

DIADSE – DIALOGUE FOR ADVANCING SOCIAL EUROPE

Country report: Netherlands

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1. Introduction

1.1 Introduction

The Netherlands has a very strong tradition of social dialogue. In the first chapters we introduce the institutions of social dialogue. This provides the background that is required to understand the institutional participants of the social dialogue and the reforms following the financial and economic crisis as well as the consequences of these reforms for social dialogue. We also go into some more detail on the impact of the financial and economic crisis in the Netherlands, the proposals of the government to deal with the crisis and to improve the functions of the labour market, as far as they can be obtained from legal documents and other official statements, or from documents from national institutions for social dialogue (the Labour Foundation/ Social Economic Council)

The second chapter takes a closer look at the institutions that coordinate social dialogue at a national level and regulatory industry bodies and will address the role of government. In this paragraph we examine the different levels at which consultation concerning employment conditions takes place: at a national level and a sector-wide level. In the third paragraph we give an overview of the political environment during the crisis, which is necessary to understand the timing and content of the austerity plan. In the fourth paragraph we take a closer look at the content of the austerity plan and the implementation of the plan.

Table 1: *Major events : time table*

| | |
|---|----------------|
| Cabinet Balkenende starts | Februari 2007 |
| start financial crisis | Summer 2007 |
| crisis Accord 2009 | March 2009 |
| short term unemployment | April 2009 |
| Cabinet Rutte I starts | June 2010 |
| not complying to SG Pact | Autumn 2011 |
| Pension Accord 2011 | June 2011 |
| Cabinet Rutte I resigns | March 2012 |
| austerity program 2012 | April 2012 |
| Cabinet Rutte II starts | November 2012 |
| Social Accord 2013 | April 2013 |
| implementation of revised dismissal law | Jan./July 2015 |

1.2. Institutional setting of social dialogue in The Netherlands

1.2.a The Labour Foundation

In 1945 the trade union federations and employers' organisations established a private law cooperation body, the Labour Foundation. The most important objectives were advising the government on social-economic policy and the coordination at central level of the employment conditions bargaining process in the various sectors and companies. The government does not have a position within the Labour Foundation. The chairpersons of the largest union, the FNV, and of employers' organisation VNO-NCW act as chairperson of the Foundation. The Social Economic Council (SEC, Dutch: *Sociaal-Economische Raad*) was established following the enactment of the Company Organisation Act (*Wet op de bedrijfsorganisatie*), which has now been renewed and called Social Economic Council Act (*Wet op de SER*). This Council has taken over a significant number of the advisory tasks of the Foundation. Nevertheless the government often seeks the Foundation's opinion on various aspects of social policy.

The emphasis of the Foundation's activities lies on the coordination of the employment conditions bargaining process. The Foundation has an important influence on, in particular, the development of wages and employment. The Foundation can only achieve this by making recommendations: the Foundation does not have the power to impose mandatory regulations. If a central Accord is reached within the Foundation, then in practice this leads to a recommendation to the affiliated unions and employers on the attitude in the employment conditions bargaining process. The maximum wage increase is then laid down in the central Accord. Thanks to the fairly moderate position taken by the big trade unions it is often possible to reach a central Accord. Recent research shows that in the last few years the difference between the maximum wage requirement set by the FNV and the initial wage increase was approx. 1% per year.

The government has a great interest in the making of a central Accord, as this keeps a rein on the wage costs. The government is often involved in the consultation in order to include government interests in the consultation and to prevent that the government try to force employers and employees by means of statutory measures (e.g. intervention in social security payments) to make specific agreements or refrain from making such agreements. Once a year there is formal consultation on this matter between the Foundation and the government, the so-called 'autumn consultation'. The central Accord which the Foundation reached in 1982 is sometimes referred to as being historic. It was agreed that the employees would waive price compensation in exchange for a reduction in working hours and the government promised it would show reserve with regard to intervention in the employment conditions. This agreement is seen as the start and perhaps even best example of the blessings of the "polder model".

The polder model refers to the many agreements which are made at various levels on the social-economic policy to be followed. Some agreements are reached under great pressure of the government. In 2003 the government threatened that, if such an agreement would not be made, it would implement statutory measures which would make continued payment of wages during the second year of illness impossible and would tighten benefits for unem-

ployment and illness. After the 2003 Central Accord had been reached, the government stated it would not take such measures. To date it would appear that the parties to collective labour agreements are, in general, in compliance with the agreements reached by social partners and the government: agreements are generally properly complied with by employers' and employees' organisations. Different cases show that although the government formally does not often play a formal role in (the making of) a central agreement, the material influence of the government is substantial. As will be explained later (paragraph 4), the austerity plan to overcome the crisis in the Netherlands was also based on an agreement reached by the government and social partners on 11 April 2013. This 'Social Accord' ('Sociaal Akkoord'), also called the "Mondriaan-agreement", is an overarching compromise with a lot of measures that have to be translated in legislation. This legislation is made in close cooperation with the Labour Foundation.

Another important task of the Foundation is to give advice to the government. In 1996 the Labour Foundation advised the Minister of Social Affairs and Employment on the Flexibility and Security Paper. In this Paper the minister suggested revising employment law in such a way that flexible employees would be offered sufficient security while at the same time allowing employers sufficient flexibility for responding to economic developments. The advice of the Foundation, which was achieved with great difficulty, was then implemented as law with very little alteration.

Finally, the Foundation makes a lot of recommendations to collective labour agreements negotiators. The recommendations relate to the way in which certain topics should be arranged in collective labour agreements. This does not concern the introduction of regulations to which the Netherlands has committed itself on an international level, as in the Netherlands they are usually not introduced by collective labour agreements but by statute. Examples of recommendations of the Foundation are the way in which the employee deals with a suspicion of an abuse and the facilities which the employer has to offer this employee, "whistle-blowing". This, but also other recommendations of the Foundation, should have an influence on the collective labour agreements negotiations and the specific conduct of employers and employees. When determining the rights and obligations between employer and employee, the Dutch courts do, however, sometimes seem to take account of the recommendations and deem them important for the fleshing out of the many vague statutory obligations which ensue from the employment contract.

As set out above, the Labour Foundation is the most important consultation body with regard to the coordination of consultation on employment conditions at national level. This coordination first of all takes place by means of the central agreements. In these central agreements a recommendation is made to collective labour agreements negotiations on the desired wage development. A central agreement is reached in the form of a recommendation: this means that if the recommendation is not generally followed, the agreement does not immediately have to be broken off. In addition, a central agreement is a broad formulation so that a specific breach thereof is not always easy to construe. It was agreed in the Central Accord of 2003 not to allow the contract wages to rise. This is without prejudice to the option of agreeing a one-off payment for the employees in those sectors in which a profit is made. This option is also used, inter alia in the banking sector. In the odd collective

labour agreements, in particular company collective labour agreements, a contract wage increase is made in the central agreement.

1.2.b The Social and Economic Council

The Social and Economic Council (SEC) arose in 1950 after a long period in which the ideal structure of our society and economy was regularly a topic of discussion. A key point in this discussion was the role that government and social organisations should play. After the Second World War, with the big economic crisis of the Thirties still fresh in people's memories and reconstruction in sight, the general opinion was that a greater part was to be reserved for government. The government increased its intervention in economic growth, employment and social security. The government believed it could only realise this task by permanently involving the business community (companies and employees) in the solving of social and economic issues. This greater involvement was reflected in the Company Organisation Act of 1950. This Act established an advisory function and an administrative function for the organised business community. The administrative function consists of the forming of Commodity Boards and Sector Committees in which employers and employees could subsequently arrange matters which they deemed to be in the interests of the own business sector.

The SEC consists of 33 members of whom 11 are Crown-appointed members, who are appointed by the government, 2 of whom are the president of the Dutch Central Bank (De Nederlandse Bank) and the director of the Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau) by virtue of their office. 11 members of the SEC are appointed by the employees' organisations and 11 are appointed by the employers' organisations. The Crown (the Minister of Social Affairs and Employment) determines which organisations may appoint members and must appoint representative organisations in this respect. The Crown also determines how many members each organisation may appoint. Currently VNO-NCW (employers organisation) has the right to appoint seven employers' members, MKB-Nederland (Medium and small enterprises) three members and LTO-Nederland (farmers) one member. On the employees' side the FNV appoints eight members, the CNV appoints two members and the VCP appoints one member. Up to 1995 the government was obliged to seek the advice of the SEC on numerous subjects, but this obligation has been cancelled. Since then, however, the government has nevertheless made frequent use of the option of asking the SEC for advice. The SEC can establish a committee to give advice, which is what happens in practice. People who are not members of the SEC can also sit on this committee. This committee prepares a draft which is then discussed by the employers' and employees' organisations respectively. After this "consultation of the rank and file" the draft is discussed in the plenary meeting. The latter meeting will make any changes (if applicable), after which the advice will be established. The government is not obliged to follow such advice. This does not detract from the fact that the advice of the SEC, certainly when unanimous, is of great importance for implementing policy and legislation.

The division of tasks between the SEC and the Labour Foundation is not always that clear. Sometimes a topic is first presented to the Foundation for advice and is then presented to the SEC for advice. Although this has sometimes led to frictions, social partners and government are apparently not willing to merge the Foundation and the SEC.

1.2.c The role of government

The above has already shown that the role of government in the making of the social accords, certainly if a limitation or a waiving of wage increases is provided for, is materially substantial. A formal regulation of the above-described influence is totally lacking. The decollective labour agreementsration of the great involvement of the government in the bargaining process relating to employment conditions is historic. In the period from 1945 to 1982 the minister intervened in the outcomes of the employment conditions bargaining process by making wage moderation decisions. There were objections to this intervention on the part of both the employees and the employers to the ILO on the basis of ILO Convention 87, which in Art. 3 guarantees the right to collective bargaining freedom. The Committee of Experts believed that intervention was permissible in 1973, but after complaints on the interventions in 1980, 1981 and 1982 the Committee turned out to be more critical. The conclusion of a central agreement with the Labour Foundation in 1982, in which wage moderation was agreed for the year 1983, implied that there was no government intervention in that year. This type of approach started a trend: after this agreement the government did not any more use its statutory options for very direct intervention. Because of the central agreements, there was also less need for intervention. In 1987 the Wages Act was adapted to this new development. After the 1987 revision the Act gave the minister the power to establish general rules regarding wages and other employment conditions. The minister only has this power if in his opinion there is an unexpected emergency situation in the national economy, caused by one or more external factors which occurred suddenly. It is thus only possible to intervene in very exceptional situations. The minister has not made use of this option to date, although an important minority of Parlement regularly expresses their feeling that the minister should in order to force social partners to agree upon rules they think are needed.

Decentralisation is the clear trend which has been occurring from 1982 to date and definitely took off in a big way in the Nineties of the last century. Government has increasingly been stepping back. In any event, this trend is not only visible with regard to the employment conditions policy. The deregulation operations in the Nineties have led to more emphasis on the self-regulatory capacity of the social partners. In line with the government's policy of tailor-made options, the government leaves as much as possible up to the social partners and controlling bodies, whether or not on the basis of a minimum level of protection or organisation. Key words in this policy are decentralisation, flexibility, differentiation and individualisation. Although this has been extensively discussed in the Dutch parliament, no answer has been found to the question regarding who is responsible for what. There is no clear, sharp and consistently argued demarcation between the responsibilities of the government and the social partners. According to the government "it is after all precisely inherent in our consultation model that for every 'file' the goal is to find the complementing of policy and social partners (and co-participation bodies). In practice this can lead to various 'mixes' of regulation and self-regulation, whereby the government regulation supports the (further) regulation as much as possible."¹ The government provides for a minimum level of protection by means of mandatory rules. One example of this is the Minimum Wages Act (*Wet minimumloon*). This Act sets out a bottom limit below which the wages agreed in the

¹ Parliamentary Documents I 1999-2000, no. 222a, pp. 10-11.

collective labour agreement may not fall. The minimum monthly wages for an employee of 23 years or older who works full time is € 1524,60 as of 1 January 2016. Other examples are the mandatory provisions laid down in the Civil Code with regard to wage payment, special conditions and dismissal. Mention has been made above of the introduction of the Flexibility and Security Act which included a broader use of provisions of conditional mandatory law. The decentralisation trend led, in particular - as appears from a survey of 2000 - to an increase in the bargaining power of the social partners in the area of wage development, taking into account that the Labour Foundation has taken over this task to a significant degree. Social partners in turn have considerably toned down the bargaining freedom at national level. Decentralisation of government is accompanied by a concentration of the relationships between employers and employees at national level. From this perspective no decentralisation can be detected with regard to the primary employment conditions. The matter is different for the secondary employment conditions, where decentralisation appears to be a major trend. Analogous to the discussions on "the new employee" there is also reference to "the new employer", an employer who responds to the changing views of "the new employee". "The new employer" does this by looking for maximum flexibility and primarily viewing the employee as an investment instead of a cost heading. The employer has a great interest in flexibility in this respect. A collective labour agreement with decentralisation provisions offers him the option of customising the collective labour agreement to his company. Employers and their organisations are increasingly expressing the desire to be able to form more tailor-made employment conditions.

In the interviews² representatives of social partners (SP's) confirm the enduring tradition of close consultation between SP's and government. This consultation takes place at different levels. In a permanent exchange of information representatives of SP's and the Ministry of Social Affairs meet regularly, in the Regiegroep SZW-StAr³ on all kinds of issues of regulation, on occasions three times a week. At a more formal level, the Socio-Economic Counsel (SEC) provides for a platform at which tripartite consultation can take place in a setting which offers scope for a plain discussion, partly based on results of policy research. The SEC has, in the period since the crisis, nevertheless hardly been able to reach agreement on issues and was thus not able to exert much influence. It has rather been the (bipartite) Labour Foundation that has in a number of cases been successful in influencing policies. According to VNO/NCW both have hardly produced results, partly because parties were, before the crisis, convinced that the important issues had been settled. That the system of close consultation has kept upright in the face of the crisis, is considered, also by VNO/NCW, to be quite a performance.

We may add that the scope of social dialogue had already, before the crisis, been reduced by government policies that took away SP's say in matters of Employments Offices and the Social Security Administration.

² Interviews have been made with representatives of unions (2 FNV, 1 CNV), employers' organisations (VNO/NCW, AWWN), social dialogue institutions (SER) and government (1 Ministry of Social Affairs and Employment) by Robert Knegt.

³ The 'Consultation group' of the Ministry of Social Affairs (SZW) and the Labour Foundation (StAR) consisting of SP's.

All three parties recognize the importance of good relations of consultation. Social dialogue and consultation have a firm basis and are being supported by government, although – as in particular the unions stress - in different degrees according to the political composition of cabinets. Cooperation is based on “trust” (VNO/NCW) or “coagulated distrust” (FNV), and agreements are mainly reached in situations in which there is a common recognition that ‘things can’t go on like this’. The involvement of SP’s is not that of advisers to a decision-making government; in the Netherlands it is rather a permanent common effort, up to the details of specific schemes. Its modalities depend on the political composition of cabinets and on the political identity of their Ministers of Social Affairs. According to a representative of FNV, we may generally consider ourselves blessed with such relations. In particular the FNV had consistently resisted attempts, already for a long time supported by employers’ organizations, at reforming dismissal law.

Only in the political context of Parliament doubts are sometimes raised at the value of social dialogue, for instance about the usefulness of collective agreements. According to the unions, a problem with these discussions is that politicians often have insufficient knowledge of relations at the workplace. The position that government takes, may be qualified as ‘instrumental’: it tends to ‘unload all kinds of matters on SP’s’ (FNV). According to the CNV, SP’s have been insufficiently involved by the government in the process of responding to the crisis. Too often the unions have been instrumentally used by the government as bringers of bad news.

1.3 The economic and political context in The Netherlands at the start and during the financial and economic crisis

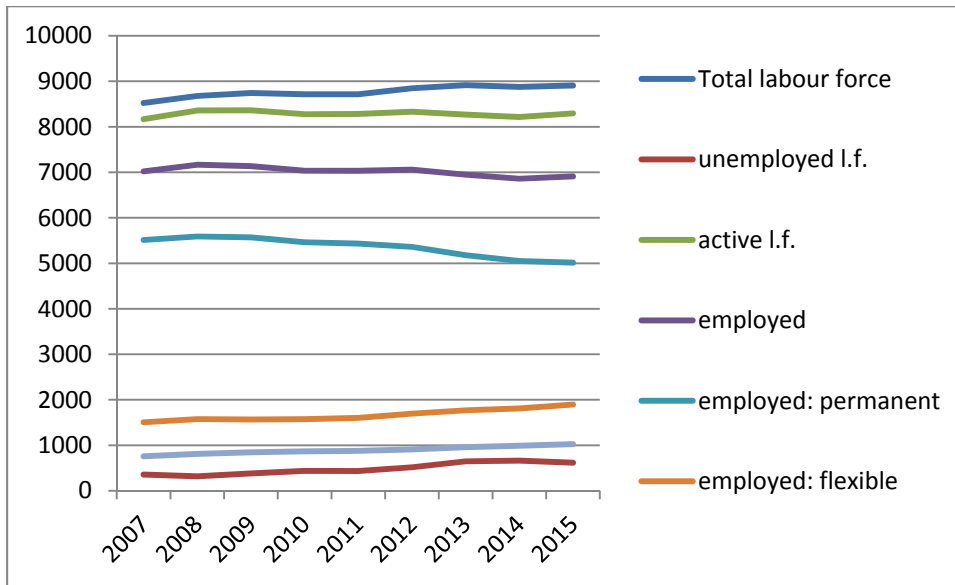
1.3.a Impact of the financial and economic crisis on the labour market in the Netherlands

The financial crisis started in the summer of 2007. In the previous years the Dutch labour market had been very tight: policymakers predicted full employment and as late as 2008 the report of a government advisory committee (‘Commissie Bakker’) even predicted a lack of workers.

While the total labour force increased from 8,5 (2007) to 8,9 million workers, the active labour force decreased from 8,36 (2008) to 8,21 (2014) and only rose again to 8,29 in 2015. The number of permanently employed workers remained stable, in absolute numbers, till 2009, then dropped from 5,57 (2009) to 5,01 million (2015). The number of flexible workers remained almost the same till 2010, but afterwards rose rather quickly from 1,57 (2010) to 1,90 million (2015). Figure 1 points this out in absolute numbers, figure 2 in percentages of the total available labour force.

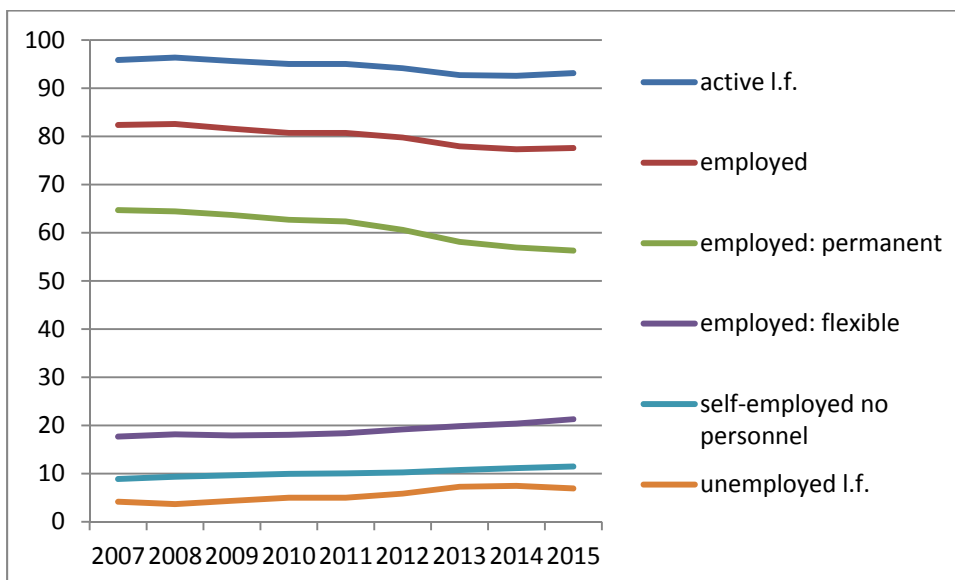
Figure 2 shows clearly the effects of the crisis, both in terms of a decrease of labour participation (unemployment doubled from 3,7 % in 2008 to 7,4 % in 2014) and of permanent jobs, and of an increase in the share of flexibly employed (as from 2011) and the very gradual increase over the whole period of the share of self-employed without personnel.

Figure 1: Developments in labour force, number of (flexible / permanent) employed, self-employed without personnel, unemployed, 2007-2015, in absolute numbers (x 1000)



Source: StatLine, Statistics Netherlands, consulted 10-02-2016

Figure 2: Developments in active labour force, (permanent / flexible) employed, self-employed without personnel and unemployed, in percentages of the total available labour force, 2007 - 2015



Source: StatLine, Statistics Netherlands, consulted 10-02-2016

The first year the crisis hadn't had hardly any impact in the labour market. Until the second quarter of 2009 the employment rate even grew, although unemployment also started to

increase.⁴ The labour market in the Netherlands responded slow to this external economic factor. This is partly due to the shortages on the labour market in the years before the crisis and the employers' feeling that it would be a waist to dismiss an employee that they only could have hired after an intensive search on a tight labour market. Another explanation is that the vacancies were the first the employers cancelled, because the need to hire 'an extra hand' was gone. The retarded response is also partly due to the level of employment protection, which is in the Netherlands quite high. The level of employment protection prevents the employer to dismiss directly after a short term downturn: the need to dismiss needs to be substantiated before a dismissal is allowed and the decision to dismiss and the procedure to dismiss take some time. After the second quarter of 2009 the unemployment rate grew only slowly, until 2011. After 2011 the unemployment rate grew faster, as is shown in figure 1. Starting in 2007 from about 5% of the workforce (around 400.000 people) unemployed to around 10% (660.000) at the start of 2014. Although the unemployment rates are recently (last quarter of 2015) dropping spectacular, the rates are still quite high.

Note that after 2011 a rapid increase of the unemployment rate is visible. At the beginning of the crisis the unemployment rates didn't keep up with the speed of the economic downturn. Aside the previous mentioned reasons (to dismiss employees, hired in a period of shortage, is a waist, and the slowing effect of dismissal law) a lot of people explain the slow increase of unemployment in the first period of the crisis by pointing at some measures taken by the government, in consultation with social partners. We deal with these measures in paragraph 1.4 .

The development of the number of vacancies and of the unemployment rate is shown in figure 3.

1.3.b flexibility and dismissal law

The number of employees with a permanent employment contract decreases from 2008 to 2015 by ten percent, from 5.59 to 5.01 million. Some economists explain this shift to more flexible forms of employment by pointing at the inflexibility of wages and the high costs of dismissal. In a situation in which employers are insecure about the future, they prefer more flexible forms of hiring labour.⁵

Noteworthy is that the financial and economic crises strengthened a already slightly visible trend towards flexibilisation of employment relations. Although the background of some of the developments on the labour markets is not clear and even still highly debated, there seems to be a general understanding that the employment contract is considered to be heavily loaded with obligations for the employer, which makes the use of flexible contracts an attractive way to escape these obligations.

Especially in the Netherlands the increase of the number of self-employed workers is high. In 2002 about 7% of the workforce was working as a self-employed, ten years later this percentage had doubled. According to the Netherlands Institute for Social Research SCP half of this increase can be attributed to government policies promoting self-employment.⁶

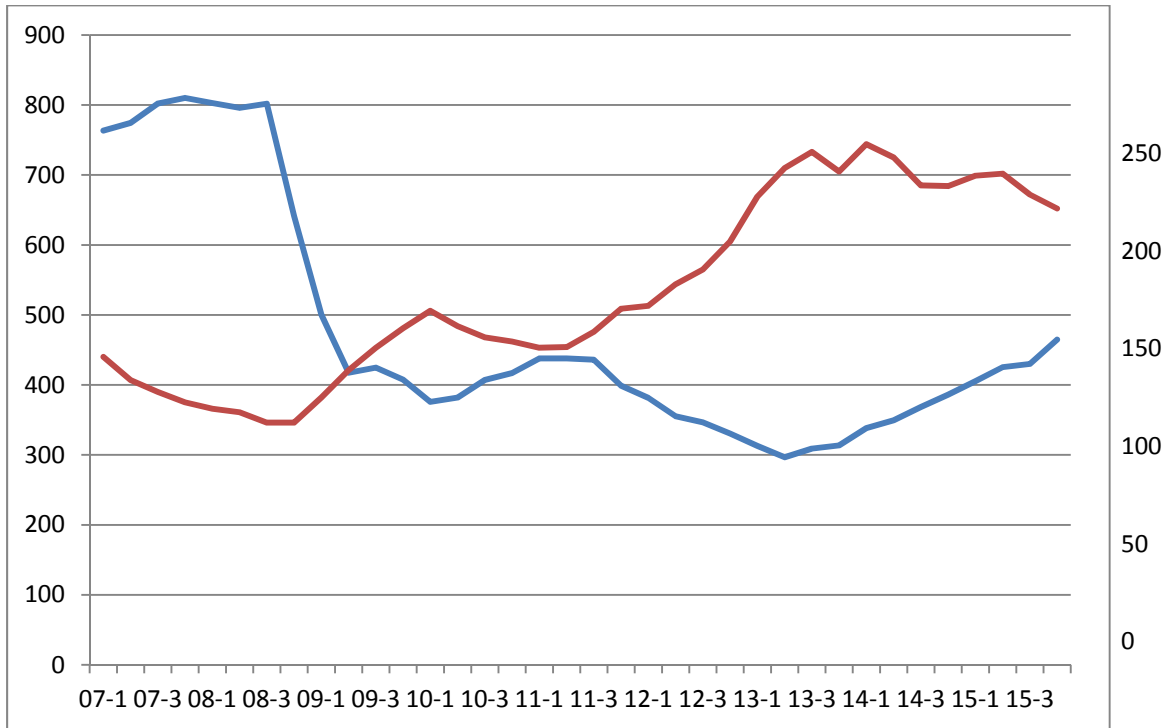
⁴ CBS: De arbeidsmarkt en crisis, 2010, p. 77 e.v.

⁵ B. van der Klaauw, *Tijdschrift voor economisch onderwijs* 2013, p. 28-31.

⁶ SCP (2014) , 'Bevrijd of beklemd?',

http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Bevrijd_of_beklemd

figure 3: Number of unemployed (blue line, left scale) and of vacancies (red line, right scale) in The Netherlands, 2007 – 2015 (quarterly figures, indicated below by last two figures of date-number of quarter)



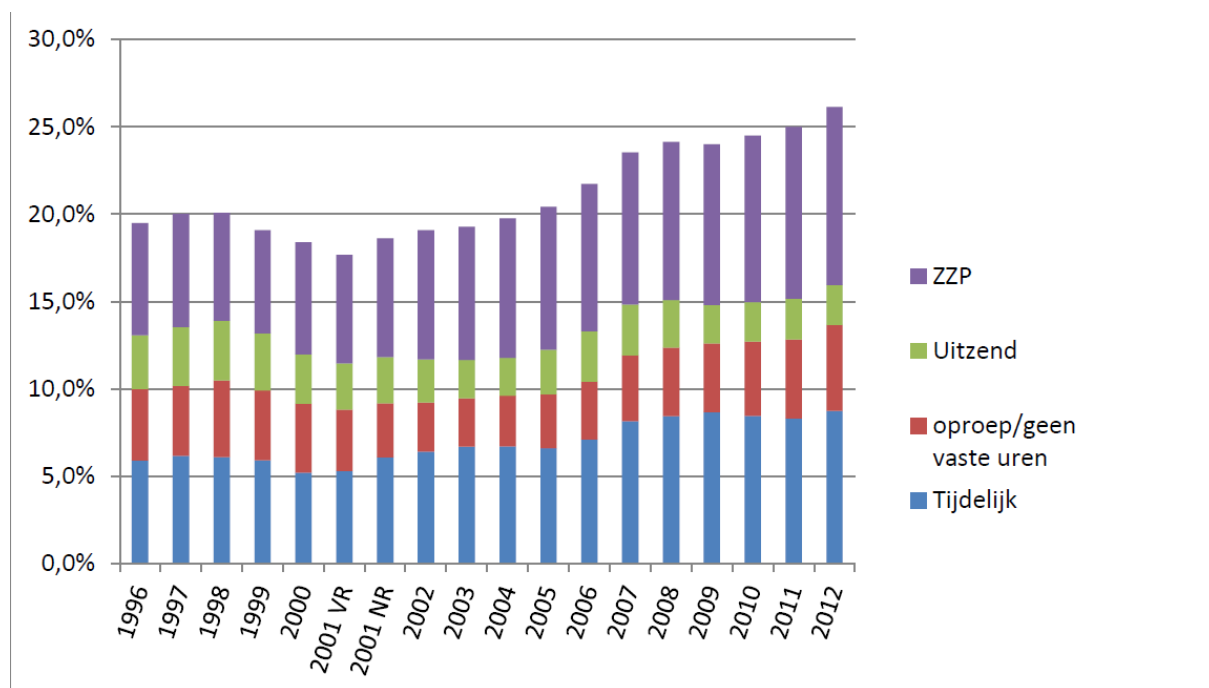
Source: Statistics Netherlands, StatLine, consulted 11-03-2016.

There has been an ongoing discussion in The Netherlands on reform of dismissal law. This has been a highly contested issue, on which the unions have always taken a firm position, arguing that in the current context of globalization any change will be detrimental to workers' rights. Even among economists, the need of lower employment protection is being contested and even the OECD changed its position on the issue. The crisis has been the lever to reach an agreement within the framework of the Social Agreement of 2013 (see below).

Besides the dismissal law also the obligation to continue to pay wages in case of illness of the employee, during a periode of 104 weeks (2 years), introduced in 2002, and the (due to the crisis and the (felt)) need to look carefully at costs, in order to be more competitive, are said to have caused employers to seek for more flexible and less expensive ways to employ workers.

The crisis and the flexibilisation of the labour market affected the way social partners look at the labour market and changed their strategies.

figure 4⁷: Percentages of different types of 'flexible work' in The Netherlands, 1996 - 2012



Legenda: purple: self employed green: temporary agency work
 red: oncall/no fixed hours; blue: fixed term contracts

1.3. c. The impact of the crises on (and the position of) the government

One of the major political threats due to the financial and economic crisis was the impact on the state's deficits. According to the Stability and Growth Pact the Member states were obliged to maintain a debt of no more than 3%. If a Member State breaches the SGP's outlined maximum limit for government deficit and debt, the surveillance and request for corrective action will intensify through the decollective labour agreementsration of an Excessive Deficit Procedure (EDP); and if these corrective actions continue to remain absent after multiple warnings, the Member State can ultimately be issued economic sanctions.⁸ During the first years of the crisis the Netherlands was one of the countries calling for sanctions for those Member States that didn't comply with the Stability and Groth Pact.

During the year 2011 Netherlands itself seemed to be not able to comply with the Pact for the years 2013 und forward. The EC conducted a research and found that: "The Netherlands is experiencing macroeconomic imbalances, which deserve monitoring and policy action. In particular, macroeconomic developments regarding private sector debt and deleveraging pressures, also coupled with remaining inefficiencies in the housing market deserve attention. Although the large current account surplus does not raise risks similar to large deficits, the Commission will also continue monitoring the developments of the current

⁷ Parlementary recordings, MVT 33 818

⁸ partly: Wikipedia: SGP

account in the Netherlands.”⁹ No direct recommendations were made regarding the regulation of the Dutch labour market. The commission stated that the labour costs were not posing a significant problem. Still a severe austerity program was needed, to avoid an excessive deficit and by doing so, sanctions from the EC.

The crisis started in a instable political environment. Until 2010, starting in February 2007, the cabinet Balkenende IV governed. This cabinet resigned in spring 2010. During this period there were only few attempts to face the financial and economic crisis (see XXX). After the elections in June 2010 a new cabinet was formed by the liberals and christen-democrats (Rutte I), but this cabinet lacked a majority in parliament. This cabinet was supported by a right wing, populist party, that didn't participate in the cabinet. This fragile basis collapsed when in spring 2012, the political parties involved couldn't agree upon an austerity program to face the crisis and comply with the Stability and Growth Pact. After the resignation of the cabinet, five political parties, including those forming the cabinet, reached an agreement for an austerity program, and the resigned cabinet, facing election in September 2012, started to execute this austerity program.

After the elections, a new Dutch government was formed by the liberals and the socialist party at the end of 2012. This cabinet has a quite unsteady basis with a majority in the Second Chamber of only one seat, and no majority in the First Chamber after the elections of 2015. The program of this government (called Rutte II) is pro-Europe and contains an austerity plan, based on the agreement reached in the spring of 2012. The austerity program sums up for in total € 17 billion of savings. Part of the program of this cabinet was a restructuring of the Unemployment benefit scheme. This is important because the Unemployment fund in the Netherlands is part of the EMU balance and saving on the obligations of this fund directly affects the debt of the Stability and Growth Pact. Also part of the program was a radical change of the dismissal law. Partly due to the unstable basis of the cabinet, the (socialist) minister of Social Affairs searched support of social partners for the execution of this program, which led to negotiations on a new social agreement.

In November 2012 a new cabinet, composed of liberals and social-democrats, took office, that had a peculiar instability: it could count upon a majority in the Second, but not in the First Chamber of Parliament. Social-democratic Minister of Social Affairs Lodewijk Asscher brought back a regular consultation practice. The peculiar instability of this cabinet - which was welcomed as a stable successor to the former minority cabinet - had the peculiar outcome that the restoration of consultation practices has, at least initially, also been favored by employers' organizations. More recently, however, the latter's support seems to be decreasing (as representatives of FNV are stating).

1.3.d Impact of crisis on the 'polder' organizations themselves

The crisis also had impact on the social partners, internally as well as externally.

⁹ COMMISSION STAFF WORKING DOCUMENT, In-depth review for the NETHERLANDS, in accordance with Article 5 of Regulation (EU) No 1176/2011 on the prevention and correction of macroeconomic imbalances, Brussels, 10 April 2013

There had already been heavy discussions within the FNV before the crisis. Ten years ago the 'organizing' model has been adopted, partly in a reaction to the strategy of employers' organizations to withdraw from the social dialogue at the moment they did not need the unions, partly to try to do something about a growing distance between union leaders/staff and members. The intention, says FNV, was rather to restore our role in the social dialogue than to radicalize. The reform of the pension system was the most visible issue, and according to some in fact the main one, but others point out that the issue of the reform of dismissal law was also a perilous issue. The crisis has indirectly increased the pressure on the organization, it has contributed to the sense of urgency that resulted in a fusion of the participating unions.

The crisis has also put pressure on employers' organizations. The offices of VNO/NCW and the MSEs' organization MKB Nederland have been fused, but not as a consequence of the crisis. There were differences in the extent to which different sectors were economically affected by the crisis: whether they were oriented to national or international markets, to private consumption or to business-to-business transactions. In this way the crisis accentuated different interests within VNO/NCW as well as differences between larger companies and MSE's ('MKB'). Retail, for instance, favoured proposals to raise wages in an answer to the crisis, but most other sectors did not follow them in that. Proposals to take specific measures as to particular sectors may invite others to look at them with envious eyes. Some sectors (f.i. construction) even passed over the normal ways of institutional dialogue and made occasional coalitions with political actors, generating statements about CLA provisions in order to put external pressure on negotiations about CLA's.

2 Debates and reform measures in The Netherlands

2.1 Austerity plans

As explained before the Netherlands didn't introduce a major austerity plan directly after the outburst of the financial and economic crisis. Partly due to the insecurity of the impact of the crisis and (at the beginning of the crisis) lack of sense of urgency for the need of long term solutions (the unemployment rate even decreased in the first part of 2011) and partly due to political circumstances and the lack of support, it takes until 2012 before a real austerity plan is even proposed. In the mean time, the public debate focuses on the question how the consequences of the crisis in terms of the threat of growing unemployment should be handled. And in fact, some measures are indeed taken. First of all, a *Short Term Working Scheme* is introduced, at first as a special regulation at the end of November 2008.¹⁰

Quickly after the outburst of the crisis there is agreement between social partners on the need to allow for short time working, to keep companies from rushing into redundancies. Fierce cooperation between social partners on this issue succeeds in convincing the government, against objections based on main stream economic theory, to adjust existing restrictive regulations on short term working ('Deeltijd WW').

This short term unemployment scheme is agreed upon by social partners and the government in the Social Accord of Spring 2009. This scheme, formalized in a Ministerial Order¹¹ and effective by April 1st, 2009, offers the employer the possibility to ask for a unemployment benefit for half of the working time of the employee. The employee is, in that case, not dismissed, but his working time is reduced. In order to use the spare time meaningful, the employee is supposed to get training; therefore, employer and employee are supposed to produce a training plan. The costs of the spare time of the employee, bound under this scheme to a maximum of 50% of the working time, are paid from the unemployment benefit funds. Urged by social partners, the government has prolonged the term during which the scheme has been operative several times. Applications can be made till April 2010, the last benefits are paid in June 2011. During 2011 the Minister of Social Affairs resists pressure, in particular from unions, to further extend the term of the scheme, arguing that other measures to enhance employment would now be more effective.

The March 2009 Crisis Accord ('Crisisakkoord'), reached in the Labour Foundation, prioritizes the need to conserve productive power above wage increases. Temporary measures are considered to be needed to allow firms 'to retain their liquidity, innovative power and efforts towards sustainability'. The value of the short time working scheme is confirmed. Measures are announced to combat youth unemployment, among others by way of

¹⁰ Besluit van de Minister van Sociale Zaken en Werkgelegenheid van 26 november 2008, nr. AV/IR/2008/33534, tot vaststelling van bijzondere beleidsregels inzake ontheffing van het verbod op werktijdverkorting 2008 (Bijzondere beleidsregels ontheffing verbod op werktijdverkorting 2008).

¹¹ Besluit van de Minister van Sociale Zaken en Werkgelegenheid van 31 maart 2009, nr. IVV/I/2009/7428, tot tijdelijke algemene ontheffing van artikel 8, eerste lid, van het Buitengewoon Besluit Arbeidsverhoudingen 1945 in verband met deeltijd WW tot behoud van vakkrachten (Besluit deeltijd WW tot behoud van vakkrachten)

employers' promises to make efforts towards trainee posts for youngsters. Training ought to be an important issue: the current drop in labour demand should be used to train workers for work in sectors that might be expected to have a labour shortage as soon as the crisis would be over.

The unions agree, besides to a smooth development of wages, to a reopening of the discussion on the pension age. It is the latter discussion that dominates social dialogue and public attention in the period that follows, at the cost of other important themes, and to the effect – as our SZW-respondent notes - that actually surprisingly few measures have been taken. In the end there turns out to be no unanimous union position: the CNV union federation finally agrees to a gradually raising of the pension age to 67, while FNV keeps resisting to this. In June 2011 the Pension Accord ('Pensioenakkoord') is reached between social partners and the cabinet, opening the door to a gradual raising of the pension age while at the same time giving some guarantees on the level that retirement pay should keep. The Pension Accord is heavily criticised by unions within the federation FNV, causing its president to resign. In this Pension Accord social partners accept a steady increase of the pension age from 65 to 67. This increase leads to a lower premium for pensions, because the pension input period (in which pension can be saved) is extended. Even more important perhaps is the impact that acceptance of shift of the pension age has for the rates of participation in the labour market.

The period after the Pension Accord is marked, apart from a reconfiguring of the federation FNV, by a unions-inspired debate on the growing numbers of flexible and short-term contracts in the Dutch labour market. Their quick rise in numbers is considered to surpass 'healthy limits' and to have, in the long term, a negative impact on the strength of the Dutch economy.

As from the third quarter of 2011 the unemployment rates start to grow, causing a felt political urgency to come up with an austerity plan. As explained above, the political instability initially prevented the cabinet Rutte I from coming up with a serious austerity plan. After the elections and the start of the cabinet Rutte II, November 2012, the execution of the austerity plan requires a stronger basis and the government finds it in an agreement with social partners.

2.2 Social Accord of April 2013

The Social Accord of April 11, 2013 marks a new phase in the social dialogue and in the struggle against the crisis. As the chairman of the employers organisation stated: "we decided the crisis has ended". The Accord is presented as a proof of the blessings of the "polder model". The Accord is the result of negotiations on very diverse and sometimes even hidden interests of the participating parties, as we will show in the next paragraph. The Minister of Social Affairs announces, at the same day, the proposal of a new *Act on Work and Security* ('Wet Werk en zekerheid') that would strike a new, modernized balance between flexibility and security on the labour market.

In this paragraph we summarize the content of the Accord, in paragraph 3.2 we deal with the impact of the Accord on the social dialogue and the political background. Basically the Accord comprises the following headlines:

- the social partners will become responsible and involved in the executive boards of the unemployment benefit funds,
- a strong commitment to avoid unemployment by making incentives for 'work-to-work'-transitions,
- the law on dismissals will be revised, in order to put an end to the situation that employers may one-sidedly choose between different ways of terminating the employment contract,
- the legal position of flexible workers will be improved,
- the duration of public unemployment benefits will gradually be reduced from 3 to 2 years maximum,
- the employers and the government will create jobs, at an amount of 100.000 resp. 25.000.

A lot of these headlines have, as we write, already been implemented, like the reform of the dismissal law, and the retrenchment of the unemployment benefit schemes. The *Law on Work and security* of 14 June 2014 has been the main piece of legislation in this respect. The revisions related to dismissal, implemented therewith, have three components: i) combating excessive flexibility, ii) reforming dismissal law, also regarding the costs for employers of dismissal, iii) retrenchment of the duration of the unemployment benefits

i) excessive flexibility.

'Excessive flexibility' (in Dutch: "doorgesloten flexibilisering") is the term the trade unions (FNV) use to oppose the shift away from permanent employment contracts. The Accord provides for measures to prevent this extended use of fixed term contracts by shortening the period of consecutive fixed term contracts to two years as well as fixing a maximum of three consecutive fixed term contracts –after which the fourth will be for an indefinite period. Contracts are considered to be consecutive if the period between them is no longer than six months – an extension of the former period of three months. If, after two years of consecutive fixed term contracts, the employee is dismissed, he/she is entitled to a so called 'transition allowance', a redundancy payment of one third of the monthly wages for each half year of service. Besides the parties have agreed on some improvements of the position of the payrolled worker.

ii) dismissal law

This revision of the dismissal law has been implemented in January and July 2015. As from July 1st 2015 dismissal is only allowed if (i) there is a reasonable ground (*redelijke grond*) for dismissal and (ii) there is no possibility of retaining the employee in a suitable alternative position, following retraining where appropriate.¹² There are only eight reasonable grounds listed and the legislator has tried to avoid the use of open norms.

As before, an employer has to apply for a dismissal permit. If he does so for economic reasons or because of the continued disability of a worker, he is now obliged to approach the UWV (the Administrative Office of Employees' Insurances) and does not have any more the regular option to approach a district judge. If the employer does have one of the reasonable grounds to dismiss, the employee is entitled to receive a 'transition allowance', a redundancy payment amounting to one third of the monthly wages for each year in service, and per *half* year if employment has lasted longer than ten years. Social partners are allowed to negotiate a somewhat different arrangement by collective agreement, provided that it

¹² see for a overview: <http://www.barentskrans.nl/nl/rechtsgebieden/arbeidsrecht/wwz-engels/>

remains sufficiently close to the legislator's scheme of providing for an allowance that can be used to increase an employee's chances to get back to paid work.

The allowance is bound to a maximum of (originally, subject to indexation) 75 000 euro or, if this is higher, the amount of one yearly salary.

iii) unemployment benefit

As explained above, the revision of the unemployment benefit was a crucial issue for the government but highly contested by the trade unions. The Accord contains a reduction of the duration of the public unemployment benefit scheme, from 3 to 2 years. Social partners agreed to repair this entrenchment in their collective labour agreements.

The regulation regarding the first two topics are implemented in close cooperation with the (social partners united in the) Labour Foundation. The speed of the legislative procedure has been unusual, and probably given to it in order to avoid obstacles to this legislation from being put in the way. This caused some frustration with some members of parlement, and legal scholars, who because of this speed had no time to comment on the legal changes that the implementation of the Social Accord 2013 implied.

3 The role of social dialogue and the impact of the Social Accord

As set out above, in The Netherlands the socio-economic effects of the crisis were only gradually becoming apparent and the government's policies to counter the effects have been designed rather late, due to the political situation that has been sketched in section 1.3.c. One might ask whether the social partners have been involved timely and correctly in the process of designing these policies.

The crisis has taken all of us by surprise, says a union representative, and that makes it hard to say whether government should have consulted SP's more often or more intensely. There has been regular consultation on what should be done, says our SEC-respondent. Employers' organizations agree to this as far as their role of 'social partner' is at stake, but in their adjacent role of representing economic interests of companies they are much more critical of the pace of government's economic policy reactions.

In the interviews representatives of the unions assessed the situation as follows. Generally, the political situation in the Netherlands at the time of the crisis was rather unstable, with a minority cabinet governing only thanks to the support of a right-wing party. The context of political instability has had a significant impact on the social dialogue (and its main body, the Social Economic Council (SER)). For some years before the crisis the political composition of cabinets had not been favorable to initiatives to consultation of the Social Partners (SP's); rather employers' organisations were able to influence policies directly, without involvement of unions. The crisis, on the one hand, shifted the balance of power to the employers' side, on the other hand it has given an impulse to the social dialogue, in particular at sectoral level, and mostly so where the challenges to employees have been largest and the pressure to reach some kind of agreement was felt most acutely.

The institutional result of the crisis was that SP's were brought to the negotiation table again, in particular when employers' organisations and unions needed one another's cooperation to get government to introduce the short time working scheme. As it became clear, at the end of 2009, that the financial crisis was turning into an economic crisis, employers' strategies turned to an adaptation to falling demand by a greatly extended use of flexible work. This development resulted in a loss of influence of the unions.¹³ Even on employers' side the flexibilization of labour contracts has been considered to have 'gone too far'.¹⁴ In the meantime the Federation of Dutch Trade Unions (FNV) as an organization had been weakened by internal conflicts between participating unions and between more radical 'organizers' and leaders traditionally oriented towards making agreements with employers. We noted that the peculiar outcome of political developments has been that the restoration of consultation practices has, at least initially, also been favored by employers' organizations. More recently, however, the latter's support seems to be decreasing (as representatives of FNV are stating).

¹³ F.i. in construction a loss of demand of 20 percent resulted in a reduction of workers covered by collective agreement of 40 percent.

¹⁴ As recognized in the text of the *Sociaal Akkoord* of April 12th 2013.

3.1 SP's involvement in reforms regarding labour protection legislation

3.1.1 Employment

In the interviews it is reported that before the outburst of the crisis the Consultation group (of Ministry & SP's) was in the process of making agreements on reduction of unemployment, in particular of low-skilled workers. Themes like employability and outplacement strategies ("from work to work") were prominent issues in the social dialogue. The crisis has halted these initiatives. According to unions as well as the employers' organization AWWN, they are in large part now not being discussed any more. The fact that redundancies, as a result of the crisis, have also affected high-skilled workers, is said to have contributed to a cynicism on the importance of training. First priority to the union FNV is now to 'get back normal jobs'; only after that has been realized, employability will be back on the agenda. According to others, however, the issue of 'employability' has not been discussed less, has even gained importance due to the crisis – it is the results that failed to be reached, due to the consequences of the same crisis. The Ministry of Social Affairs claims to have reinitiated the discussion on outplacement strategies shortly after 2009. An employers' representative notes the paradox that, although investment in the training of workers is in times of crisis more needed than ever, it is retrenchment measures, deemed necessary to compensate for the consequences of the same crisis, that now result in less investment in training. In the public sector the combination of state fiscal problems and an actual higher age of retirement have strongly reduced the influx of new personnel.

Shortly after the outburst of financial crisis there has been an initial initiative to broaden the possibilities of short time working, in unions' perspective actually a matter of the state subsidizing companies for the costs of unused working time. It is not quite clear who took the initiative; some say: employers did, and in order to realize it they needed the support of unions; others (FNV) say that the unions clearly wanted this themselves and even that the unions have put great pressure on government to realize it. To the CNV the measure was important as a sign that SP's were willing to come to agreements on measures to face the crisis. Employers' organizations were longing for peaceful relations, the unions wanted to regain their position in the social dialogue.

The first result has been a measure that started from the supposition that the crisis would be short and vehement, and that (according to unions and AWWN) actually succeeded in keeping a lot of people on their jobs. Reactions to the crisis were in part late because its effects have to some extent also been late: for instance construction projects, but also all the transport activities that are involved, go on for the duration of the projects (often two or three years) - only after they have ended, the effects of the crisis become visible (CNV).

Employers' organization VNO/NCW was ambivalent about the measure: it tended to agree with economists' arguments against it and not to expect much of its effects, but it faced employers in some sectors who argued they could have great benefit from it, and understood that politicians wanted to show they were doing something about it, and thus it supported the short time working scheme. The Ministry of SZW admits to its political

significance but additionality point to the initial consensus among SP's on the practical relevance of the measure.

The most important initiative for increasing the level of employment has been the introduction, announced during August 2013, of sectoral funds that stimulate regional activities to increase employment. For sectoral plans 600 M€ has been made available. By making employers responsible for financing half of the costs, a guarantee has been created for a sound implementation, according to the FNV. VNO/NCW is also ambivalent about this measure, arguing that an economic adjustment has to take place to which policies can hardly make an important contribution.

Initiatives to counter labour market segmentation have been taken at a sectoral level, in agreement between unions and employers' organizations. According to FNV, by taking this issue away from the discussion at the central level, the possibilities to get to results are increased. Some results have been booked, but recently the employers' position has tended to become more confrontational (f.i. in construction).

3.1.2 Flexible work

The crisis and the flexibilisation of the labour market affect the way social partners look at the labour market and cause their strategies to change. As from 2011 union confederations raise the issue of the wide abuse of flexible work arrangements to a prominent place in their strategies. The issue of 'excessive flexibilisation' ("doorgeschoten flexibiliseren") and the question where and how to put 'healthy' limits to it, is being put on the agenda. It is argued that this is not only a problem of working conditions or of a bifurcation of the labour market, but also of the strength of 'health' of the Dutch economy.

According to employers' organizations the increased use of flexible work forms by employers is actually a consequence of the unions' lack of willingness to discuss a reform of the system of collective agreements. While federation CNV is not completely insensitive to this criticism, the FNV rejects it and points out that where room in collective agreements has been created, employers turn out not to use it to a significant extent. FNV's strategy is not just to see to it that more jobs are created, but to see to it that the jobs created, are fair and decent jobs, which means: jobs that are not posted and not flexible.

As a direct sequel to the Social Accord of April 2013, The Minister of Social Affairs and Employment announced an Act on Work and security ('Wet Werk en zekerheid'), intended to strike a renewed balance between 'flexibility and security' (see for details 1.4.b).

3.1.3 Training

The representative of CNV reports that the crisis has contributed to paying attention again to the 'emancipation of the worker' as a union goal. Redundant workers turn out to be much more dependent upon their former employer and workplace than the union had expected. The crisis has changed both members' perceptions of their position and the relation of the union to its members. The representative of CNV reports that the union is now trying to

convince them that they cannot just trust in staying in their job but have to be prepared for a changing world of work, of which flexible work is an integral part.

The crisis has thus changed both members' perceptions of their position and the relation of the union to its members. As they have to be prepared for a changing world of work, of which flexible work is an integral part, CNV's policy is directed at individualizing now existing funds, reserved for training, in order to provide employees with financial means to exert their own responsibility for their careers. Efforts of the Ministry are also directed at mobilizing existing sector funds, at taking away boundaries between sectors, in order to increase training of employees and further a mobility that is often not spontaneously welcomed, neither by employees nor by employers.

3.1.4 Dismissal law

In a discussion on reform of dismissal law that has lasted, in The Netherlands, for over fifty years, without significant changes in the law having been realised, the crisis has pushed toward a breakthrough in the social dialogue on this issue. A number of reform attempts have, since the 1980's, had to be abandoned because of the resistance, not only of the unions but also of organisations of SME's that saw the advantages of the current system. Meanwhile the smoothly functioning system was criticised for being too rigid, by OECD, organisations of larger enterprises and several political parties, and for its failing legal-systematic logic by labour law scientists. During the negotiations in preparation of the Social Accord, this issue turned out to be one in which the unions finally had to give in, although they succeeded in keeping up the preventive testing of dismissals. The level of severance allowances was significantly reduced, while at the same time these allowances were made much more broadly available to dismissed workers. The systematics as well as the effects of the new dismissal law, effected by 1 July 2015 by the *Law on Work and security*, are still being debated.

3.1.5 Statutory pension age

An important issue in the discussions in the period after the crisis has been that on the statutory pension age. There was already an ongoing discussion on the possibility of raising the pension age. Fiscal problems of the state had already been urging for that; the crisis has acted as a lever to open this issue to discussion and to decision-making on this issue. In the years directly after the crisis and in particular from 2009 to 2012 the issue tended to dominate the discussions. Generally, in view of the improved health of older workers, of labour participation policy goals, and of fiscal problems of the state, raising the statutory pension age was considered a fruitful proposal. But could the working age be extended irrespective of working conditions (f.i. physically burdening jobs) and was it really wise to do that in a period in which (youth) unemployment was rising and it was time and again shown how difficult it was for older unemployed workers to find a job? Contradictions, already slumbering within the confederation FNV, were stirred up by the issue and led to considerable unrest, made its president resign, and initiated a restructuring of the internal organization. Meanwhile the Labour Foundation has agreed upon the goal of an equal labour

participation of 80 percent in *all* age categories of the labour force. After the Social Accord of April 2013 the issue has been given a rest, but this reluctance is yet not based on a broad popular support for the increasing pension age.

3.2 The impact of the Social Accord 2013 on the social dialogue

An important moment in social dialogue developments has been the conclusion of the Social Accord (Sociaal Akkoord) of November 2013. This Accord is the result of a peculiar political constellation in which the position of employers' organizations has played a crucial role. Employers' organizations are said to have been worried by a perceived radicalization of the FNV and to have been afraid that the FNV would increasingly refrain from agreements. In a context of increasing political instability a new political situation occurred, that of a new cabinet, lacking a majority in the First Chamber of Parliament and thus weakened by a partly inadequate political basis. Besides, the direct access to government policies, that employers' organizations had been enjoying during former cabinets, had now been ended. It is argued that therefore the strategic aim of employers' organizations was to reach a central agreement, even if they would find themselves urged to make concessions to the unions, according to some even 'almost independent of what would be in the Accord'.

Representatives of employers' organizations confirm that the importance of the Social Agreement has rather been elsewhere, not in its response to the economic crisis. Because of the stabilizing role of FNV in Dutch industrial relations, it was important, first, to avert a crisis in this union, by stealing a march on its radical wings. And second, employers' organizations considered it important to prevent the cabinet from being wrecked in the First Chamber, and an Agreement would significantly strengthen the cabinet's position. The FNV, referring to its own internal problems, had the least to be gained by an agreement, which made for a strong negotiating position. The result has been the Social Accord of April 2013, that was hailed by all parties, although they all had a lot to explain to their constituencies. In particular on employers' sides there has been considerable dissatisfaction with parts of the Accord (for instance with the central prohibition of zero-hours-contracts in the care sector). The SER-representative concludes that the impact of the Accord has been that on both sides, despite of internal contradictions, the bargaining-oriented factions have been successful in taking the lead.

The contents of the Social Accord partly reflect the coalition agreement that formed the basis of the cabinet-Rutte II, however with some important modifications, in particular on the issues of dismissal law and unemployment insurance. Neither the SZW policy makers nor the political parties in Parliament were, of course, all satisfied with these modifications, but the broad basis of support underlying the Accord has invalidated their objections.

Although the discussion on the pros and cons of collective agreements revives from time to time, there seems to be to employers no feasible alternative to collective labour agreements (CA). Survey research repeatedly points to a high level of employers' support for the CA-system.

At the level of negotiations on collective agreements an effect of the crisis has, in the perspective of the unions, been that issues that had been settled, were once more brought

up for discussion (FNV). The financial position of companies severely restricted what could be negotiated (CNV). Differences in this position in different sectors created a new differentiation in the level of wage rises: low in sectors producing for national, higher in sectors producing for international service or financial markets. From employers' sides the change of atmosphere is stressed, as an indirect effect of the crisis, leading to a hardening of standpoints that prevented what they would have expected to happen in the framework of social dialogue in such a situation: a common adaptation to the changed economic situation.

Generally the relation between SP's has, since the outburst of the crisis, gradually deteriorated. Opinions diverge on whether this is a cyclical (FNV) or a 'fundamental' (VNO/NCW) change. From employers' side it is argued that globalization and the financial crisis have reinforced a latent uneasiness about the mess people think the powerful are making of things, and have negatively influenced the image of enterprise. The publicity on bonuses has added up to this uneasiness. This has made for an atmosphere not conducive to a good social dialogue.

Both at central and decentral levels, SP's are now to a large extent occupied in reproaching one another, unions arguing that employers would be misusing the crisis to do away with all kinds of certainties, employers' organizations that the unions would be digging their heels in and would not be ready to innovate CA's. As the economic situation improves, unions tend to increase their demands, while employers tend to argue there is not yet financial room for improvements. The newly elected chairman of VNO/NCW immediately distanced himself from the Social Accord and also refrains from some of the social dialogue involvements that would normally be part of his functional tasks. Social dialogue at central level depends also on mutual trust within a small network of persons who represent their organizations, and this mutual trust has recently been upset by a number of incidents.

It appears to be hard to innovate without giving people the uneasy feeling they are being deprived of their rights, but the tenability of some arrangements has, according to AWWN, definitely expired, as you can tell from the rise of the number of semi-dependent workers. AWWN pleads for a more fundamentally innovative answer to the changed conditions of labour relations.

In part, the government has also contributed to tensions between SP's, for instance by austerity measures regarding the public care sector. Care institutions find themselves forced to turn normally employed workers into fake independent workers because the costs of the latter are about 25 percent lower.

3.3 A shift towards more decentralized collective bargaining?

One of the agreements reached in the Labour Foundation dealt with decentralization. Parties promised to decentralize the level of collective bargaining to the company level as a way to strive to more flexible and tailor made bargaining deals. As a consequence of the Social Accord 2013 some responsibilities are shifted from the state to social partners. The new dismissal law offers ample possibilities to deviate from the legislation by collective labour agreement. This part of the social Accord is already implemented in legislation. Part of the Accord is a shift of responsibility for the public funded unemployment benefit funds from the state to social partners. This could be seen as a confirmation of the shift towards more

decentralised collective bargaining, but whether a shift towards a more decentralized level has taken place thanks to the crisis is not that clear.

Already before the crisis employers' organisations tended to favor decentralization and modernization, pleading for agreements 'made to measure'. The unions' position is basically not to allow for competition on labour conditions. Although the call for agreements 'made to measure' is strong, it turns out that where they have been realized (f.i. in the metal sector), only scant use of them is being made. Unions argue that it is not attractive to employers; in particular for SME's there is much to be gained by a central agreement on wages. Also representatives of CNV and SEC deny that there would be a general tendency to decentralisation.

To some extent, however, regulation of working time has been decentralized. In the 'Metalectro' CA room has now been created for a conditional deviation from centrally made provisions.

Unions sometimes favor sectoral agreements because it turns out that at sectoral level better agreements can be made. These developments are, however, not much related to the crisis, there already was a tendency to make framework-CA's and leave part of the content of agreements to a lower level. The possibility to make decentral agreements in pejus seems to be no issue in the Netherlands, probably while the possibilities to use flexible forms of work take away the need to make it an issue (FNV).

The CNV differs from the FNV in that they think unions have indeed concerned themselves not enough with a modernization of CA's. From employers' sides it is argued that the failure to reform the CA-system, in combination with the influx of Eastern European workers, has resulted in an increased use of flexible workers and of semi-independent workers, which in turn undermines the CA-system. For some time, employers' organizations have postponed the conclusion of new collective agreements, waiting for central political decision-making on a number of issues. Related to this, also a reverse tendency towards centralization is signaled, in the sense of political pressure on employers to stop refraining from making new collective agreements.¹⁵

¹⁵ At least up to mid 2015 the renewal of CA's in the Netherlands has been stagnating.

4. Evaluation of the outcomes of social dialogue.

In this chapter we give an overview of the views and opinions of the interviewees about the way social dialogue functioned during the crisis, the effects of social dialogue and the effects of measures taken to combat the effects of the crisis on the labour market. Also the interviewees have been asked to reflect on ways to improve the social dialogue.

4.1 *Have aims been achieved by reform measures?*

According to the unions, the short time working measures, taken shortly after the outburst of the crisis, have buffed the effects on the level of employment in the Netherlands. Employers were stimulated to think twice before they decided to reduce employment, and the effects of the measure lasted longer because its rules implied the requirement of employers to keep employees for at least half a year after the end of the compensation period. The proclaimed aim of stimulating training of workers during the non-worked hours has not been reached, but in some sectors (f.i. the metal sector) the measure has clearly contributed to the preservation of employment and of professional skills in companies. The functioning of the *Short Term Working Scheme* has been investigated and evaluated by the Netherlands Bureau for Economic Policy Analysis ('CPB'); it concludes that it has had a positive effect on the unemployment rates to a maximum of 0,1 to 0,2 percent of the average unemployment rate. Other research has confirmed this very limited effect.¹⁶

Part of the Social Accord of November 2013 is the declared intention of SP's to take responsibility for a scheme to provide for benefits during the third year of unemployment, thus compensating for the reduction of the scheme that the government has operated. This is said to have been a strong demand of FNV in the negotiations on the Accord, in fact forced upon the other parties. Both FNV and CNV express regrets that it is the third year for which this arrangement should be made: it is doubtful whether it will concern a lot of people entitled to it, and it would have had much more importance if it would have concerned the first year of unemployment. Doubts are raised by most respondents whether it will, in the current context of relations, be possible to reach an agreement on what this arrangement will have to look like.

AWVN welcomes the goals that have been formulated in the General Accord but points to problems in its implementation in a broader sense, for instance in the rules in the Wet Werk en zekerheid on the maximum of temporary contracts after which a permanent contract would automatically be realized – they might turn out to be counterproductive. While FNV and the Minister of Social Affairs stick to the permanent contract as the benchmark to be restored, it would, so AWVN argues, be better to accept the reality of other forms of work and take good care of flex workers as well as semi-independent workers. Other unions (CNV, Unie) seem to be more prepared to do that. The respondent of the Ministry stresses that a

¹⁶ CPB, 'Werkt werktijdverkorting?', 11-06-2012. Brief van de Minister van Sociale Zaken en Werkgelegenheid van 11 juni 2012 ASE/SAS/12/9136, 'Kabinetsreactie evaluatie bijzondere wtv-regeling en deeltijd-WW'.

lot of measures have only recently been introduced, so it is hardly possible to draw conclusions on their effectiveness now. He regards the Social Accord as a clear agreement on the course that developments ought to take, so if things would turn out otherwise, parties have a basis to call upon one another.

One representative of employers' organizations casts doubts on the effects of political measures in general; the Dutch economic government advisor CPB is considered to support him in this conclusion. He considers these measures to be mainly a political issue, their significance is mainly political but not many effects may be expected from them. AWWN is somewhat more positive on the effects of measures, for instance of the short time working scheme: it has helped a lot of people to keep their employment, and 'it was good that we dared to do something of which economists said we had to leave it to the market' (AWVN). The quota of disabled people per enterprise, hold out as a prospect in the General Accord, and disliked by employers, has nevertheless contributed to an awareness of employers of their responsibility in these matters.

Questioned on the contribution of social dialogue to the content, the shape and the effectiveness of the adjustments that have been realized, some union interviewees answered that for a long time after the crisis we have in fact been occupied with compensating the consequences of the crisis, instead of with the causes of the crisis – which are strongly related to the now dominant market perspective on all kinds of fields of social relations. The contents and shape of the adjustments that have been made, are very significantly the result of social dialogue (see above). Their effectiveness may suffer a drawback due to the peculiar power configuration under which the 2013 Social Agreement has been reached. Employers' organizations now are perceived to tend to withdraw from the agreement. It is doubtful, for instance, whether the declared intention of SP's to make common arrangements regarding the third year of unemployment will be able to be materialized.

This last remark is an example of the statement that not the content of the social Accord, but the mere fact that parties were able to reach an agreement, was of importance.

4.2 Effects on social dialogue itself?

According to the FNV, there has been no structural change of relations due to the crisis. Relations have not become more tense as a consequence of the crisis. There are cyclical variations, however, that are mainly due to the extent that employers' organizations are in need of social dialogue to pursue their goals. The crisis has created conditions in which this was the case (FNV). But after that relations have gradually deteriorated. We have had that before, and we therefore know it may last some time before they will have recovered. Social partners are now, according to AWWN, seized by a partly crisis-induced cramp, out of uncertainty about all spectacular changes in society. After times of prosperity it now feels like the carpet is being pulled from under our feet. This cramp unfortunately prevents us from doing what we should do: adjust to changed conditions, accept some wage restraint, and attend to innovation.

4.3 How has social dialogue been affected by EU measures?

According to unions, it has become clear that there is not much to be expected from the EU. According to the union FNV, the Lavall- and Viking-cases have made it clear that economic freedom has priorities over collective social freedoms. European legislation makes it largely impossible to keep up labour protection. Besides it turns out that the impact of EU jurisdiction is decreasing: decisions of the European Court tend to be more often neglected and thus to have less preventative effects than they used to have.

At European level some Directives have been realized, but generally SP's have already for some time not been mobilized by the EU to provide for arrangements. According to VNO/NCW social dialogue at European level should get more body. One unsolved problem is the relation between central and decentral dialogue, another that employers at that level are divided among themselves about the stakes. AWWN would also prefer a much stronger Europe. CNV reports that in the construction sector the EFBH makes agreements with employers' organization FIEC, for instance on measures regarding migration labour. One of the results is the ID-card for boundary-crossing construction workers.

4.4 What should be done to advance the contribution of social dialogue?

An important condition of social dialogue is the presence of institutional arrangements that keep up an interdependency that urges parties to get to an agreement. If occasional attacks on the system of collective agreements would, unfortunately, ever be successful, this would have disastrous effects on the system of social relations (FNV as well as VNO/NCW). Also according to AWWN, we have to preserve the system of CA's and the institutions of social dialogue. The impact of a social good dialogue is potentially fabulous, it can make an enormous contribution to productivity (AWVN). Social dialogue, however, is not only valuable if agreements are actually made on a topic, but also if it is possible to reach a common analysis of the problem, as has been done in the SER study on labour migration. If innovation is perceived as affecting acquired rights, then a good dialogue is a precondition.

AWVN proposes to work on a New Agenda for social dialogue.¹⁷ The Ministry of SZW is trying to start up a more general discussion, abstracted from current contested issues, on the future of social dialogue. Issues of representativeness, of regionalization and the role of municipalities, and of the relation to semi-dependent workers should be part of this discussion.

Already at a national level it is very hard to indicate how one could improve the social dialogue. At the level of social dialogue institutions, the need to adjust the institutional arrangements to new developments is being stressed. Both SER and employers' organizations notice problems of representativeness of established participating

¹⁷ AWWN published, at the end of 2014, a manifest in which it pleads for an all-encompassing dialogue, crossing established boundaries between f.i. employment and self-employed work, broadening its constituent basis .

organizations. Unions ought to modernize and attract more young members (VNO/NCW), the system would have to be open to new groups, for instance semi-independent workers, or to new ways of relating to its constituencies (f.i. voting by means of ICT?) (SER). Another new development that will have consequences for the social dialogue is the decentralization operation of Dutch government in which municipalities are being equipped with more powers, and can play an important role in employment policies.

At European and international level the unions are very well organized, according to employers' organizations, but it is nevertheless not easy to reach results at that level: the number of issues to be discussed, is restricted and it is difficult to align standpoints. The EU has initiated research projects on 'precarious labour' but has failed to do something about it. They could have invited SP's to try to do something about it, but they have not. It is a pity that everything above an EU-wide minimum level is immediately being disqualified as 'gold-plating', and that nothing may in this respect, realistically, be expected from the EU. Neither has it guaranteed the national culture of labour relations of the MS's. Much labour protection has been flattened without being replaced by good minimum norms at EU level. The EU ought to have much more respect for the legal position of workers. The Ministers of Social Affairs ought to develop an independent agenda on the quality of labour relations. The ILO has unanimously criticized the effects of the Troika measures on the social dialogue in Greece, but in spite of its own involvement in these measures the EU has not bothered to respond to this criticism. What has happened to the Green Paper that could have been a basis for EU actions?

5 Summary & conclusions

In paragraph 1.2. we have set out that the Netherlands has a strongly developed social dialogue, institutionally organized. The main institutions on national level are the Labour Foundation and the Social and Economic Council (SEC). The government plays a facilitating role, and when it has interests, which is usually at hand, the government tends to be a strong persuader to achieve agreements. In paragraph 1.3. we sketched the instable political environment during the first years of the crisis. Nevertheless some agreements have been negotiated in this period and some measures have been taken. Part of the effects of the crisis, in the longer run, was that employers increased the use of flexible employment, and by doing so deteriorated the (legal) position of employees.

In 2011 the government came under high pressure to take austerity measures because of the prediction that otherwise the state debt would pass the three-percent-norm as set by the Stability and Growth Pact. After the elections in 2012 the cabinet Rutte II had a somewhat more stable basis in parliament. The social partners and the government, agreeing that stability was needed, concluded a social Accord in 2013, with also a highly debated austerity measure: detrenching the Unemployment benefit scheme. In chapter two the most important measures that the government implemented during the crisis (the short term unemployment scheme of 2009 and the legislation stemming from the social Accord 2013) are described. Both have been to a large extent the result of social dialogue. In between both a lot of the discussion on reform measures focused on issues of the statutory pension age

In the third chapter we analyse the role of social dialogue during the crisis and the impact of the social Accord. The short term unemployment scheme, introduced in 2009 and finalized in 2011, has mostly met almost general approval, although part of the employers felt uneasy about this intervention in market mechanisms. An evaluation study did not find much effect of the scheme on the level of employment, but according to union representatives it has really prevented redundancies. Paragraph 3.2 deals with the effects social partners think the conclusion of the Social Accord of April 2013 has had on the social dialogue. The rather particular constellation of an economic crisis, political instability and an internal crisis in the largest union federation urged all parties to approve to the Social Accord, leaving employers' organizations, more than the other parties, with a burden to explain its contents to their members. In the mean time, relations between employers' organisations and unions have deteriorated. In paragraph 3.3 the question whether the crisis has led to a shift towards more decentralized collective bargaining is answered negatively.

Chapter 4 contains an account of the reflections of the interviewees, working for trade unions, employers organisations and the government. It is noteworthy that the social partners display some proudness about the short term unemployment scheme while research could not substantiate significant effects of this scheme on unemployment. In paragraph 4.1 the interviewees assess the Social Accord of April 2013. It shows that not so much the content of the Accord but the fact that a Social Accord was agreed, was important. The Social Accord played an important role in stabilizing the position of the biggest trade union and preventing this trade union from becoming more radicalized. Paragraph 4.2. shows that the crisis and the social dialogue during the crisis didn't improve the social

dialogue, but also didn't deteriorate it. The last paragraph expresses the opinions of the interviewees on the possible improvements of social dialogue.

Final conclusions are not easy to be drawn. Part of the measures foreseen by the Social Accord 2013 have just been implemented in 2015. In the previous two years social partners spent the most of their efforts in implementing the regulations stemming from the social agreement and negotiating about the details of the social Accord. Employers' organisations, in particular of SME's, appear to try to distance themselves from the Social Accord, but the Minister of Social Affairs has indicated that parties will have to adhere to the commitments they have entered into.