

## Summary of country report on The Netherlands

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The institutions of social dialogue provide the background for the very strong tradition of social dialogue in The Netherlands. By making recommendations, the bipartite *Labour Foundation* has an important influence on, in particular, the development of wages and employment. The government, strongly interested in making central agreements, is often involved in its process in order to get government interests represented in the recommendations. Some agreements are reached under strong government pressure. In 1996 a recommendation of the Labour Foundation has been the basis of the 'Flexibility and security law' of 1999.

After WW II the government, in order to permanently involve the business community in its socio-economic policies, established in 1950 the tripartite *Social and Economic Council (SEC)*. It has an advisory function and an administrative function for the organized business community. The SEC can establish committees on certain subjects to prepare a draft which is then discussed by employers' and employees' organisations respectively. After this "consultation of the rank and file" the draft is discussed in the plenary meeting, and in many cases finalized in an advice.

Along both paths the role of government in the making of the social accords is materially substantial. Since the 1980's, however, deregulation operations have emphasized the self-regulatory capacities of the social partners (SP's); the government leaves as much as possible up to the social partners and controlling bodies. Key words in this policy are decentralisation, flexibility, differentiation and individualisation. The government provides for a minimum level of protection by means of mandatory rules, among others as to minimum wages, wage payment, special conditions and dismissal. 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*, in contrast to the *secondary* employment conditions, where decentralisation appears to be a major trend. Employers and their organisations are increasingly expressing the desire to be able to form more tailor-made employment conditions.

In an enduring tradition of close consultation between SP's and government consultation takes also place at a down-to-earth level: in a permanent exchange of information, representatives of SP's and the Ministry of Social Affairs meet regularly in a room at the ministry on all kinds of regulatory issues, on occasions three times a week. Higher up, the SEC has, in the period since the crisis, hardly been able to reach agreements 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 also by VNO/NCW seen as quite a performance. 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. It is only in the political context of Parliament that doubts are sometimes raised at the value of social dialogue;

unions say this testifies to the often insufficient knowledge of politicians of relations at the workplace. The position that government takes, may be (dis)qualified as 'instrumental': too often the unions have simply been used by the government as bringers of bad news.

#### *Economic and political context at the start of the crisis*

Before the financial crisis started, the Dutch labour market had been very tight: policy analysts predicted full employment and even an upcoming lack of workers. As from 2007 the total labour force increased from 8,5 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 million 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). After 2011 the unemployment rate has grown fast to nearly 10 percent.

The labour market in the Netherlands responded slow to the crisis, partly due to the shortages on the labour market in the years before the crisis and employers' reluctance to dismiss employees that they had been at great pains to hire. The retarded response is further due to the relatively high level of employment protection. Reform of dismissal law used to be urged for by economists, but has been for a long time a highly contested issue, reform being firmly rejected by the unions. Nowadays even the OECD has changed its position on the issue. The crisis has turned out to be the lever to reach an agreement on reform.

The crisis strengthened an 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 permanent employment contract is considered to be heavily loaded with obligations to the employer, for instance, in case of illness of the employee, of continued wage payment during a period of 104 weeks (2 years). The use of flexible contracts would be an attractive way to escape these obligations. The percentage of self-employed workers, in 2002 about 7%, has doubled in ten years. According to researchers half of this increase can be attributed to government policies promoting self-employment.

One of the major political threats due to the financial and economic crisis was the impact it had on the state's deficits. Although once a fervent proponent of the 3-percent-norm of the Stability and Growth Pact, The Netherlands turned out to be unable to comply with it for the years 2013 and forward. Although the Commission has made no direct recommendations, still a severe austerity program was considered to be required. A cabinet formed by the liberals and christen-democrats (Rutte I), lacking a majority in Parliament, collapsed when in spring 2012 no agreement could be reached on an austerity program. After its resignation five political parties, including those forming the cabinet, agreed on a program that the resigned cabinet, facing elections in September 2012, started to execute. In November 2012 a new cabinet, composed of liberals and social-democrats, took office, that had to face a peculiar instability: it could count upon a majority in the Second, but not in the First Chamber of Parliament. The austerity program of this cabinet comprised a restructuring of the unemployment benefit scheme and a radical change of the dismissal law. Social-democratic Minister of Social Affairs Lodewijk Asscher brought back a regular consultation practice, that has, at least initially, also been favoured by employers' organizations. More recently, however, the latter's support seems to be decreasing.

The crisis also had impact on the social partners, internally as well as externally. An earlier tendency of employers' organizations to withdraw from the social dialogue had, within union FNV, been answered by introducing an 'organizing' model, rather, it is said, to restore its role in the social dialogue than to radicalize. The crisis has indirectly contributed to a sense of urgency that resulted in a fusion of the participating unions. The crisis has also put pressure on employers' organizations. It accentuated different interests within VNO/NCW as well as differences between larger companies and MSE's.

#### *Debates and reform measures*

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. A *Short Term Working Scheme* is introduced, first in November 2008 and confirmed in the Social Accord of Spring 2009, based on an agreement between social partners on the need to keep companies from rushing into redundancies. Their fierce cooperation succeeds in convincing the government to take this measure. It allows for reduction of the working time of employees, and of using the spare time for training. Urged by social partners, the government has prolonged the term during which the scheme has been operative several times; the last benefits have been paid in June 2011.

The March 2009 *Crisis Accord* ('Crisisakkoord'), reached in the Labour Foundation, prioritizes the need to conserve productive power above wage increases. Measures are announced to combat youth unemployment. The unions agree, besides to a smooth development of wages, to a reopening of the discussion on the pension age, that then dominates social dialogue and public attention in the period that follows, at the cost of other important themes. 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 criticized by unions within the federation FNV, causing its president to resign.

The *Social Accord* of April 11, 2013 marks a new phase in the social dialogue and in the struggle against the crisis. The Accord is presented as a proof of the blessings of the "polder model". The Minister of Social Affairs announces, that same day, the proposal of a new Act on Work and Security ('Wet Werk en zekerheid', enacted 14 June 2014) in order to 'strike a new, modernized balance between flexibility and security on the labour market'. Main issues of the proposal are: (a) partly restoring social partners in their responsibility for the unemployment benefit funds, (b) avoiding unemployment by making incentives for 'work-to-work'-transitions (c) revising the law on dismissals, reducing costs of employers (d) improving the legal position of flexible workers by further restricting the number and duration of consecutive fixed-term contracts, (e) gradually reducing the duration of public unemployment benefits (from 3 to 2 years maximum) and (f) creating jobs.

#### *The role of social dialogue and the impact of the Social Accord*

In The Netherlands the socio-economic effects of the crisis were only gradually becoming apparent. That the crisis 'has taken all of us by surprise', makes it hard to say whether government should have consulted SP's more often or more intensely. The context of political instability has had a significant impact on the social dialogue. The crisis, on the one hand, shifted the balance of power to the employers' side, on the other hand it has brought SP's to the negotiation table again. As the turn of

the crisis into an economic one became clear, at the end of 2009, employers' resorted to a greatly extended use of flexible work. This development resulted in a loss of influence of the unions, at the same time that union federation FNV was weakened by internal conflicts.

### *SP's involvement in reforms*

Issues in discussion before the outburst of the crisis (reduction of unemployment, in particular of low-skilled workers, employability and outplacement strategies) are reported to have disappeared from the agenda. 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. Others say these issues have even gained importance due to the crisis – but in consequence of the crisis results have failed to be reached, due to the consequences of the same crisis.

The first reform realized, on short-time working, had started from the supposition that the crisis would be short and vehement. It has (according to unions and AWWN) actually succeeded in keeping a lot of people on their jobs. The most important initiative for increasing the level of employment has been the introduction, in 2013, of sectoral funds that stimulate regional activities to increase employment. Initiatives to counter labour market segmentation have been taken at a sectoral level, in agreement between unions and employers' organizations. Some results have been booked, but recently the employers' position has tended to become more confrontational (f.i. in construction). As from 2011 union confederations raise the issue of the 'excessive flexibilisation' ("doorgeschoten flexibilisering") and the question where and how to put 'healthy' limits to it. 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.

The representative of CNV reports that the crisis has contributed to paying attention again to the 'emancipation of the worker' as a union goal. It has changed both members' perceptions of their position and the relation of the union to its members. The union is now trying to convince members that they have to be prepared for a changing world of work, of which flexible work is an integral part. The crisis has further pushed toward a breakthrough in the social dialogue on reform of dismissal law that has lasted, in The Netherlands, for over fifty years, without significant changes in the law having been realized, on this issue. The system of dismissal law, although smoothly functioning, was criticized 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.

An important issue in the discussions in the period after the crisis has been that on the statutory pension age. The crisis has acted as a lever to open this issue to discussion and to decision-making on this issue. 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.

Of great importance has been the conclusion of the Social Accord (Sociaal Akkoord) of November 2013. This Accord is the result of a peculiar political constellation: employers' organizations, worried by a perceived radicalization of the FNV and by the fragile position of the new cabinet, strategically headed for a central agreement, even if they would find themselves urged to make concessions to the unions. Because of FNV's stabilizing role in Dutch industrial relations, a crisis in this union ought to be averted, by stealing a march on its radical wings. An agreement would significantly strengthen the cabinet's position and make it survive in the First Chamber. The FNV, referring to its own internal problems, had the least to be gained by such 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, but in particular employers' organizations, had a lot to explain to their constituencies.

Collective agreements (CA's) are an issue of debate, but there seems to be to employers no feasible alternative. Survey research repeatedly indicates a high level of employers' support for the CA-system. The financial position of companies in the aftermath of the crisis severely restricted what could be negotiated (CNV). From employers' sides the change of atmosphere is stressed, as an indirect effect of the crisis, leading to a hardening of standpoints. 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. 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.

One of the agreements reached in the Labour Foundation dealt with decentralization of collective bargaining to the company level as a way to strive to more flexible and tailor made bargaining deals. 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, only scant use of them is being made. Unions argue that it is in fact not attractive to employers; in particular for SME's there is much to be gained by a central agreement on wages. Unions sometimes favor sectoral agreements because it turns out that at sectoral level better agreements can be made.

### *Evaluation*

According to the unions, the short-time working measure has clearly contributed to the preservation of employment and of professional skills in companies. Research reports a minimal positive effect on unemployment rates. The Social Accord's goals are welcomed by employers' organisation AWWN but it points to problems in their implementation: for instance the rules on the maximum number of temporary contracts after which a contract would automatically become permanent, might turn out to be counterproductive.

Some union interviewees point out that for a long time after the crisis we have in fact been dealing with compensating the *consequences* of the crisis, instead of with its *causes* - which are strongly related to the now dominant market perspective on social relations. The effectiveness of the

measures taken may suffer a drawback due to the peculiar power configuration under which the 2013 Social Agreement has been reached. Employers' organizations now tend to withdraw from the agreement. According to the FNV, there has been no structural change, though. We are familiar with cyclical variations, that are mainly dependent on the extent that employers' organizations are in need of social dialogue to pursue their goals. According to AWWN, however, SP's are 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 adjusting adequately to changed conditions.

As to social dialogue, not much is expected from the EU. Economic freedom has clear priorities over collective social freedoms. Unions argue that 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. European legislation now 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. 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.

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. According to employers' organization AWWN, the impact of a social good dialogue is potentially fabulous, it can make an enormous contribution to productivity. Initiatives are now being taken towards a New Agenda for 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 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.