



NEW EMPLOYMENT FORMS AND CHALLENGES TO INDUSTRIAL RELATIONS – NEWEFIN

Policy brief The Netherlands

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1. Introduction

This paper includes the major findings of the Dutch national report regarding to the EU-funded project entitled New employment forms and challenges to Industrial Relations (Newefin project). The project applies a juridical analytical framework combined with a qualitative analysis.

The aim of the project is to provide a multilevel comparative analysis of how the challenges to labour law and social protection systems, generated by current trends in labour market flexibility and rising non-standard/new forms of employment, are addressed through innovative policy responses and social dialogue. The non-standard/new forms of employment that are addressed in the project and this study are temporary employment, triangular employment relations, self-employment and new jobs in the gig economy. The more concrete aims of the study are 1) to provide insights into the rise of non-standard and new employment forms and the impact on the level of social protection of workers; 2) to analyse the risks to the sustainability of the system; to provide insights on experiences of implementing legislation and public policies aimed to regulate these forms of employment within the legal framework; 3) to analyse the challenges social partners face in the rise of new employment forms; 4) to discuss and disseminate the project results.

The methods used are semi-structured interviews with public authorities, trade unions, experts, employers and employer organisations. 10 interviews were conducted. The interview data was triangulated with desk research and analyses of collective agreements and other relevant documents from social partner organisations, national statistics as well as research reports and academic research studies.

2. The general overview

Characteristics

Permanent contracts were the standard for many years in the Netherlands, but now around 60% of all workers are entitled to an employment contract for an indefinite period and almost 40% form part of the group of non-standard workers (flexible employment and self-employed). The increase in non-standard work in the Netherlands has been driven by a variety of forces, including technological changes and demographic shifts. Globalisation and digitisation are making it easier and cheaper to offer work online and online platforms have experienced spectacular growth in recent years. Flexible employment – including fixed term contracts, on-call work, temporary agency work and contracts with variable numbers of working hours – has grown by almost 80% since 2004; from around 14% in 2004 to nearly 22% of the total active working population in the Netherlands in 2019. Self-employment has also increased quite a lot in the Dutch labour market. Nowadays, more than 16% of the active working population in the Netherlands is self-employed.

	2004	2019	2004	2019
	X 1000		%	
Standard employment contracts	5,659	5,552	72.9	62.0
Flexible employment contracts	1,079	1,923	13.9	21.5
Self-employment	1,022	1,477	13.2	16.5
Total working population (active)	7,760	8,952	100	100

The Dutch labour market is polarised in terms of income and job security between standard work on the one hand and non-standard work on the other hand. The level of employment protection for permanent contracts is relatively high, while there is a lack of employment protection in relation to non-standard work. In short, job security for workers with a non-standard employment contract is less than for workers with a permanent employment contract. They have a greater chance of becoming unemployed. The same rift is apparent in relation to income security. Workers in non-standard work earn less and run greater risks of poverty. The growth of non-standard work can therefore lead to more poverty in the Netherlands. In addition, it does not impact all workers equally. Women, youngsters and migrants are more likely to work in non-standard arrangements. Further growth of flexible work may therefore also lead to greater inequality and reductions in job equality.

Apart from the problem of precariousness for individual workers, there are some major risks for society as a whole. If a smaller percentage of the labour force is not working on the basis of an employment contract, some institutions like the pension or social security systems can lose strength. Those institutions are based on employment contracts. The same applies to the system of collective bargaining and worker involvement at the workplace. Almost all individual and collective labour law in the Netherlands is applicable to employees only. In other words, the employment contract is the cornerstone of Dutch labour law. This is a challenge not only for labour law, but also for social security law and tax law. The challenge is to combine them into a balanced system.

3. Legal framework and legislative initiatives on new forms of employment

The Dutch legal framework is built around or upon the full-time employment contract for an indefinite period of time, which serves as the ‘standard’ or norm. In the Dutch report, the following forms of non-standard work are described: temporary agency work, contracting & payrolling, on-call work, self-employed and platform work. Temporary agency work has been a popular modality of non-standard work since the 1960’s. Temporary agency work is regulated sufficiently in the Netherlands by law and collective labour agreements. According to Dutch law, there is an employment agreement between the agency and the temporary agency worker. The problem is not so much the legislation, but rather the use of agency concepts for activities for which it is not really intended. Another problem is that alongside temporary agency work, other triangular relationships – like payrolling and contracting – appeared in the Netherlands. The rules on temporary agency work are not applicable to some of the new triangular relationships. The next table shows an overview of the most significant forms of contract in the Netherlands and the main modalities of the different forms.

The main problem in the Netherlands is (sham) self-employed workers, including platform workers. Self-employed workers are not protected by employment law at all, while they often do the same work as employees. The number of self-employed workers is growing significantly (see introduction) and most policy initiatives refer to the problem of the (sham) self-employed (see below). The group of self-employed is very diverse, from high-skilled professionals to dependent self-employed with a low income.

Contract classification	Employment contract				Contract for services
Employed?	Employed directly by the employer			Outsourced to a third party (triangular relationship)	Not employed
Type	Permanent	Fixed-term	On-call contract	Agency	Self-employed
Protection against dismissal	Yes	For term of contract	For term of contract	Agency provision: first 78 weeks, contract can be cancelled if there is no work at the hiring firm	None
Certainty on hours	In principle fixed, downwards adjustment not easily possible	In principle fixed, downwards adjustment not easily possible	No security. Offer of fixed scope after 12 months	Depends on the number of weeks worked.	None
Minimum remuneration and holiday	Yes	Yes	Yes	Yes	No
Illness and employment disability	2 years continued wages and reintegration with employer. Then (possibly) right to WIA benefits	Right to continued wages and reintegration with the employer during the contract. Then possible Zw benefits and reintegration with the UWV. Right to WIA benefits possible after 2 years.	Right to continued wages and reintegration with the employer during the contract. Then possible Zw benefits and reintegration with the UWV. Right to WIA benefits possible after 2 years.	CLAs state that on illness the outsourcing provision can be revoked. This leads to termination of the contract. Then access to Zw benefits and possible WIA benefits after 2 years. No outsourcing provision: continued wages, Zw and WIA	None
Unemployment	Right to WW	Right to WW	Right to WW	Right to WW	None

Three major legislative changes have been adopted since the 1990s: the *Wet flexibiliteit en zekerheid* (Flexibility and Security Act) in 1999, the *Wet werk en zekerheid* (Work and Security Act) in 2015 and the *Wet arbeidsmarkt in balans* (Balanced Labour Market Act) in 2020. Together they constitute an institutional framework which allows some forms of flexible work and – at the same time – avoids precariousness for workers. All of these statutory amendments had the same goal: to create balance between flexibility on the one hand and security on the other hand.

A big challenge for the Netherlands is tackling the problem of the sham self-employed, including platform work. In their coalition agreement ‘Confidence in the future’, the current government agreed that the self-employed are considered to be employees if the rate is low (125% of the minimum wage) and if the work constitutes normal business activities (see below for more information).¹ At the end of 2019, the Minister of Social Affairs presented a plan for new legislation on self-employed work.² Part of this plan is a minimum gross wage of EUR 16.50 for every self-employed worker (a minimum tariff). Self-employed persons who earn more than EUR 75 an hour can use an opt-out. In that case, freelancers and the suppliers of work declare that the relationship is not an employment contract. The self-employed worker has to prove that he earns a gross wage of EUR 75, otherwise the supplier of work will still have to pay premiums. Labour market experts and the self-employed have doubts about the new plans. One of the main points of critics is that the minimum tariff will become a maximum. The Minister recently withdrew his plans. The Dutch Minister for Social Affairs and Employment Koolmees appointed the Borstlap advisory committee to provide advice on fundamental questions about the future of work. The advice from this committee was presented in January 2020. Among other things, the committee advised the government that the principle of labour law should be that every worker is an employee, unless proven otherwise. The committee also advised the government to abolish all fiscal incentives for employees. All triangular relationships should be temporary agency work, according to the committee. The advice of the committee is now being debated in the House of Representatives.

¹ Government Accord 2017-2021, *Vertrouwen in de toekomst* [Faith in the Future], VVD, CDA, D66 and ChristenUnie.

² Minimum Remuneration for the Self-employed and Self-employed Statements Bill [*Wetvoorstel minimumbeloning zelfstandigen en zelfstandigenverklaring*].

4. Social partners' responses to new forms of employment

While trade unions made a significant contribution, along with employers, to matters such as the regulation of temporary agency work and other forms of flexible working in the 1990s, they have not been great advocates for the way in which these flexible forms of working should now be used in practice.

Trade unions reach out to platform workers as members. They support them by offering information and legal support. The main strategy of trade unions at this moment is to start legal procedures in which they claim the following:

- (i) platform workers are – in fact – employees and not self-employed;
- (ii) platform employers fall under the scope of the collective labour agreement in the industry.

Because of this strategy, the FNV trade union does not want to negotiate with platform employers about a collective labour agreement for platform workers. They consistently maintain their opinion that platform workers are employees who fall under the scope of existing collective labour agreements. In that respect, there is likewise no problem in the protection of platform workers. They are – in the opinion of the trade union – already protected by employment law.

Initially, trade unions opened up negotiations on a collective labour agreement for platforms. Later, they took the position that sectoral collective labour agreements, like the CLA for the professional transport of goods, was applicable to platforms. In general, self-employed persons without personnel are weakly organised. They are poorly accommodated by the current system of social dialogue and social partners. There are at least 18 associations in the Netherlands that organise and represent self-employed workers. Some of these associations organise the 'entrepreneurs' in the group of self-employed people, while others are more focused on the groups of 'self-employed workers without rights'. There are also professional associations for self-employed workers, such as for journalists (*NVJ*), for construction workers (*Zelfstandigen-Bouw*) and for healthcare professionals. Apart from their lobbying function vis-à-vis the government and social partners, organisations for the self-employed offer (collective) insurances, pensions and other services for their members. In sum, the many organisations in the Netherlands that claim to represent self-employed workers in the Netherlands differ widely in the characteristics of their members and in their ideologies. There are remarkably high numbers of associations focussing on the ideology of entrepreneurship, autonomy and the ability of people to cope with and manage the risks of income insecurity for themselves. On the other side of the spectrum are the associations that are linked to the trade unions, which focus on the protection of the lower segments of self-employed in the labour market and try to provide these groups with the security of the 'classical' employment contracts, to combat 'sham self-employment', and to include them in collective solidarity arrangements in the welfare state.

5. Summary and conclusions

In this report, we have attempted to answer the research question common to all the national studies as it was stated in the introduction: *How the challenges to labour law and social protection systems, generated by current trends to labour market flexibility and rising non-standard/new forms of employment, are addressed through innovative policy responses and social dialogue?* It was furthermore an aim within the project to describe the legal framework in each of the countries involved, in this case The Netherlands.

The analyses have consisted of a general overview of labour market trends, the existing legal framework in the Netherlands with regard to standard and non-standard work, regulatory changes and social partners' and policy makers' initiatives. The *main findings* are:

- the Netherlands is one of the front runners in flexible work in the EU. Permanent contracts were the standard for many years, but now around 40% of the active working population does not have a standard employment contract for an indefinite period;
- flexible employment – including fixed term contracts, on-call work, temporary agency work and contracts with variable numbers of working hours – has grown by almost 80% since 2004, from around 14% in 2004 to nearly 22% of the total active working population in the Netherlands in 2019;
- the OECD points out that the labour market in the Netherlands is rapidly changing due to digitisation, globalisation and demographic changes. The OECD emphasises that work contracts are increasingly flexible and are offering lower levels of protection;
- nowadays, more than 16% of the active working population in the Netherlands is self-employed.
- the growth of non-standard work can lead to more poverty in the Netherlands. In addition, it does not impact all workers equally. Women, youngsters and migrants are more likely to work in non-standard arrangements. Further growth of flexible work may therefore also lead to greater inequality and reductions in job equality;
- the Dutch legal framework is built around or upon the full-time employment contract for an indefinite period of time, which serves as the ‘standard’ or norm;
- temporary agency work has been a popular modality of non-standard work since the 1960s. Temporary agency work is regulated sufficiently in the Netherlands by law and collective labour agreements;

- self-employed workers are not protected by employment law at all, while they often do the same work as employees;
- the Dutch Minister for Social Affairs and Employment Koolmees established the Borstlap advisory committee to provide advice on fundamental questions about the future of work. The advice from this committee was presented in January 2020. Among other things, the committee advised the government that the principle of labour law should be that every worker is an employee, unless proven otherwise;
- the last three major labour law reforms had the same goal, to create balance between flexibility on the one hand and security on the other hand;
- while trade unions made a significant contribution, along with employers, to matters such as the regulation of temporary agency work and other forms of flexible working in the 1990s, they have not been great advocates for the way in which these flexible forms of working should now be used in practice;
- trade unions reach out to platform workers as members. They support them by offering information and legal support. The main strategy of trade unions at this point is to start legal procedures in which they claim that 1) platform workers are – in fact – employees and not self-employed, and 2) platform employers fall under the scope of the collective labour agreement in the industry;
- in general, self-employed persons without personnel are weakly organised.