



## Good governance: right of appeal of the Works Council

*The Works Council has – in addition to the [right to be consulted](#) and the [right of consent](#) – a right of appeal if the management does not (entirely) adopt the advice of the Works Council or has not consulted the Works Council. The appeal can be lodged with the Enterprise Division of the Amsterdam Court of Appeal.*

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*About the author:*

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### Right of appeal of the Works Council

The Works Council can appeal a decision of the management as referred to in Article 25, Works Councils Act (WOR) if:

- The advice of the Works Council has not been followed (entirely)
- The management has failed to ask the Works Council's advice, or the Works Council could not issue advice (for instance, if the Works Council was not given sufficient information)
- After the advice issued by the Works Council facts and circumstances became known that could have led to a different advice of the Works Council.

For a period of one month the Works Council can appeal a decision before the Enterprise Division of the Amsterdam Court of Appeal. The period commences when the Works Council has been notified in writing of the decision. During this period, the management has to suspend the performance of the decision.

Appeals are lodged by a lawyer submitting an application. The Works Council must notify the management of the appeal that was lodged, so that the management has the opportunity to submit a statement of defence.

### Procedure



The Enterprise Division of the Amsterdam Court of Appeal will treat the request as swiftly as possible. The oral procedure will generally take place six weeks after the request has been submitted. This hearing is open to the public.

## Reasonable weighing of the interests involved

The Works Council will have to adopt the position that the management “by weighing the interests involved *could not reasonably have reached its decision*” (Art. 26 lid 2 Works Councils Act (WOR)). The following main features will be considered by the Enterprise Division:

1. Does ignoring the advice constitute in general a manifestly unreasonable decision?
2. Has the management taken into account the procedural requirements of the Works Councils Act?
3. Has the management weighed the employees’ interests sufficiently clear against other interests?
4. Have any commitments been made by the management?

## Decision and provisions

If the Enterprise Division regards the appeal to be well-founded, it will declare that the management in weighing the interests involved could not reasonably have reached the decision made. This is referred to as a declaratory judgment, meaning: it is not more significant than a moral sanction. As a result, the management will not be affected in implementing the decision.

If the Works Council wants measures to be taken that (provisionally) prevent the implementation of the decision, the Works Council will have to request the Enterprise Division in the application to make provisions. These may include:

- Imposing the obligation on the management to revoke the decision (entirely or in part).
- To undo certain consequences of the decision.
- Imposing the prohibition on the management to perform or to have performed actions to implement the decision (or elements thereof).



# Newsletter

## Action

- Obtain legal advice in the event the Works Council has lodged an appeal or intends to do so.
- Try to avoid unnecessary and delaying proceedings before the Enterprise Division.
- Contact a lawyer for legal assistance in proceedings before the Enterprise Division.

## More information

Do you have any questions regarding the right of appeal and the other powers of the Works Council, or any other questions regarding corporate law and employee participation, please contact:

Thomas Schutte, LL.M. ([thomas.schutte@russell.nl](mailto:thomas.schutte@russell.nl)).