

# The crisis and national labour law reforms: a mapping exercise

## Country report: the Netherlands

### 1. Introduction

Initially, the Dutch economy was assessed as relatively well prepared to weather the economic and financial crisis, with low unemployment, a large and stable current account surplus, low government debt and a budget in surplus.<sup>1</sup> In 2008, however, the negative effects of the crisis became more apparent and economic growth came to a grinding halt in the second quarter.<sup>2</sup> From 2008 the government had taken measures intended to stimulate the economy.<sup>3</sup> In 2009 and 2010 the government set aside, alongside other measures, nearly 6 billion euros to tackle the consequences of the credit crisis, and the provinces and municipalities provided 1.5 billion euros. This money was spent on various measures with the objective of stimulating employment, construction, the housing market and a sustainable economy.<sup>4</sup> In 2013 it was reported that the Netherlands, Germany's ally in pushing for greater budgetary discipline in Europe, had fallen into an economic crisis itself.<sup>5</sup>

However, since 2014 the Dutch economy has recovered, including unemployment. While from 2011 to 2014 unemployment grew to 7.43 per cent, since 2015 it has been gradually falling, reaching 5.7 per cent in July 2016.<sup>6</sup> In 2015 it was reported that after years of crisis, recession and stagnation, economic growth appears to have convincingly returned to the Netherlands.<sup>7</sup>

In sync with the Dutch economic situation, since 2012 the Netherlands has received recommendations for labour law reform within the cycle of annual policy coordination under the European Semester. The European Commission and the Council asked the Dutch government 'to address labour market rigidities, including by reforming employment protection legislation and the unemployment benefit system' in the CSRs of 2012, 2013 and 2014.<sup>8</sup> Besides enhancing labour market participation, other recommendations – including for 2011 and 2015 – targeted the need for pension reform by linking the statutory retirement

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<sup>1</sup> Maarten Masselink, Paul van den Noord, The Global Financial Crisis and its effects on the Netherlands, ECFIN country focus, Vol. 6, Issue 6, 2009, p. 1.

<sup>2</sup> Ibid.

<sup>3</sup> <https://www.government.nl/topics/financial-policy/contents/how-did-the-netherlands-handle-the-credit-crisis> (accessed 28 October 2016).

<sup>4</sup> Ibid.

<sup>5</sup> <http://www.spiegel.de/international/europe/economic-crisis-hits-the-netherlands-a-891919.html> (accessed 28 October 2016).

<sup>6</sup> <http://www.tradingeconomics.com/netherlands/unemployment-rate> (accessed 28 October 2016).

<sup>7</sup> <https://economics.rabobank.com/publications/2015/november/outlook-2016-the-netherlands/> (accessed 28 October 2016).

<sup>8</sup> See the European Commission's recommendations and consolidated versions for the years 2011-2015 at [http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index\\_en.htm](http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm); for an overview see Clauwaert (2015) at 104-105.

age to life expectancy and reforming the second pillar pension. Improving the employability of older workers (CSRs 2013 and 2014) and reducing tax disincentives for second-income earners (CSRs 2011–2014) were recommended as well. The recommendation concerning the second pillar of the pension system was repeated in 2016 and the EU institutions added to the mix the need for measures to reduce distortions in the housing market, to tackle the remaining barriers to hiring staff on permanent contracts, to facilitate the transition to permanent contracts and to address the high increase in the number of (sometimes bogus) self-employed.<sup>9</sup>

The labour law reforms in the Netherlands have largely followed the economic situation of the country and also the need to implement EU measures or to comply with EU recommendations. The early years of the crisis saw the introduction of various ‘flexibility’ measures (2010–2012), while more recently (from 2013 to 2014 and from 2015 onwards) the reforms have been mixed, some decreasing, some improving the level of protection for workers.

## 2. Labour law reforms: 2010–2012

For the period from 9 July 2010 to 1 January 2012, a new paragraph was added to Article 7:668a of the Dutch Civil Code on **fixed-term work**. This article provided that after three consecutive contracts – each time renewed directly within three months of the previous one – the fourth contract automatically becomes permanent. If during the second or subsequent contract, the total duration exceeds 36 months, the contract is automatically converted into a permanent contract, provided the period between contracts is no more than three months. For people under 27 years of age, however, only the fifth contract became permanent.

In November 2011 the Minister of Labour and Social Affairs submitted a draft reform to the Parliament giving employers a possibility to, because of the crisis, **derogate from wage policies and working conditions negotiated at sectoral level** within the framework of collective agreements. The main goal was to avoid further bankruptcies and allow weak businesses to shrug off the sectoral agreements negotiated annually and in particular to overrule agreements on early retirement to reduce their number if the economic situation demanded it.

Attacks on trade union powers continued with the right-wing populist Freedom Party (PVV) presenting a bill to that end on 14 December 2011, which was backed by both coalition parties, the Christian Democratic Appeal (CDA) and the Liberal Party (VVD). The draft bill provided that collective agreements negotiated by trade unions should be binding for the entire sector through general extension (by ministerial decree) only if a majority of employees supported them. This system would thus provide workers who are not affiliated with a trade union with a voice in the negotiation process on collective agreements. Other ideas included giving company works councils a bigger role in negotiating sectoral collective agreements. Trade unions reacted strongly against the envisaged measures. This proposal instigated the government to analyse in depth the functioning of the collective bargaining system in the Netherlands, although this did not result in new legislation.

On 1 January several laws inspired by the CSRs came into effect.

Regarding **temporary agency work**, a registration requirement was introduced for temporary employment agencies. Agencies not registered with the trade register administered by the Netherlands Chamber of Commerce are now fined, as are companies that hire staff from such agencies. Furthermore, the tax authorities and labour inspectorate were obliged to pass on the details of all agencies they encounter to the institutes responsible for certifying temporary employment agencies. The requirement for temporary employment agencies to hold an operating license was scrapped in 1998, but due to abuse, successive governments have begun to see the need for greater control. In addition, and to ensure the implementation of EU temporary agency directive 2008/104/EC, the principle of equal treatment for temporary employees was expanded and the works councils were awarded more extensive

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<sup>9</sup> Clauwaert S., The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2016–2017, ETUI Background analysis 2016.01, Brussels: ETUI (available at: <https://www.etui.org/Publications2/Background-analysis>).

rights to gather information about the use of temporary staff within their respective companies.

Concerning **fixed-term work**, the possibility of four consecutive renewals of *fixed-term contracts for young people* up to the age of 27 was scrapped from 1 January 2012. This option (mentioned above) was originally introduced on 9 July 2009 with the intention of keeping young people employed for longer during the crisis but because the measure only had limited effect and prevented 9,000 young workers from being offered indefinite contracts, it was discontinued.<sup>10</sup> From this date, the number of consecutive temporary contract renewals for young people is limited to three, as with all other employees.

In 2012 there were amendments to the procedure of **collective dismissals**. At least 20 dismissals have to occur within a period of three months for the procedure to apply. However, in this calculation employment contracts that are terminated by agreement were not taken into account, creating for firms the possibility to avoid the application of the procedure for collective dismissals. The amendment fixed this problem by including contracts dissolved by court and terminated by mutual agreement in the computation. Also, it is no longer sufficient that employers notify the unions of the intended redundancies and invite them for consultation: the consultation must in fact take place, and there is a waiting period of one month following the notification before the dismissals can actually take place.

On 26 April 2012, the so-called 'Kunduz' agreement, the name given to the 2013 budget, was signed by Jan Kees de Jager, Christian-Democratic Minister of Finance, and centrists from D66, the Groenlinks green party and Christen Unie Christian-Democrats. It proposed following changes, among others:

- a pay freeze for certain civil servants (teachers, firefighters and the police, who had not had a raise for two years);
- wage moderation in the private sector;
- increased flexibility for dismissal regulations.

Concerning **dismissals**, before the system was characterised by two different dismissal paths: (i) through the Institute of Employee Insurance (*Uitvoeringsinstituut Werknemersverzekeringen* – UWV) and (ii) through the courts. The new proposals sought to institute a single dismissal path, no longer requiring judicial review. A *notice period* of two months would be required for employers or employees to terminate an employment contract. Employers would have to give the *grounds for dismissal* in writing and hold a hearing providing the employee with an opportunity to respond. In case of the employee's disagreement with the grounds for dismissal, they could bring the case before the courts which could award *dismissal compensation* (instead of reinstatement of the employment relationship, as was hitherto the case) if the termination of employment was considered unreasonable.

The draft law also proposed the so-called 'transitional allowance' (*transitievergoeding*) that sought to reduce **the difference in compensation between temporary workers and permanent employees** at the end of their employment and shift the cost for the initial period of unemployment onto employers. At the time, the courts determined the level of compensation, which made it rather costly for employers to dismiss permanent staff, while the contracts of fixed-term employees simply expired without any possibility of (judicial recourse to) compensation for contract termination. The government intended to encourage employers and employees to invest in training during and following employment so that employees would quickly find a new job. The new rules would not apply to collective redundancy, where the last-in first-out principle remained in force. The Labour Party did not support the agreement, and the three trade union federations – the Dutch Trade Union Federation (FNV), the Christian Trade Union Federation (CNV) and the Federation of Managerial and Professional Staff Unions (MHP) strongly objected to the changes.

On 12 September 2012 elections took place. The resulting new centre-left coalition between the PvdA and VVD presented its coalition agreement containing major social measures on 29 October. However, by way of compromise, the proposal to amend dismissal regulations was temporarily abandoned. The new coalition had changed the tone and direction of the

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<sup>10</sup> Of the 19,000 youngsters who had been given a fourth consecutive contract, for 10,000 this prevented unemployment, but for another 9,000 it meant that they were not offered an indefinite employment contract, which they would have been offered except for the temporary deviation possibility. Therefore, the measure was discontinued from 1 January 2012 onwards.' (Gundt (2014) at 8)4.

government's approach to reforming labour law in the Netherlands. It built on reviving the traditional Dutch 'compromise culture' through the so-called *Polder Model*.<sup>11</sup> A deal struck through tripartite negotiations was developed into a series of reforms that received assent in 2014.

On 29 June 2012, the government added flexibility to the regulations facilitating the **recruitment of non-European temporary workers** in large 'knowledge' firms with sales above 50 million euros. From now on, inspectors sent by foreign customers to check orders before they are delivered to shipyards or any other industry making industrial machines will no longer need a work permit. Likewise, non-European temporary employees working for big firms on special projects relating to 'knowledge' (architecture, electronics) will no longer be subject to this administrative requirement. There is only one condition: the Dutch company using their services needs to have annual sales over 50 million euros.<sup>12</sup>

### 3. Labour law reforms proposed: 2013–2014

On 11 April 2013, employers, employees and the government concluded a major Tripartite Social Agreement. As a part of the new accord, new infrastructure was established by the social partners, local employers and local government to **aid those seeking jobs**, particularly in a regional context. The maximum duration of unemployment benefits was reduced to two years from 38 months. Unemployment insurance will be split evenly from employer and employee contributions beginning in 2016. In the case of a collective agreement, the duration of benefits may be extended up to 14 months.

By the Agreement the much debated **dismissal law** reform was postponed until 2016, on the assumption that the economic state of the nation will have improved. Given the shift in the government's approach more room for judicial review in the case of individual dismissals was promised. The agreement furthermore took aim at precarious work; both the government and the courts had been trying to reduce it. In particular the health care sector saw the abolition of **zero-hour contracts and fixed-term employment** was lowered. Other subjects of negotiation included the hiring of disabled employees, which business has agreed to increase, and increased support for youth jobseekers searching for apprenticeships and entering the civil service.

Regarding **precarious work**, the government advanced a bill in 2013 that paralleled increasing court activism on the subject. Given an increase in the use of precarious workers who are paid below minimum wage, measures have been put forward to guarantee the minimum wage to all workers. Primarily aimed at seasonal, self-employed and temporary workers, the bill sought fair pay vis-à-vis those with permanent contracts in the same sector. Not exclusive to hourly rates, worker equality was thus extended to working time, overtime and number of days of annual leave.

In 2013 it was decided that the **vocational training of works council members** will be paid for exclusively by the employers. Previously, they received a subsidy that was paid for by a tax on the employers. Because vocational training may now seem more expensive and employers might be tempted to choose cheaper options, the amendment introduces the right for works councils to training of 'sufficient quality'. A foundation was established and assigned to check and certify vocational training institutions. The Social and Economic

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<sup>11</sup> 'The idea of "Poldering" resonates deeply with the Dutch populace. Historically, dwellers in the low-lying country had to cooperate across social classes to share the costs of maintaining the system of windmills and dikes that protected them from floods and turned marshes into dry farmland known as 'polders'. It was a matter of life and death. Now, with the economy in the doldrums, the housing market in decline and unemployment at a 10-year high of 7.2 per cent, "poldering" is back in vogue. [...] In the Netherlands, hits from the global financial crisis have so far been absorbed in a more relaxed way, as political parties, trade unions and officials have been more focused on cutting deals than in fighting over principles — and sharing pain as well as prosperity. After all, the pragmatic Dutch outlook says, we're all in this together. The Dutch system, known as the "Polder Model," seeks to divvy up the inevitable suffering from a downturn in a way that feels fair to all. Employers agree not to slash as many jobs as they otherwise might in exchange for workers agreeing to take pay cuts and not go on strike. The government, meanwhile, attempts to build public support for tax hikes and spending cuts by distributing them evenly across groups', Sterling, T. (2013) Dutch 'Polder Model' of sharing pain helps country agree on austerity in economic downturn. Associated Press, 25 January 2013, available at: <http://www.timescolonist.com/business/dutch-polder-model-of-sharing-pain-helps-country-agree-on-austerity-in-economic-downturn-1.56156#sthash.HK4gRLsl.dpuf> (accessed 22 January 2016).

<sup>12</sup> Planet Labor, 3 July 2012, No. 120440 – [www.planetlabor.com](http://www.planetlabor.com)

Council will annually publish recommended prices for vocational training of sufficient quality so employers have a guideline.

In March 2014 the government proposed to **generalize the veto right of works councils** related to decisions on *pensions schemes*. The Ministry of Labour formulated a request for advice on 20 March 2014 to the Social Economic Council (SER) - the tripartite body is the government's main advisory body on works council issues and looks after, among other things, the execution and enforcement of the Works Council Act (WOR). According to Article 28 of the Dutch Works Council Act (WOR) and Article 23 of the Pension Act, a works council has to be consulted on any regulation relating to a pension scheme. This act already gives the works council a sometimes limited veto right over every proposed decision on the part of the enterprise to lay down, modify or withdraw an enterprise or sectoral agreement that belongs to the so-called second pillar of the pension system. However, the necessity of works council consent is not absolute and depends on the type of pension scheme. In some cases it is still possible that the works council has no veto right on changes of the scheme, but only on the installation or withdrawal of a scheme, even if the changes were not agreed by the social partners. The government wanted to skip the existing possibilities for exemptions and the differences in consent. The consequences will be that an employer in any case has to request the approval of every decision with regard to the establishment, changes to and withdrawal of a pension scheme in the private sector, irrespective of the fund that deals with the execution of the provisions.<sup>13</sup> These plans have not yet resulted in legislation. In addition, in October 2014 the Social and Economic Council formulated a recommendation on works councils and *confidentiality*. Although the recommendation will not be transposed into legislation the fact that both sides of the industries are involved in the drawing up and conclusion of these SER positions guarantees an effect in practice. Imposing the constraint of confidentiality will occur only under exceptional circumstances and its imposition should not hinder the works council undertaking its responsibilities. The recommendation sets a framework for treating confidentiality.<sup>14</sup>

On 18 April 2014 the Labour Party (PvdA) proposed a Private Members Bill with the intention of creating a discussion around *gender inequality* in remuneration. The proposal sought to enhance **information and consultation rights of works councils** over data relating to payment delivered to male and female employees of a firm. According to the proposal, organizations implementing measures in pursuit of achieving pay equality must consult works councils during the process and make available to them information on pay discrepancies. The works councils would also achieve the right to initiate investigations into unfair practice in the workplace.

In the first half of 2014, the Dutch Parliament adopted the **new Act on Employment and Security** (Wet werk en zekerheid (WWZ)),<sup>15</sup> which represented the outcome of negotiations that started in November 2013 and were based on the April 2013 Tripartite Social Agreement as a point of departure. The new law brought about a substantial overhaul of Dutch labour law, focusing in particular on flexible labour practices, unemployment benefits and dismissal protection law.<sup>16</sup> In the Explanatory Memorandum of the WWZ, the Dutch government explained that it considered that the reform of the dismissal law was overdue because it had essentially remained unchanged since the Second World War and the law on flexible contracts underwent a major reform 15 years ago.<sup>17</sup> The aim of this major labour law reform was to modernise the provisions on job and income security.

In order to create a new balance between flexibility and security in the labour market, the new law also introduced **employment security** as an 'overarching benchmark' (*overkoepelend uitgangspunt*) for contemporary labour market policy. The legislator explicitly recognized the

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<sup>13</sup> Planet Labor, 31 March 2014, No. 8291 – [www.planetlabor.com](http://www.planetlabor.com)

<sup>14</sup> Planet Labor, 12 November 2014, n° 8716 – [www.planetlabor.com](http://www.planetlabor.com)

<sup>15</sup> The Second Chamber, the Dutch house of representatives, adopted the new law on 18 February 2014 and the first chamber, the Council of State, passed it into law on 10 June. The new act can be seen as the conceptual counterpart to the renowned Flexibility and Security Act, adopted in 1999, that provided inspiration to the so-called 'flexicurity' principles adopted by the EU in 2007.

<sup>16</sup> The bill garnered support from a broad coalition, including the ruling Liberal-Labour government (VVD, PvdA), but also the Progressive Liberal Democrats (D66), the Christian Democrats (CDA), the Christian Union (ChristenUnie), the Progressive Green Party (GroenLinks) and the Constitutional Protestant Party (SGP). The centre left coalition needed the support of the opposition in order to have the bill passed through the Senate where the Liberal-Labour partnership is in a minority.

<sup>17</sup> Dutch Government, Explanatory Memorandum, Parliamentary Paper 33818 no. 3, available at <https://zoek.officielebekendmakingen.nl/dossier/33818/kst-33818-3?resultIndex=88&sorttype=1&sortorder=4>

positive effects of the law protecting against dismissal and the Unemployment Insurance Act and the important interlinkages between the two, as well as with the law on temporary contracts. It acknowledged further that both employers and employees appreciated a certain flexibility in employment arrangements but, simultaneously, underlined that the existing Dutch rules on flexible employment left too much room for abuse from successive fixed-term contracts. Considering the growing share of workers with flexible contracts and the resulting segmentation of the labour market to be a structural problem (with negative effects in terms of unemployment and reduced access to training and the housing market), the government aimed to reduce employment precariousness, while maintaining sufficient flexibility for the economy. The balance between permanent and temporary jobs had to be restored, in particular by preventing workers from being employed long-term and involuntarily on insecure flexible contracts. The reform therefore sought to ensure that temporary contracts would (sooner) serve as a stepping stone towards permanent employment and reduce the difference in entitlements between fixed-term and indefinite contracts.

Against this background, the main changes introduced by the WWZ from July 2014 were as follows:

- Concerning **successive fixed-term contracts**, previous legislation limited employers to hiring temporary workers on three consecutive contracts for a total of 36 months. The new amendment lowered this period to 24 months, unless a collective agreement had been signed (maximum 48 months) or a waiting period of six months between contracts is observed. Three more changes are also noteworthy. An obligation of notification was imposed upon employers regarding their intentions to prolong or not to prolong a fixed-term contract one month before the contract ends. Additionally, possibilities to shift the risk of payment to the employee by using so-called ‘zero-hours contracts’ were restricted. Also, there was a new prohibition on including a trial period in short-term contracts of up to six months. Employers are hence confronted with the choice between giving a longer contract, possibly including the right to terminate the contract prematurely on probation, or a shorter contract without a trial period.
- **Redundancy regulations** were amended in an effort to simplify procedures, reduce costs and aim for a more equitable treatment between temporary and permanent workers. The main modifications concerned:
  - Coming into effect on 1 July 2015, the new system retained the two tiers for redundancy cases but the element of choice was abolished. On one hand, dismissals for economic reasons and long-term illness now require administrative authorisation by the employee insurance agency (UWV). On the other, all other disputed cases of employment termination have to be brought before the district judge (*kantonrechter*), one primarily for economic or illness scenarios and the other for disputed cases. The former scenario will go through the UWV, while disputed cases will continue to go through labour tribunals, as before.
  - In cases of termination of the employment contract by mutual consent, under the new law the agreement has to be in writing. Also, the employee now has the right to withdraw their consent within fourteen days of the signature without giving reasons for the withdrawal.
  - Another innovation is that the possibility to appeal the UWV’s refusal to authorise a dismissal to the district judge has been opened (also in the second and third instances). Given that one of the new Act’s aims was to prevent lengthy litigation, this was a rather surprising addition. Before July 2015, the law excluded these possibilities, expressing a preference for clarity about the (continued) existence of an employment contract over uniformity of outcome.
- Also, the above-mentioned idea of a **“transitional allowance”** (*transitievergoeding*) was implemented through the WWZ. In order to reduce the inequality of outcome that existed depending on whether a dismissed permanent worker’s employment ended with severance pay or a temporary employee’s fixed-term contract simply expired, from July 2015 onwards every employee with a minimum of 24 months of seniority is entitled to a standardised severance payment. The new allowance is 1/6<sup>th</sup> of the monthly salary for 6 months for the first 10 years, anything after that time period will be raised to 1/4<sup>th</sup>. The compensation was capped at €75,000 or one years’ salary depending on which is greater. The compensation is

due irrespective of whether the contract had been terminated through administrative authorisation, by the district court or as a result of non-renewal of a chain of fixed-term contracts. However, the law allowed employers to deduct costs incurred for training during the job from the transitional allowance due at the end of the contract without limitations.

- Finally, the legislation's reform of **unemployment benefits** was seen as a concession on the part of organized labour in the Netherlands to avoid more sweeping austerity measures in response to the crisis. Following the Tripartite Agreement, the bill lowered unemployment insurance coverage from 38 to 24 months. It foreseen for the planned reduction to be introduced in phases beginning on the 1<sup>st</sup> of January 2016 and continuing until 1 April 2019.<sup>18</sup> The maximum 24 months of unemployment benefits can be extended if the Social Partners reach a collective agreement that stipulates a longer duration (to a maximum of 36 months). It is also new that the social partners can now agree on a privately financed top-up of the unemployment insurance by means of collective agreement.

Finally, in this period the debate about the functioning of **collective labour agreements (CLAs)** in the labour market continued. Certain MPs worried whether CLAs are capable of offering (individual) businesses suitable provisions tailored to their respective needs. Most prominent was the issue of so-called "dispensation" (*dispensatie*) – i.e. the possibility of granting (individual) employers an opt-out from collectively agreed labour standards, notably those that had been generally extended by ministerial decree.<sup>19</sup> Upon the request of then-Minister Kamp (VVD), the Dutch Labour Foundation forwarded its advice regarding the question of dispensation in CLAs on 8 June 2012.<sup>20</sup> The Foundation concluded that most CLAs contain provisions regarding dispensation but that these were often not very transparent; it emphasized the preference for self-regulation and advised on different possibilities how a CLA can offer tailor-made provisions.<sup>21</sup> In order to render dispensation rules in extended CLAs more transparent, the Labour Minister adopted a new policy guideline on the assessment framework for declaring CLAs generally binding (*Beleidsregel Toetsingskader Algemeen Verbindend Verklaring CAO-bepalingen (AVV)*, no. 2013-0000158609) on 28 November 2013. In addition and following the invitation by the Ministry, on 23 August 2013 the Dutch Social-Economic Council (SER) – a tripartite advisory body – issued a report on extending the base of support for CLAs (*Verbreiding draagvlak cao-afspraken*, no. 2013/03).<sup>22</sup>

Finally, on 16 December 2014 the Dutch Senate passed the Modernisation of Leave and Working Hours Regulations Bill. The idea behind this legislative change was to make it easier for employees to combine work with care responsibilities. Most of the amendments took effect on 1 January 2015. The main changes were:

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<sup>18</sup> Benefits will be tied to the salary of the individuals' previous job and after 6 months the person will be obliged to accept any available job. From this year (2016), an employee builds up entitlements of 1 month unemployment benefit for each year worked for the first ten years; after that the increase in entitlements will be only by half a month of unemployment benefit for each year of service.

<sup>19</sup> Under the current system, dispensation is only granted if there exist compelling arguments based on which the application of of CLA-provisions presented for general extension cannot be borne by the claimant. For instance, parties in the temporary agency work sector submitted a complaint because the Employment Minister had refused to grant dispensation from the generally extended sectoral CLA for a new CLA entitled 'ContinuFlex'. The reason for refusal lay in the risk that the position of agency workers would not sufficiently be safeguarded under the new CLA. See the Minister's letter to the Parliament, no, 2014-0000024329.

<sup>20</sup> The Labour Foundation is a national consultative body, established on 17 May 1945 and organised under private law. Its members are the three peak trade union federations and three peak employers' associations in the Netherlands. Its advisory report on 'Dispensation in the CLA' is available (only in Dutch) here: [http://www.stvda.nl/~media/Files/Stvda/Nota/2010\\_2019/2012/20120608\\_cao.ashx](http://www.stvda.nl/~media/Files/Stvda/Nota/2010_2019/2012/20120608_cao.ashx)

<sup>21</sup> As a follow-up, on 12 July 2012 the Labour Foundation issued a recommendation to collective bargaining partners at decentral level in order to render the provisions on dispensation more transparent. See [http://www.stvda.nl/~media/Files/Stvda/Nota/2010\\_2019/2012/20120712\\_aanbevelingen\\_dispensatie\\_cao.ashx](http://www.stvda.nl/~media/Files/Stvda/Nota/2010_2019/2012/20120712_aanbevelingen_dispensatie_cao.ashx)

<sup>22</sup> The report is available (only in Dutch) under: <https://www.ser.nl/nl/publicaties/adviezen/2010-2019/2013/verbreiding-draagvlak-cao-afspraken.aspx>

- More flexible **parental leave**. The employees now can ask to have parental leave in any way desired and the employer can only object if there are compelling business interests. Also the employee does not have to have worked more than one year before taking parental leave. In addition, the law now provides that, if the employee changes employers, the employee will retain his/her right to the remaining portion of parental leave.
- Partners are now entitled to three days of **unpaid leave** in addition to the current two days of paid paternity leave. This leave must be taken during a four-week period after the paternity leave. This partner leave cannot be denied and is to be deducted from the entitlement to parental leave.
- Employees now can claim **additional maternity leave** if their newborn child is hospitalized. After six weeks, women can also divide the rest of the maternity leave in various segments within a 30 week period, unless there are compelling business interests. If the mother dies, the remaining maternity leave and benefit rights will be transferred to the partner. In addition, the maternity leave can now be extended if the mother is pregnant with more than one child. Women who are pregnant with more than one child will receive four weeks of extra leave.
- The period in which the employee can take **adoption leave** has been increased from 18 to 26 weeks. The duration of the leave is still four weeks. This change applies to foster care leave as well. Unless there are compelling business interests, the employee himself/herself can decide how this leave will be taken.
- The statutory limitations on spreading out and taking **long-term care leave** have been withdrawn. The employee can now take the leave in any desired form, as long as the employer does not have any compelling business interests precluding this.
- **Care leave** may not only be taken to care for a parent, child or partner, but also for a family member related to the second degree, a housemate or – under certain conditions – other persons with whom the employee has a social relationship.<sup>23</sup>

## 1. Labour Law Reforms: 2015 Onwards

The issue of the state of affairs and the future of the **collective labour agreements** received new attention in early 2015. The Parliament asked the Minister of Labour to report on CLAs in February 2015. Following consultations<sup>24</sup> the Minister formally responded in a letter to the Parliament (no. 2015-0000285410) on 13 November 2015 and simultaneously forwarded to the Parliament a report on the ‘Effects of the general extension’ (*Effecten van algemeen verbindendverklaring*).<sup>25</sup> In general the Government, as well as the main social partners, see no cause for introducing fundamental (legislative) changes regarding the content, form or process of CLAs. The Minister recognised his (political) responsibility for promoting the role of the collective bargaining system in maintaining good employment relations and endorsed the fact that the Government had an influence on the point of departure for autonomous collective bargaining by the social partners, exerted through legislation and accompanying policies.

Next to the impact of the crisis and increasing migration, particularly the continuing rise in the number of own-account workers – so-called self-employed persons without employees (*zelf-standige zonder personeel (ZZP)*) – puts increasing pressure (e.g. wage competition) on the collective bargaining processes, affecting different sectors with varying intensity. This has caused a delay, if not a reduction, in the conclusion of CLAs which was felt most in 2015 – still about 72% of the Dutch working population (compared to 75% in 2014) were covered by collective agreements. The need to better understand the relationship between own-account workers and (traditional) employees in the light of the interaction between self-employed activities and CLAs has also been emphasised by two recent judgments, one of the CJEU (case C-413/13 *FNV v the Netherlands*) and the corresponding decision of The Hague Court of

<sup>23</sup> <http://eela.org/news/modernisation-of-dutch-law-on-leave-and-working-hours-regulations/> (accessed 28 October 2016).

<sup>24</sup> A roundtable discussion with different stakeholders in May.

<sup>25</sup> See <https://www.rijksoverheid.nl/documenten/rapporten/2015/11/13/effecten-van-algemeen-verbindendverklaring-eindrapport>

Appeal of 1 September 2015. The Government therefore plans to issue more guidance for the collective bargaining parties on what CLA-provisions in the context of ZZP could be eligible for general extension while keeping within the limits of competition law.

From January 2015 for a **fixed term contract** it is no longer allowed to conclude a non-competition clause, unless the employer has a predominant business interest and motivates this interest in writing upon agreeing to a non-competition clause. Failing to give this motivation or failing to prove sufficient ground for the non-competition clause renders the clause invalid.<sup>26</sup> In addition, the obligation for the employers was introduced to notify the employee in writing in case the employer decides not to extend the present fixed term contract nor offers the employee a new contract. So contrary to the previous law, the fixed term contract does not expire anymore without the employer being required to take action. The announcement of ending the fixed term contract has to be made in writing no later than one month before the end of the fixed term. Failing to do so or to do so timely causes the employer to be liable to pay a penalty to the employee equal to the amount of one month of basic salary.<sup>27</sup> In addition, a trial period in fixed-term contracts of six months or less is now prohibited. This prohibition is applicable to all contracts commencing after January 1, 2015.

From 1 January 2016 a new law (*Wet aanpak schijnconstructies*) introduced a new approach to deal with problems of **undeclared work**, notably arising from bogus self-employment, subcontracting etc. Like the WWZ, also this law was triggered by the 2013 Tripartite Agreement. Salaries in the range of the minimum wage now have to be paid by cashless bank transfer. Only those parts of the salary that are beyond the minimum wage may still be paid in cash. The payslip must now contain a specification of the reimbursement of (additional) expenses in order to identify those parts that may and may not be counted towards the minimum wage. Furthermore, in order to improve the compliance with amongst other the law on the minimum wage, the Labour Inspectorate will in the future make certain inspection results public. It is also noteworthy that the Dutch Cabinet adopted another law, proposed by State Secretary for Social Affairs and Employment Klijnsma, helping those self-employed persons without employees who receive social assistance to save for a pension. From 1 January 2016, the beneficiary's accrued pension capital (up to EUR 250,000) is excluded from the assessment (means-testing) of a benefit claimant's assets.

A new Act on Flexible Working (*Wet flexibel werken*) extended the possibilities for employees to request from their employers an adaptation of their **working time** schedule. Now the employer can only reject such a request in case of compelling business or departmental reasons (*zwaarwegend bedrijfs- of dienstbelang*). Workers may also request an adaptation of the workplace and the employer may only refuse following consultations with the employee.

Until January 2016 an employee was entitled to one month of **unemployment benefits** for each year that the person worked and contributed. From January 2016 for the first ten years an employee is entitled to one month unemployment benefits for each year the person worked and contributed. Afterwards, the employee is entitled to half a month per year that the person worked and contributed. The maximum duration of unemployment benefits has been reduced to 2 years (previously 38 months); the main part of the benefits remains income-related. Unemployment insurance is funded by employers and employees (50/50) from 2016 on. Social partners could decide to extend the duration of benefits with an extra 14 months (in collective bargaining agreements). These changes were part of the Work and Security Act, a package of labour market reforms based on a 2013 agreement of social partners (*Sociaal akkoord*). In addition, after six months of receiving UB (currently 12 months), people have to accept all offers on suitable work (*passende arbeid*). Suitable work is defined in a way that it does not have to be at the person's level of education or in the previous occupation. A new system to calculate income should prevent that people receive less income than benefits when they accept a job (here the idea behind the reforms was to 'make work pay').

Moreover, a new Act facilitating employment after reaching the pensionable age (*Wet werken na de AOW-gerechtigde leeftijd*) addressed the **employability of older workers**. From

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<sup>26</sup> <http://bgadvocaten.nl/the-changes-in-dutch-labour-law-in-2015-in-a-nutshell> (accessed 28 October 2016).

<sup>27</sup> Ibid.

January 2016, the law provided a notice period of one month for employment contracts with workers who have reached the legal retirement age. With such employees, also the rules on fixed-term contracts were smoothened – allowing a succession of maximum six contracts over a maximum period of four years. If these limits are exceeded, the contract will be converted into one of indefinite duration. However, this affects only contracts concluded with persons *after* they have reached the pensionable age. The legal obligation of continued payment in case of sickness for two years, incumbent on Dutch employers generally, has been reduced to a maximum of 13 weeks for workers in retirement age. The corresponding employers' obligation of reintegration and the prohibition of dismissal during sickness also has been lifted for this age group. These employees also do not anymore benefit from the right to request an adaptation of their working time and they will be the first affected in case of collective redundancies.

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