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The crisis and national labour law reforms: a mapping exercise. Country report: Netherlands

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## **Netherlands**

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. This article states 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 contact, 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. The new paragraph states, however – with the aim of reducing youth unemployment during the crisis – that for young people below 27 years of age the fifth contract (instead of the fourth, as previously) becomes permanent. It also states that after 48 months (instead of the previous 36) a contract becomes permanent.

On 28 November 2011, Henk Kamp, Minister of Labour and Social Affairs, presented to Parliament a draft reform giving employers exceptional room to manoeuvre because of the crisis to derogate from wage policies and working conditions negotiated at sectoral level within the framework of collective agreements. The main goal is 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 demands it.

Attacks on trade union powers continued and it looks like a majority may be found in the Dutch Parliament in favour of a bill presented on 14 December by the right-wing populist Freedom Party (PVV), backed by both coalition parties, the Christian Democratic Appeal (CDA) and the Liberal Party (VVD). The draft bill provides that collective agreements negotiated by trade unions should be binding for the entire sector only if a majority of employees support 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. Hitherto, this has been the prerogative of trade unions and their members. Other ideas include giving company works councils a bigger role in negotiating sectoral collective agreements. Trade unions have reacted strongly against the envisaged measures.

On 1 January 2012, several labour laws came into effect. Regarding temporary agency work, a registration requirement has now been introduced for temporary employment agencies. Agencies not registered with the trade register administered by the Netherlands Chamber of Commerce will be fined, as will companies that hire staff from such agencies. Additionally, the tax authorities and labour inspectorate will be 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 will be expanded and works councils will be awarded more extensive rights to gather information about the use of temporary staff within their respective companies. Secondly, the option of four consecutive renewals of temporary employment contracts for young people up to the age of 27 was scrapped. This option was originally introduced on 9 July 2009 with the intention of keeping young people employed for longer during the crisis but studies revealed that the measure only had a limited impact. The maximum number of consecutive temporary contract renewals for young people will be limited to three, as with all other employees.

However, on 23 April the minority coalition government, consisting of the conservative-liberal People's Party for Freedom and Democracy ([VVD](#)) and the centre-right Christian Democratic Appeal ([CDA](#)), collapsed. On 26 April 2012, the so-called "Kundunz" 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 provided *inter alia* for a pay freeze for certain civil servants (teachers, firefighters and the police, who had not had a raise for two years), encouraged wage moderation in the private sector and increased flexibility for dismissal regulations. As for the latter, the applicable system was characterised by two different dismissal paths: 1) through the Institute of Employee Insurance ([UWV](#)) and 2) through the courts. The new proposals provide for a single dismissal path, no longer requiring judicial review. A notice period of two months will be required for employers or employees to terminate an employment contract. Employers will be required to give grounds for dismissal in writing. A hearing will follow during which the employer will warn the employee of his impending dismissal, providing an opportunity for a response. If the employee disagrees with the grounds for dismissal, he or she can bring the case before the courts. If dismissal is deemed unreasonable, the courts may award dismissal compensation, unlike the previous system where an employee could, in theory, keep his or her job. Employers will be responsible for the costs of any initial period of unemployment for dismissed staff on temporary or permanent contracts, but it is foreseen that the lower dismissal costs of the new system will compensate them for any extra costs. At the same time,

employers will be encouraged to help employees find a new job quickly. Under the new dismissal system, both permanent and temporary employees would be allocated a transition budget, calculated as a quarter of a month's salary for each year worked, capped at half a year's salary. At present, the court determines the level of compensation and this generally turns out to be higher than the proposed transition budget. This makes it expensive for employers to dismiss staff with permanent contracts, and makes it less likely that the employee will seek another job quickly. The government hopes to encourage employers and employees to invest in training during and following employment so that employees will quickly find a new job. The new rules will not apply to collective redundancy, where the last-in first-out principle will remain in force. Also, compensation is going to decrease, going down from at least one month's pay per year spent in the company (known in the Netherlands as the 'magistrate's system') to only one quarter of a month's salary per year in the company. 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.

12 September 2012 saw elections taking 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 abandoned.

## **References/sources**

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Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)