareholder focus of firms is growing. For a lot of economists this raises efficiency of firms and markets. A small minority of economists question this relationship between shareholder pressure and efficiency. Firms are productive and profitable when they efficiently combine the investments of all stakeholders. This is of extra importance when investments are asset-specific (Williamson 1996). When the commitment of other stakeholders is not sure, a hold-up problem will result (Moerland 1998). As asset-specificity of labour is higher than asset-specificity of capital, it is strange that in the shareholder value criterion the relationship with the capital market dominates the relationship with other stakeholders. This criticism from an economic point of view is shared by some researchers on the field of industrial relations, who, as the minority of the economists, focus on the fact that labour needs a long term orientation to be effective and make firms competitive. Not only labour asks for a long term perspective, also investment in R&D asks for a longer period than one year to gain results. Shareholder orientation is seen as 'short-termism', while stakeholderism is seen as 'long-termism' (Scott 1997). This follows the distinction between the conflictive versus the cooperative model. Theoretical analysis focuses on the possible effects of bank lending (important in Germany) and institutional investors with long term interests versus private, small investors and on the effects of a two tier versus a one tier system of corporate governance. But although the theoretical debate is growing, empirical research on the *effects* of shareholder pressure and different systems of corporate governance is rare.

An emeritus economist of the University of Amsterdam, Henk de Jong (1997), has done comparative research on the effects of Rhineland versus Anglo-Saxon and

⁴ NRC April 26, 2000.

Latin firms, where the seat of the holding is the most important variable. He concludes over the period 1991-1994 that German and Latin firms have a higher productivity growth and less decline in employment than Anglo-Saxon firms. With respect to the distribution of the net value added Anglo-Saxon firms give capital a higher yield (23.5 % of net value added) than German (8.8 %) and Latin firms (14.4 %). Shareholder orientation does not automatically lead to higher productivity and employment. Implicitly, national institutions are seen of greater importance than variance between firms within the different systems (although De Jong combines firms in nations to three regional types). This fits in the institutional approach in industrial relations where path dependency, national legislation and social cultural traditions lead to rather resistant national systems (Ferner and Hyman 1998). But differences between nations also have to do with other features of national models than just corporate governance. For example, also cooperative collective bargaining in the German model influences productivity, employment and labour and capital income. So in the research of De Jong the influence of various aspects of corporate governance cannot be analysed.

In addition, not only national systems differ. Also firms within in one nation will differ in corporate governance structure, shareholder influence (relative to other stakeholders) and firm strategy. The debate in the Netherlands has led to a database of Dutch companies that are judged for their transparency and openness. This database is also used for economic research, but also in this case, researchers were particularly interested in the financial effects of the different corporate governance models. They conclude that share concentration has a positive influence on shareholder value, whereas take-over defences and the size of the supervisory board have a negative influence (Center 2000). This research shows that some, but not all presuppositions for corporate governance reform hold. But research on the trade off between long term and short term financial and HRM-results of the firm, in relationship with shareholder, management and workers influence still is lacking.⁵

5. The corporate governance debate in the Netherlands.

The actual debate about corporate governance in the Netherlands is initiated by a market-oriented cabinet that replaced, in 1994, a very long tradition of governments dominated by Christian-democrats that favoured traditional institutions within and around the firm. In 1994, a new government was formed which did not include the Christian Democratic Party for the first time since 1913. The Christian-democrats are generally seen as supporters of intermediary organisations and a consultation economy. The actual cabinet, dubbed the 'purple' government owing to its political hue, includes Social Democrats and Liberals, and started its mandate with the goal to restrict the role of the social partners. Political and public opinion was at that time turning against an economic policy based on central coordination and sector negotiations. This (internal)

⁵ In the CNV R&D department we are conducting research on this topic that will lead to results at the end of this year.

pressure on the social economic institutions just was released when in 1997 international politicians favoured these institutions as the ‘Dutch miracle’. This new left-liberal cabinet (1994-1998) also focussed on liberalisation of the stock market by enhancing shareholder influence on firms, for example by greater firm transparency and diminishing blockades for unwanted take-overs.

This government pressure was followed by an initiative of different shareholder-related organisations in the Netherlands. They formed a ‘Corporate Governance Committee’ (lead by a former president of a Dutch insurance company, Jaap Peters) that came with forty recommendations in June 1997. This committee has pleaded for self-regulation: government intervention should not be necessary if Dutch firms should change their corporate governance on their own initiative. The recommendations of this Committee completely focussed on the role of the supervisory board, such as: a composition that makes an independent and critical position possible, no automatism in re-appointment of supervisors and drawing up a profile for their members. Nearly all recommendations could be seen as enhancing shareholder influence. Trade unions in the Netherlands criticised these recommendations because they would lead to a relative loss of power by management and workers representatives.

The corporate governance debate not only focussed on the position of small minority shareholders, it also led to an internal discussion within the important institutional shareholders (especially pension funds, who in the Netherlands are governed by employers and trade unions). In 1998 they formed their own foundation (‘Stichting Corporate Governance Onderzoek voor Pensioenfondsen’ or Foundation Corporate Governance Research for Pension Funds). The participants in this foundation represent 60 per cent of pension fund investments in Dutch companies. This foundation has made its own code for corporate governance, mainly based on the recommendations of the Corporate Governance Committee.

One element of the Corporate Governance Committee report was the role of the Supervisory Board. The Dutch corporate governance system is based on the two-tier board principle.⁶ The Structure Act of 1971 regulates the governance structure of the so-called ‘structure corporations’. The Netherlands not only have a two tier board, as other European nations have, the dominant legal system is that the supervisory board functions independently. In the 60s social partners and politics did not choose for a system with dependent board members, but for a system of ‘controlled cooptation’. In the normal regime for structure companies, neither (the general assembly of) shareholders, nor employees can choose or appoint their delegates in the supervisory

⁶ The basic distinction usually made is between a ‘two-tier’ and a ‘one-tier’ system. In a two-tier system, there is a formal separation between the supervisory and control function and the executive management, commonly described as the supervisory board and the board of directors or management board. In one-tier systems, there is a single body, the board of directors, responsible for control of the company. The board may contain members of company management alongside with members from outside, representing shareholders and sometimes other parties (Carley 1998).

board. This board and all its members individually have to serve the interest of the company as a whole. This legal system was the result of a carefully reached compromise between labour and capital, strongly made possible by Christian-democrats who ideologically choose for a system of self-regulation, also on firm level.

The Dutch structure regime is applicable for multinationals that are seated in the Netherlands but of whom a majority of the employees are working abroad. Although also in 1971 the greatest Dutch firms operated international (Shell, Philips, Unilever, Akzo), the number of firms operating internationally, has grown. In those cases, most elements of the structure regime are applicable to the Dutch sub-holding (as it also is to Dutch 'daughters' of foreign multinationals). A phenomenon that holds since the 80s is that the popularity of the business unit structure has weakened or even passed national sub-holdings. Research in the Netherlands has shown that a part of the firms that are not obliged to do it, apply the structure regime: they prefer to give the board of governors an important position. Also in a lot of firms who do not apply the structure regime, a rather strong position is given to the supervisory board. A recent survey on directors also showed the popularity of this board; it is seen as a mitigating channel to shareholder influence.

The shareholders' meeting and the works council both have the right to propose supervisory board candidates and to object to the appointment of supervisory board candidates. In practice however members of the board of supervisors are appointed by cooptation without much influence of the shareholders or the works council. There is a dominant criticism that this practice diminishes shareholder influence and firm efficiency. On the other side, trade unions plea for more supervisory board members appointed by workers representatives. In 2000 both (and other) claims are on the agenda of the tripartite Social Economic Council, the top organisation of the Dutch institutional model. The debate in the Social Economic Council can be seen as focussing on the question how international (capital) market forces can be harmonised with the long term oriented social system in Netherlands (as else in continental Europe).

The trade unions in the Netherlands have since the 60s the point of view that one third of the members of the supervisory board should be appointed by the works council, another third by the general meeting of shareholders, and this members both cooptate the last third of the supervisors. Dutch trade unions perceive the Dutch legal system of appointment of independent supervisors as a system of parity of capital and labour they want to behold.⁷ The Dutch system is rather unique in its parity. Even the German system, with its direct representation of capital and labour in the supervisory board is not seen by the trade unions as a desirable alternative because of (1) the fact that representatives of capital can overrule labour representatives in the *Aufsichtsrat* (2) the practical problems coming from direct representation. The employers organisations in the Social Economic Council disagree with the proposals of the trade unions, but both parties are willing to reach a compromise, to improve the functioning and legitimacy of

⁷ In a comparative analysis Carley (1998) sees the German system as most nearing parity. Real parity only exists for firms under the 1951 Act on Co-determination in the Coal, Iron and Steel Industries.

the supervisory board and (for the employers) to prevent government intervention.

In the Netherlands, the debate in the Social Economic Council is strengthened by political pressure. In Parliament, criticism to the existing system of cooptation in the Board of Supervisors is growing. This criticism also is reflected in the request to advise that cabinet has laid down at the Social Economic Council to give an opinion on corporate governance in general and the board of governance more specifically. Government knows that a law based on a unanimous advise of the Social Economic Council is easier to implement than a law that misses support at the level of important decision-makers. In practise the government also uses the Social Economic Council when it is not able to reach unanimity within between the cabinet. Fritz Scharpf (1997) would label this political pressure as 'the shadow of hierarchy'.

6. Corporate governance and industrial democracy

The debate on corporate governance, in the Netherlands as elsewhere, expects that a change in the corporate governance system and even in the composition of the supervisory board will effect strategic decision making and the results of the firm. Especially shareholder influence and shareholder gains are seen to be dependent of corporate governance structure. But what do we really know about this relationship? Morris Tabaksblat, former-president of the Dutch-British multinational Unilever and now chairman of the Board of Reed Elsevier Plc has experience with both Dutch and British board and shareholder assembly, but does not see much difference in shareholder influence in practise. Also in British general meeting of shareholders, shareholders do not really try to influence firm policy.⁸ Only major shareholders can have influence directly or indirectly, but I wonder if they will realise this influence explicit on the general meeting. Shareholders influence firms by trading on the stock market (although their trade can not always be seen as being the result of their opinion on the firm). Of greater importance is the extent to which the board of directors is acting in a way to increase shareholder value (mostly seen to be reflected in actual exchange rate). Can corporate governance structure effect this (growing) shareholder orientation of most firms? The most and strongest cross border competition occurs between internationally operating concerns. The scale size of their production leads to the international markets being dominated by just a few actors. This situation is given further strength through the strategies that a concern employs in the efforts towards being a global player: 'you are one of the top three, or you don't count'. Through the business unit structure that has appeared in the last few years at the cost of their national organisations, competition has arisen *within* concerns in addition to competition *between* concerns (Marginson and Sisson 1994).

These recent trends seem to diminish the role of the works council more than the position of supervisory board. This is one of the explanations for the fact that workers representatives are losing influence on strategic decision making in the firm

⁸ *Elan*, March 2000.

(Van Brummelen and Van den Toren 1998, Van het Kaar and Looise 1999).

7. Conclusions and policy implications

Shareholder pressure forms one of the paradoxes of actual economics. Twenty per cent of Dutch households are trading in shares, and most of the in a speculative way. This trade makes the stock market more dynamic and company directors nervous, shortens their time horizon and hinders stability on the work floor for employees - of whom 20 per cent has shares themselves.

National institutions in the Netherlands facilitate bipartite consensus to cope with shareholder pressure. There is a general consensus to behold the Dutch structure regime with an independent supervisory board. The tendency to increase the role of the general meeting of shareholders is used by the trade unions to plea for enhancing the role of the works council in enumerating board members, to maintain the formal parity. The final outcome of the debate in the Netherlands is not known, but I expect that it will lead to a modernisation of the Dutch two-tier system, in an aim to give it an increased legitimacy to capital and labour. But I wonder if this modernisation will limit shareholder pressure on firms. Higher transparency and quality of the supervisory board do not automatically lead to a change in the balance of power between (various types of) shareholders and workers or to a change in corporate goals. But what are additional policy measures to mitigate or at least regulate growing shareholder orientation?

From an economic perspective, raising transaction costs on the capital market should reduce negative effects of high capital mobility. With the same logic it is possible to raise the costs of exchange transactions, to reduce speculative trade. It is clear that this type of policy measures should be made on an international level. The liberalisation of the capital market and the anti trust laws are favoured by the market orientation of the European Union. The directive for the liberalisation of the European capital market has facilitated and accelerated this process; on the other hand it has given legitimacy to the European Union to intervene where necessary.⁹ But what can Europe do more? We know that the European Company Statute is an element of European policy making, but this initiative does not seem to have much luck. Luckier seems to be the EWC-initiative. Since 1994 there has been a duty for international companies to install a European Works Council (EWC). This duty applies to about 1200 companies, and at the present time about 500 of these companies have complied with that ruling.¹⁰ According to the relevant European directive the European Works Council ought to be (at least) informed and consulted about special circumstances such as the relocation or closing of companies, or collective dismissal. From recent research it appears that the experiences of Netherlands concerns with a European Works Council have been predominantly

⁹ Directive 88/361/EEG of the Council of 24 June 1988 for the implementation of article 67 of the Treaty.

¹⁰ According to an inventory drawn up by the European Trade Union Institute 515 companies were involved as of March 1999. For this database see Kerckhofs, 1998.

positive.¹¹ But it is not realistic to expect that the EWC will be able to balance labour vis-à-vis capital.

From a juridical or institutional perspective, the debate focuses on the influence of capital versus labour on (strategic) decision making on corporate level. There is a general tendency to release long term protection measures and to increase the role of the general assembly of shareholders, in combination with an autonomous growth in shareholder orientation by firms. In general this can be seen as a shift in the precarious balance between capital and labour reflected in Dutch company law. In the Netherlands the actual debate focuses on the role and composition of the supervisory board of Directors. Actual research shows that works council in most cases lack influence on strategic decision making in the firm. To make it able to participate in strategic decision-making on company level it is important to strengthen the position of the works council, not only via the supervisory board but also directly in its relationship with the board of directors.

It is important to see that the actual shareholder debate not only has to do with the classical division of power between capital and labour. Also other stakeholders have entered the debate, which give opportunities for new coalitions. Management, both on corporate and business unit level, has its own goals, which can differ from that of capital suppliers. Also management is in a lot of firms hindered by the short-term orientation of the stock market. Management not only wants to invest in R&D, it also knows that for a competitive position on the long term they need a well-trained and dedicated workforce, which can build a longer relationship with the firm than just a few years. Institutional investors as pension funds also form an interesting actor. They are bipartite governed and have a long-term scope. In the Netherlands, they possess about 20 percent of Dutch shares, but seem a bit reserved to put a proportionate influence on company goals. Within institutional investors a debate is awakening, and one suggestion in the debate is to make it possible for institutional investors to make long term agreements with firms to invest in the firm, if it fulfils certain criteria.

8. Finally

The growing shareholder orientation of firms is a recent and important trend in modern corporations. It is reflected, and not only in listed firms, in a high goal for investment decisions: although capital is cheap, firms ask themselves and their business units a return on investment of at least 15 percent. Shareholders and government have induced, in the Netherlands as elsewhere, a debate on corporate governance. In the Netherlands, the trade unions can participate in this debate via its role in tripartite institutions. But this socio-political debate is narrowed to the role and composition of the supervisory board. As institutions mainly are, this debate has a national scope, it will lead to a slight accommodation of national law to international trends, and not to a new organisation of industrial democracy. In general, European trade unions have been more dedicated to

¹¹ These three topics were under consideration in the concerns Bols Wessanen, Canon (Lamers 1998) and Hoogovens.

influence on macro or meso level than on company level. National restructuring of welfare states and wage policy have strengthened this focus on national level of policy making. In the recent revised edition of their standard work *Changing industrial relations in Europe*, Anthony Ferner and Richard Hyman conclude that national systems are more resistant to the internationalisation of the economy than was thought at the beginning of the 1990s.¹² There is as yet no sign of convergence or breakdown. On the road to the EMU and the Euro, national social partners put the most energy into national consultation; partly because their governments invited them to do so. All the EU member states have in the last few years thrown themselves back strongly on their national consultation systems. Also shareholder pressure tempts trade unions to accommodate on a national level.

But the national playing field is relatively narrow. For this reason also other stakeholders have to strengthen their position, especially the works council and institutional investors. For a more profound debate on the (shareholder oriented) goals of the firm we also need international political initiatives, for example by IMF, G8 or EU. Corporate governance restructuring has elements of a prisoner's dilemma. Without international pressure national institutions will do what is rational on a national level, but not desirable and inefficient for society as a whole.

¹² This relates to the growing attention for the historical embeddedness of national systems (Crouch 1993).

References

- Albert, M., *Capitalisme contre Capitalisme*. Soeil, Paris 1991.
- Brummelen, Y. and J.P. van den Toren, *Medezeggenschap: een hele onderneming*. CNV-rapport, OA-98-05. Utrecht 1998.
- Carley, M., 'Board-level employee representation in Europe. In: *Transfer* 2/98.
- Commissie Corporate Governance, *Aanbevelingen inzake Corporate Governance in Nederland*, Amsterdam 25 juni 1997.
- CPB, *Challenging neighbours. Rethinking German and Dutch institutions*. Springer, Berlin 1997.
- Crouch, C., *Industrial relations and European state traditions*. Oxford University Press, Oxford 1993.
- Ferner, A. and R. Hyman (eds.), *Changing industrial relations in Europe*. Blackwell, Oxford 1998.
- Freeman, R.B. and J.L. Medoff, *What do unions do?* Basis Books, New York 1984.
- Jong, H.M. de, 'The governance structure and performance of large European Corporations.' In: *The journal of management and governance*, 1997, p.5-27.
- Kaar, R.H. van het and J.C. Looise, *De volwassen ondernemingsraad. Grenzen en groei van de Nederlandse OR*. Samsom Bedrijfsinformatie, Alphen a/d Rijn 1999.
- Kerckhofs, P. *Multinationals database*, Inventory of companies affected by the EWC directive, ETUI, Brussel 1998.
- Kersten, E., 'Kortdurend beleggen bedreigt stabiliteit'. In *ESB*, 12-5-2000.
- Lamers, J. *De toegevoegde waarde van Europese Ondernemingsraden. Onderzoeksmemorandum. HSI/ AWV-N*, Haarlem 1998.
- Marginson P. and K. Sisson, 'The structure of transnational capital: the emerging Euro-company and its implications for industrial relations.' In: R. Hyman and A. Ferner (eds.), *New frontiers in European industrial relations*. Basil Blackwell, Oxford 1994.
- Meer M., van der and J.P. van den Toren (eds.), *Wat bindt de onderneming?- de belanghebbenden aan het woord*, De Burcht/ IISG, Amsterdam 1999.
- Moerland, P.W. 'Aandeelhouders en ander belanghebbenden.' In: *ESB* 15-6-1998.
- Rogers, J. and W. Streeck (eds.), *Works councils: consultation, representation and cooperation in industrial relations*. University of Chicago Press, Chicago 1995.
- Scharpf, F.W., *Games real actors play. Actor-centered institutionalism in policy research*. WestviewPress, Boulder 1997.
- Scott, J., *Corporate business and capitalist class*. Oxford University Press, Oxford 1997.
- Teulings, C. and J. Hartog, *Corporatism or competition? Labour contracts, institutions and wage structures in international comparison*. Cambridge University Press, Cambridge 1998.
- Toren, J.P. van den and P.J. Vos, 'En hoe stroomt de Rijn door de polder' in J.P. van den Toren and P.J. Vos (eds.), *Overleeft het Rijnlandse model? Perspectief op Arbeidverhoudingen 1*. Nationaal Vakbondsmuseum/IISG. Amsterdam 1997.
- Traxler, F., 'Business associations and labor unions in comparison: theoretical perspectives and empirical findings on social class, collective action and associational organizability. In: *British Journal of Sociology*, 44/1993.
- Visser, J., and A. Hemerijck, '*A Dutch miracle*' *Job growth, welfare reform and corporatism in the Netherlands*. Amsterdam University Press, Amsterdam, 1997.
- Weimer, J., *Corporate financial goals*. Dissertatie Universiteit Twente, Enschede 1995.
- Williamson, O.E., *The mechanisms of governance*. Oxford University Press, Oxford 1996.
- Wymeersch, E., *Convergence or divergence in corporate governance patterns in W. Europe?* Paper University of Gent, Gent 1999.