UNIVERSITY OF AMSTERDAM

UvA-DARE (Digital Academic Repository)

The evolving structure of collective bargaining in the Netherlands

Verhulp, E.

Publication date
2005

Published in
The evolving structure of collective bargaining in Europe

Link to publication

Citation for published version (APA):
Verhulp, E. (2005). The evolving structure of collective bargaining in the Netherlands. In S. Sciarra (Ed.), *The evolving structure of collective bargaining in Europe*

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: https://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

UvA-DARE is a service provided by the library of the University of Amsterdam (https://dare.uva.nl)

Download date:25 Jul 2022

The Evolving Structure of Collective Bargaining in the Netherlands

Introduction

Collective bargaining between employers and employees is stimulated by legislation in a number of different ways in the Netherlands. The legislator explicitly favours agreements reached through consultation between employers or employers' associations and one or more trade unions. It is not, however, inconceivable for an arrangement based on a collective labour agreement (CLA) to emerge without the cooperation of a trade union. This may be the case if a works council is involved. Such arrangements are valued differently to CLAs, and will not automatically be incorporated in an employment contract. There are two statutes that directly support the collective bargaining process: the 1927 Collective Labour Agreements Act or CLA Act (*Wet op de collectieve arbeidsovereenkomst* or *Wet CAO*, see Section 1.1) and the 1937 Collective Labour Agreements (Declaration of Universally Binding and Non-binding Status) Act or AVV Act (*Wet op het algemeen verbindend en onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten* or *Wet AVV*, see Section 1.2). There are also several other arrangements that indirectly support collective bargaining. The latter group includes conditional mandatory stipulations contained in the Netherlands Civil Code (*Burgerlijk Wetboek*, see Section 1.3), and the 2000 Merger Code of Conduct of the Social and Economic Council (SEC) and the Collective Redundancy (Notification) Act (*Wet melding collectief ontslag*, see Section 1.4). The legal framework has hardly changed in recent years. There are at most three recent statutes that include provisions from which not only the customary negotiating partners (trade unions and employers) but, in consultation with the works council, employers too can deviate (see Section 2.1.3). Chapter 2 will first take a closer look at the trade unions (Section 2.1), the employers' organisations (Section 2.2), the institutions that coordinate social dialogue at a national level (Section 2.3) and regulatory industry bodies (Section 2.4). Finally, Section 2.5 will address the role of government. Chapter 3 will examine the different levels at which consultation concerning employment conditions takes place: at a national level (Section 3.1), a sector-wide level (Section 3.2) and a works council level (Section 3.3). Chapter 4 puts forward figures on the number of CLAs and the number of employees who fall within their scope. Clarity is also provided concerning the manner in which these employers and employees are bound to the CLAs.

It is noteworthy that in 1993 agreement was reached within the ranks of the Labour Foundation – the central consultative body representing both employer and employee associations which also makes agreements in relation to negotiations concerning employment conditions – to strive towards achieving a higher level of decentralisation in terms of formulating employment conditions. This agreement – laid down in a document dated 16 November 1993 entitled "A New Direction" – has brought about significantly more and farther-reaching opportunities to deviate from CLAs at company level, in consultation with the company works council in some cases. This leads to specific problems, especially concerning the issue of whether such provisions should be declared generally binding and whether employees are bound by agreements reached at a decentralised level. It should also be noted that recent research shows that Dutch employers are exceptionally pleased with the system of collective bargaining. Of those employers bound by a CLA through membership to an employer association, 87% are satisfied with the system, 6% are undecided and 6% are dissatisfied. Of those employers bound by a CLA through its being declared generally binding (or having general effect), some 84% are satisfied, 8% are undecided and 8% are dissatisfied. Chapter 5 takes a close look at the most significant topics in CLA negotiations: wages (5.2), training and career guidance (5.3), working hours, holidays – in relation to combining work

and care responsibilities as well (5.4), the policy relating to older employees and employment opportunities (5.5), working conditions – in relation to work pressure and absenteeism as well (5.6) and multiple choice employment conditions (5.7). Finally, Chapter 6 outlines a number of trends with regard to the internationalisation of the employment and production markets.

1. Main Characteristics of the Regulatory Framework

1.1 Overview of the legal framework of the CLA

1.1.1 The CLA and the negotiations

Article 1 of the CLA Act presents a definition of the Collective Labour Agreement (CLA): *An agreement, made by one or more employers, one or more associations of employers and one or more associations of workers, concerning, predominantly or exclusively, employment conditions to be regulated in labour agreements.*
Contrary to what the literal text might imply, a collective agreement regulating a specific aspect of employment such as early retirement or an education or training fund can also be considered a CLA. Even a redundancy plan regulating how the employer or employees will deal with retrenched staff resulting from a reorganisation or downsizing can take the form of a CLA. A CLA can be made both by a single employer or a group, organisation or association of employers. Unless stated otherwise, the text below is based on the situation in which an association of employers is party to the CLA. Article 2 of the CLA Act stipulates that associations are only competent to draw up a CLA if the association enjoys full legal capacity arising by virtue of its articles of association. In cases based on Dutch law where a works council cannot comply with this condition, a CLA cannot be made with a works council. Further requirements are not imposed on the potential parties to a CLA, specifically not with regard to representativeness (see also Section 2.1.2). CLA provisions can be divided into three categories: prescriptive, mandatory and diagonal. Prescriptive provisions are directed at regulating the relationship between the individual employee and employer, including provisions governing the wage level. Mandatory provisions contain agreements reached between the respective CLA parties, possibly including a "duty to keep the peace" clause. Diagonal provisions regulate the duties of one of the members of the parties to a CLA in relation to a CLA party, such as the duty to contribute towards trade union costs on behalf of the associated employers.
The CLA itself can determine the extent to which deviations may be permitted. If a CLA applies as the minimum, it is referred to as a minimum CLA. This is currently the most common form in the Netherlands. In addition, there are standard CLAs that do not permit any deviations whatsoever, and maximum CLAs that only permit less favourable conditions for the employee. The last two variations seldom occur in the Netherlands. In the text below, the basic premise is that of a minimum CLA.
In line with the Wages Act (*Wet op de Loonvorming*), a CLA does not take effect prior to the day on which the parties to the CLA register the CLA with the Ministry of Social Affairs and Employment. This requirement has been imposed purely for administrative reasons.

1.1.2 Directly binding through membership of a party to a CLA

Pursuant to Article 9 of the CLA Act, trade union members making a CLA are bound by that CLA - in principle. In principle, because being bound in such a manner only applies if both the employee and the employer are members of one of the organisations that are party to the CLA. The intention of the CLA Act is for both parties to be bound in such a way through

membership. Article 12 of the CLA Act declares all clauses between an employer and employee that conflict with a CLA to which they are both bound void, to be replaced by the applicable provision in the CLA. Article 13 of the CLA Act stipulates that if no clauses have been incorporated in the employment contract in terms of a subject regulated in the CLA to which both the employer and employee are bound, the provisions of the CLA apply. Based on these two provisions, the provisions included in the CLA become part of the employment contract. Logically, the direct effect of provisions contained in the CLA only applies to prescriptive provisions.

1.1.3 Application of the CLA by an employer bound by the CLA to employees not bound by the CLA

If an employee is a member of a trade union that is party to a CLA, but is in the employ of an employer who is not a member of any of the parties to the CLA, he is not bound by the CLA. The legislator deemed it undesirable for an employee to insist that his employer consider the CLA applicable. The view was that the employee would not be able to enforce such an obligation. It was deemed unlikely that the employee, acting on an individual basis, would be able to force his employer to apply a CLA to the employment contract. Conversely, the employer is obliged to apply the CLA to which he is bound to employees who are not a member of a party to the CLA. (Hereafter the parties shall be referred to as "the CLA employer", "the CLA employee" and "the non-CLA employee".) This is regulated in Article 14 of the CLA Act. Although it is possible to stipulate otherwise in the CLA itself, this seldom happens. The thought behind Art. 14 of the CLA Act is that it must be prevented that a CLA employer can employ non-CLA employees at lower wages than CLA employees. This prevents employers from firing CLA employees (who are member of a trade union) to employ cheaper non-CLA employees. It is not the intention of Art. 14 of the CLA Act to protect the non-CLA employee. It is therefore assumed that the non-CLA employee cannot himself demand performance of the CLA on the basis of Art. 14 of the CLA Act, but that such performance can only be enforced by the parties to the CLA.
Art. 14 of the CLA Act is regulatory law. To what extent the obligation of the employer to treat the employees equally gives non-CLA employees an independent right to performance of the CLA, is not clear to date. The option of deviating is very seldom used, and even then it is specifically used for redundancy schemes in the framework of a social plan.

1.1.4 Contractual commitment to the CLA

The employment contract often includes a provision stipulating that the provisions of a CLA applies. This leads to application of said CLA by contract. The question whether there is commitment by membership is therefore often of little relevance. The contractual commitment particularly occurs in two different situations.
First: CLA employers almost always include a clause in the employment contracts with the employees that the provisions of the CLA apply to this employment contract. By doing so they are bringing about that if an employee is not bound to the CLA by membership, said employee is bound to the CLA by the employment contract. If a new CLA is made, this non-CLA employee is bound, by means of the employment contract, to accept the application of the new CLA. Without this contractual commitment a situation could arise whereby a CLA employer must apply the CLA to the employee pursuant to Art. 14 of the CLA Act, but the employee does not with to accept this application.
Employers who are not committed to a CLA, but who do see the advantages of a collective scheme, are free to agree with the employee that provisions of one or more CLAs apply to the

employment contract. The parties are free to state that a CLA applies which does not relate to the sector in which the undertaking works. These cases concern an agreement between individual parties and not a collective agreement. The CLA only applies on the basis of an agreement between employer and employee and not on the basis of a provision of the CLA Act, which has consequences for the working of provisions which are mandatory law, subject to some exemptions ("conditional mandatory law").

1.1.5 Scope

The law leaves the scope of the CLA up to the parties to the CLA. When a company CLA is concerned, then naturally there are very few problems with regard to the scope: the CLA applies to the employees in the employ of the employer who is a party to the CLA. The parties to the CLA sometimes exclude employees - usually higher paid employees, holiday temp workers or trainees - from one or more schemes of the CLA. There is often a provision that employees above a certain salary level are not entitled to compensation for overtime. Sometimes higher personnel is excluded from the scope of a CLA. With these employees negotiations on the employment conditions takes place on an individual level. Sometimes a separate CLA is made for the higher personnel. Pursuant to Art. 1 Paragraph 2 of the CLA ACT, a CLA can apply to a contract which an employee makes with people who will carry out work for the employer other than on the basis of an employment contract. Such contracts can be, in specific, contracts with self-employed people with no personnel. This does not happen often. It is more often the case that the employer is obliged to ensure that people who work within the company other than on the basis of an employment contract with this employer (which relates in specific to temp workers) do not receive lower wages than the employees in his employ who carry out a function similar to that of the other people. In this manner an attempt is made to prevent the employer from hiring temp workers on cheaper terms, who then take over from the regular employees. A temp worker cannot enforce compliance with such a CLA provision. As under Dutch law the temp worker is not in the employ of this employer, but of the temp agency, he does not fall under the scope of the CLA in which the right to equal pay is laid down. Only the parties to the CLA can demand compliance.
Parties to a sector-wide CLA choose, without exception, to determine the scope of the CLA by describing the business activities to which the CLA applies. The nature of the work which the employees carry out is not decisive for the scope of the CLA, but the nature of the company where the work is carried out.[1] The employment contract which a restaurant makes with a cleaner is (if both parties are bound to a CLA, see hereafter) governed by the provisions of the CLA for the restaurant industry, and not the CLA for the cleaning industry. The descriptions of the activities in the sector-wide CLA are sometimes so broad that an overlap with other sector-wide CLAs can occur. The sector-wide CLAs usually provide for a committee which can evaluate the question as to which CLA applies.

1.1.6 Advantage principle

The words "every condition" of Art. 12 of the CLA Act have given rise to discussion. Is every condition in the employment contract which deviates (to the detriment of the employee) from the CLA void, or can such nullity be discarded by a reference to another, considerably more favourable provision in the employment contract? The question is whether these words prohibit the employer from comparing packages. Can the employer agree with the employee

[1] Supreme Court, 6 January 1995, *NJ* 1995, 549, *JAR* 1995/34

that the employee will receive higher wages than those regulated in the CLA, but that the overtime compensation regulated in the CLA does not apply? With regard to the answer to this question does it matter whether the employee receives more extra wages than he would have received in overtime compensation? In 1997 the Supreme Court held that the words "every condition" of Art. 12 of the CLA Act mean that a comparison of packages is not permitted and the employee, in addition to the – agreed – higher wages, is also entitled to the payment of overtime. In the opinion of the Supreme Court, every separate condition must at least be in accordance with the CLA. The advantage principle thus does not play a role in Dutch CLA law.

1.1.7 Continuing effect

The end of the CLA does not have any immediate consequences for the CLA employer and CLA employee. As the relevant provisions of the CLA have become part of the employment contract, these provisions shall remain in effect. However, the option of the parties to make other agreements in the employment contract does come back into effect, as these agreements can no longer conflict with provisions of the CLA. If the CLA applies pursuant to the employment contract itself, nothing changes by the end of the CLA: as the CLA applies pursuant to agreements between the parties, this employer and employee already had the option of agreeing a deviation from the CLA.

1.1.8 Employment conditions bargaining in the public sector

A number of comments have to be made with regard to the public sector. For civil servants, the employment conditions are established by means of a public law scheme which the government determines unilaterally. The Dutch government endeavours to achieve equality between the employment conditions of the public sector and those of the market sector. This goal fits in with the process that is referred to as "normalisation of the employment relationships". This has led to the government committing itself not to unilaterally determine the employment conditions, but to only determine the employment conditions after the agreement of the relevant trade unions. The negotiations in this respect are carried out in twelve different public sectors, such as provinces, district water boards, municipalities, national government and the police. The sectors differ in size. The education and sciences, municipalities and national government sectors each encompass more than 100,000 civil servants, the provinces and district water boards sectors each encompass approx. 10,000 civil servants and the judicial power sector encompasses more than 2,000 officers. In addition to the size of the sectors, the degree in which the sector forms a uniform whole also differs. In the national government, defence and judicial power sectors, the relevant minister is the responsible employer. In the municipalities sector, for example, almost two hundred employers are active. Several employers are also present in the provinces and district water board sectors. In these latter three sectors, employers' associations act as negotiating partner of the employees' representatives. The sectoral negotiating agreements only acquire status when they have been approved by the rank and file. Within the national government sector there are five sectors for which a minister acts as employer. It has been agreed that the bargaining agreement made by him shall only apply after having received the permission of the council of ministers. Evaluation of the sectors model in 2002 has shown that there is great satisfaction with this state of affairs, as the role of the employer can be given better shape by the various public authorities and specific needs of the sector can better be dealt with. Despite this satisfaction, there are also bottlenecks. The most important is that there is continuing tension between the government as legislator and the government as employer. It is accepted

that the right of the parliament to intervene by means of the right to approve the budget is limited in the interaction between the minister as employer and the trade unions. There are also other differences with the market sector. For example, the minister appoints the negotiating partners. Another difference is that there is the requirement of an agreement for the public sector, so that it is excluded to make an agreement with a minority of the employees' representatives. Finally, a remaining important point is that the CLA Act does not apply and an agreement must always be "translated" into an arrangement which regulates the legal position and is then implemented. In contrast to an employee, who can directly invoke a CLA provision, a civil servant has to wait until the agreement has been implemented with regard to him before he can derive rights from it. Despite these differences the negotiations often resemble "true" CLA negotiations. The agreement of the trade unions is sometimes obtained after tough negotiations, whereby the threat of strike is invoked several times. The result of these negotiations is sometimes referred to as a CLA, but that is not what it is.

1.2 Extension of collective agreements

1.2.1. The AVV Act

The AVV Act stems from 1937. The purpose of the act is to prevent employers who are not part of an association from stipulating employment conditions under the CLA and seeks to protect the collective bargaining process. From their nature it ensues that only sector-wide CLAs can be declared to be generally binding (i.e. to have general effect). In the Act, the Minister of Social Affairs and Employment is given the power to, exclusively at the request of one or more CLA parties, declare a CLA to be generally binding. The minister has further regulated his power in the Reference Framework for Declaring CLA Provisions to be Generally Binding. The Act only includes a few conditions for declaring a CLA to be generally binding. The most important is that the CLA should already apply for a significant majority of the people working in the sector. This significant majority is determined by expressing the number of employees in the employ of CLA employers as a percentage of the total number of employees in the sector. There will be a significant majority if the percentage is 60. If the percentage is 55 to 60, the CLA can be declared to be generally binding, unless the supporting base for the CLA within the area of application is slight. In addition, the Act stipulates that the declaration of general effect cannot not take place with retroactive effect and will be for a maximum of two years. A number of CLA provisions laid down in the Act, such as those of compulsory arbitration, cannot be declared to be generally binding. Although the Minister can request advice from the Labour Foundation as to a declaration of general effect, this seldom happens.
Regarding the question whether the minister can reject the declaration of general effect of a CLA by claiming government policy and whether this is desirable, is much discussed topic in the Netherlands. It is established that the minister can politically apply the discretionary power given to him, and can thus reject the declaration of general effect of a CLA provision which conflicts with government policy. To date the minister has not made use of that power. Opinions differ as to the desirability. Proponents of the politics of making use of the power to declare CLAs to be generally binding point out that the declaration of general effect influences free market forces and can distort competitive relationships. A declaration of general effect can result in wage increase and rigidified relationships. Recent research of the Ministry of Social Affairs and Employment has shown that in the event of political use of the power, the risks that the original objectives of the AVV Act cannot be realised is great. These objectives, i.e. a calm labour market, the creation of stable employment relationships and the encouragement of self-regulation, are served by the certainty that a CLA can also be declared

to be generally binding if parties to the CLA request such and if the clear criteria of the Act and the Reference Framework have been met. The research has also shown that said objections to a declaration of general effect have not (to date) occurred in practice.

1.2.2. Objection to the declaration of general effect, dispensation.

It is possible to ask the minister to make an exception from the working of a declaration of general effect of provisions of the CLA. The policy of the minister is that such exception, or dispensation, is only granted if the relevant employer is already bound to a company CLA. Until recently this dispensation was almost automatically granted by the minister. Dispensation was refused for the first time in 2003, in a matter where it turned out that the company CLA had not been pursuant to a bargaining process with an independent trade union. The employer who sought the dispensation, supported that request by referring to a company CLA which he had made with a trade union which was established on his initiative, which had no members and no independent funds. In any event, the investigation by the minister into the independence of a trade union is very marginal. This means it is still possible to request and receive dispensation from the declaration of general effect on the basis of a company CLA which was made with a party other than the regular trade unions. There is the impression that this option is being used to an increasing extent.
Sometimes the CLA itself provides the option of asking the CLA parties for dispensation. This provision is usually declared to have general effect. In any event, the declaration of general effect is a legislative act, against which no objection is possible.

1.2.3. Societal significance of the AVV

By the declaration of general effect, very few extra employers and employees are brought within the scope of the CLA, i.e. approx. 9% of the total of the employees. However, the societal significance of the general declaration of effect is much greater. There is a popular view that the degree in which employers from associations in certain sectors is high due to the knowledge that they will have to apply the CLA anyway, if not on the basis of being directly bound by membership, then because of the declaration of general effect. This makes the societal significance of the declaration of general effect substantial, although the supporting base – partly in view of the increasing use of the dispensation option – is appearing to decrease. In addition, the societal significance of the declaration of general effect is significant because a number of CLAs which are declared to be generally binding are "fund" CLAs. These are approx. 100 CLAs, in which the founding and financing of training and education funds are regulated. These CLAs impose an obligation on the employers operating in the relevant industry to make financial contributions, so that the burdens of such funds are evenly distributed.

1.2.4 Continuing effect of declaration of general effect of the CLA

The Supreme Court has not wished to accept the continuing effect (i.e. after termination of the CLA) of CLA provisions declared to be generally binding, although legal literature does predominantly argue in favour of the acceptance thereof. The Supreme Court follows the contractual approach, whereby the will of the parties to the employment contract is deemed to be decisive. According to this approach, the provisions of the CLA which have been declared to be generally binding do not form part of the employment contract, as the parties did not want such follow-on effect. The CLA only applies because of the declaration of general effect, this is an act of legislation, and the individual agreement between the parties cannot set

aside the declaration of general effect for longer than the period for which the declaration of general effect applies. This approach entails two problems from a practical perspective. First: every time after the end of the period for which the declaration of general effect applies, the provisions of the employment contract come back into effect. The Supreme Court only ordered a right to have continued effect after the end of the declaration of general effect of the CLA in the event a right had already been awarded on the basis of the CLA which was declared to have general effect, such as continuing payment of wages during two years of illness. Despite this breach of non-acceptance of continuing working, the jurisprudence of the Supreme Court means that after the declaration of general effect the (contrary) provisions of the employment contract come back into effect, so that a type of "yoyo effect" occurs.
The second problem coincides with the transfer of an undertaking. If an employee is transferred to a new employer, the employee retains his old claims, even if these arose on the basis of the CLA in effect at the former employer's. If a CLA which is declared generally binding applies for the new employer, the new employer must apply the provisions of this CLA to the employment contract with the transferred employee. If this declaration of general effect ends, the employee can seek reinstatement of the old employment contract and can thus invoke the old employment conditions, so that the new employer will not be able (unless the transferred employee agrees to such) to bring the employment conditions of the transferred employee in accordance with those which apply for the other personnel.

1.3. Conditional mandatory law

As of 1953, the section of the Civil Code dealing with employment law sets out a number of provisions of conditional mandatory law. It is only permitted to deviate from these provisions by CLA. The number of conditional mandatory law provisions was expanded with the introduction of the Flexibility and Security Act (*Wet flexibiliteit en zekerheid*) as of 1 January 1999. For example, it is currently permitted to deviate by CLA from the rule that if four consecutive temporary employment contracts are made, without an interruption of more than three months, the last is to be deemed an employment contract for an indefinite period of time. Conditional mandatory law provisions relate to the obligation to continue paying wages, the probation period and the notice period. With regard to the protective provisions for temp workers it is the case that partial deviation therefrom by CLA is permitted. In a number of sectors there was first deviation from a CLA after introduction of the Flexibility and Security Act (inter alia: the football sector) or when the significance of the CLA increased considerably (inter alia: the temp sector). The first studies show that the possibility of deviating from the statutory regulations by CLA is frequently used. The Supreme Court recently decided on the question whether it is possible to deviate from conditional mandatory law in the written employment contract, by reference to a provision in the CLA. The Supreme Court answered this question in the affirmative, including in the event the employee is not bound to the CLA by membership, but the employer is. According to the Supreme Court it must be assumed that in such case the protection of the employee, which is the intention of the conditional mandatory law nature of the statutory provision, is provided for because the trade unions were involved in the making of the CLA. The involvement of a trade union which agreed, in the framework of the CLA, with the deviation from a (conditional mandatory law) statutory provision, in the opinion of the Supreme Court, thus offers sufficient protection of the employee's interests.
A new development is the introduction of semi-mandatory law. It is permitted to deviate from these provisions by CLA. If there is no deviation by CLA, the employer may decide in consultation with the works council to deviate from the provision stipulated by the law. The

laws relate to working hours, leave and adaptation of the working hours. See also Section 2.1.4.

1.4. Encouraging collective bargaining at company level

Two regulations have the objective of encouraging collective bargaining at company level. First: the SEC Merger Code of Conduct was established in 1975 and substantially revised in 2000. The Code, which is not law, but which is generally complied with because of the informal sanctions (publication of breach), imposes an obligation on companies, before reaching agreement on a merger, of giving notice of an intention to do so to the trade unions. These companies are also obliged to provide the requisite information in this respect. The companies must then give the trade unions the opportunity to hold a meeting in which they can give their opinion on the merger which is being prepared from the perspective of the employees' interest. The goal of the Code is to bring about that the opinion of the trade unions can be of significant influence on whether or not the merger is effected.
Second: the Collective Redundancy (Notification) Act of 1976. This Act imposes an obligation on an employer who intends to collectively dismiss employees, to give written notice of this intention to the relevant trade unions for consultation. The grounds for collective redundancy must be set out in the notice. The consultation must relate to the possibilities of preventing the dismissals in whole or in part or to mitigate the consequences thereof. The law stipulates that the request for permission to dismiss the relevant employees (still a requirement in the Netherlands in order to terminate an employment contract) will not be taken into consideration until at least one month after the trade unions have been given notice. The idea behind the duty of disclosure laid down in the act is that the trade unions will ask or, if necessary, force the employer to start up negotiations on a social plan. A social plan can take the form of a CLA, although this is not a prerequisite (see further Section 6.1).

2. Actors Involved in Collective Bargaining

2.1.1 Main characteristics of the trade unions

The law does not set any restrictions regarding the founding of a trade union. The law does not set requirements for a trade union, in particular for the representativeness. Requirements for the representativeness are set if an employees' association wants to participate in a consultation or advisory body (see Section 2.3.1). Before a trade union is given the power to validly make a CLA, a number of conditions must have been met. It is a prerequisite that the association of employees is an association with full legal authority and that this power is explicitly set out in the articles of association. The latter is required because the membership of such an association can entail that the employee is directly bound to the applicability of a CLA. These requirements can be deemed very minimal. The founding of a trade union is therefore very easy, which in times of a sluggish economy can lead to unintended effects, which is discussed in more detail in Section 2.1.3.

The regular trade unions are still divided on the basis of ideology. In addition, the trade unions in the Nederland are primarily organised by sector. The Netherlands only has a few categorial trade unions, which are slight in terms of size and significance. A creation of clusters occurred in the 70s of the last century. The main movements in the Netherlands, socialist, Catholic and Protestant each had, in every sector or activity, their own trade union. Most of the socialist and Catholic trade unions joined up in the 70s of the last century. The trade unions are – leaving aside the odd exception - affiliated with the trade union federation

which belongs with the respective ideology. The trade unions or trade union federations are not connected with the political parties active in the Netherlands. This does not affect the fact that the federations and the trade unions affiliated with them do organise employees from a specific movement.
The FNV, which arose from a merging of the traditionally socialist NVV and the Catholic KAB/NKV, is far and away the biggest trade union federation. Some 15 trade unions are affiliated with this federation. Some trade unions of various sectors, particularly those affiliated with the FNV, merged in the Nineties. This resulted in the creation of a number of large unions. The biggest is Bondgenoten FNV, a merger of the trade unions for industry, transport, the agricultural sector and the services sector with some 450,000 members. AbvaKabo FNV is another big trade union, with approx. 350,00 members. This trade union organises civil servants and employees working with the government and the subsidised sector (e.g. education and social work) and with the privatised public organisations such as the mail services (TPG). The FNV KIEM (Arts, Information and Media) trade union arose from a merger of various trade unions in said sectors and has some 80,000 members. In addition, there are approx. 8 other unions, such as Bouw- en Houtbond FNV (approx. 120,000 members) and Kappersbond FNV (approx. 10,000 members) which are affiliated with the FNV. The name alone indicates that these unions are affiliated with the FNV. In total, the trade unions affiliated with the FNV organise some 1.2 million employees. In a political sense the FNV shows significant similarities with the socialist PvdA, so that the transition of Wim Kok as chairman of the FNV to party leader of the PvdA (and then prime minister for eight years) did not cause any great surprise. Nevertheless, over a quarter of the members of an FNV trade union voted for a party other than the PvdA, whereby specifically D66, and to a lesser extent CDA and VVD were mentioned.
The second biggest trade union federation in the Netherlands is the CNV (Christian National Trade Association). The most important trade unions which are affiliated with this federation are the CNV Publieke Zaak, which organises some 180,000 employees working for the government, the subsidised sector, the Dienstenbond CNV with some 60,000 members and the Bouw- en Houtbond CNV with some 60,000 members. In total approx. 360,000 employees are a member of a trade union affiliated with the CNV. Because of its Christian background, this trade union has the greatest affiliation with the Christian-Democrat CDA and to a lesser extent the small right-wing parties.
The third trade union federation in the Netherlands is the Unie MHP. Four central organisations are member of this federation: the Unie van Onafhankelijke Vakorganisaties, the Vakvereniging voor Hoger Personeel, the Beroepsorganisaties voor Banken en Verzekeringen and the Centrale voor Middelbaar en Hoger Personeel. Trade unions are affiliated with these four central organisations, which are sectoral in part and categorial in part. In total this involves some 175,000 affiliated employees. The political hue of this organisation is to a great extent liberal.
Finally, there are a number of trade unions which are not affiliated with any of the federations. These are trade unions which are geared to smaller groups of employees, often catergorial, such as the VVCM (Association of Conductors and Machinists), the Zwarte Corps (machinists in, in specific, road construction), or trade unions which have a more ideological leaning such as the Reformatorische Maatschappelijke Unie and the Gereformeerd Maatschappelijk Verbond, which together organise some 25,000 employees and reject strikes on the basis of a strict Protestant creed. It is estimated that some 175,000 employees are affiliated with these various trade unions.

2.1.2 Trade union members and representativeness.

Although virtually all trade unions, and certainly the bigger ones or those which are affiliated with a federation, have a clear internal democracy, the active participation of members is not substantial. Some 27% of the Dutch employees are organised, whereby it must be noted that this percentage also includes the civil servants in the employ of the public sector, who have an organisational degree of approx. 40%. If this is not taken into account, the percentage of organised employees will fall to approx. 24%. With this percentage it is noteworthy that of the employees over the age of 45, some 40% are members of a trade union: the unions are clearly suffering from ageing members and to date do not appear to be succeeding in binding the younger employees. Reference is sometimes made to "the new employee", who can take care of himself, is highly educated, makes full use of the ICT options and often changes jobs. Some view this employee as not needing collectively arranged protection. Research has shown that this "new employee" is not a trend. This does not mean that the change in the type of employee does not provide any explanation for the decreasing member base of the trade unions. In any event: the number of employees who are member of a trade union has steadily increased in the last few years. This can be explained by a huge influx of new entrants on the labour market (in particular women) because of the many part time jobs which have been created. If the increase in the member numbers of the trade unions is compared to the increase in the number of employees, it is remarkable that the percentage of employees who are a member of a trade union is falling. It is also clear that many of the trade union members (estimated at 80%) are not a member of the trade union because of the collective bargaining but because of the individual bargaining. This fact too makes it clear that the CLA consultation is not a topic of great significance even among many trade union members. On the other hand, it has appeared that over 80% of the Dutch employees claim they feel that they are represented by the trade union and are of the opinion that the trade union performs an important societal task. The trade unions attach a great deal of importance to bigger representativeness, but appear to not be very capable of providing this themselves. Trade unions do develop initiatives to book member gains, such as training of managerial staff and individual financial advice, but these initiatives are not effective enough to reverse the relative loss of members.

The question is whether any statutory initiatives are necessary to make trade union membership more attractive. For example, one can consider scrapping the provisions (Art. 14 of the CLA Act) which stipulate that the CLA employer must offer the CLA conditions to all employees, even if they are not a trade union member. This provision, the purpose of which was to prevent the CLA employer from developing a preference for employees who are not trade union members, and would thus be cheaper, entails that the CLA result obtained by the trade unions also benefits non-members. It is also being considered whether or not it is desirable and possible to record in a CLA that the employees who are a member of the trade union making the CLA are to be given an advantage (e.g. higher wages or extra benefits) over the employees who are not members of a trade union. Although the CLA Act does not exclude this possibility, it is the question whether making a distinction on the basis of trade union membership is permitted in the light of equal treatment.

2.1.3 Yellow unions and abuse of the options offered by the CLA

Although in the Eighties this was already the case on the odd occasion, the trade unions closely affiliated with the employer seem to have been on the rise in the last few years. Dutch legislation does not demand for the valid effecting of a CLA that the trade union making the CLA is representative, or even has members falling within the scope of the CLA made by the trade union. As set out above (Section 1.3) it is permitted to deviate from provisions of

conditional mandatory law to the detriment of the employee by CLA. This could involve a number of provisions which sometimes provide considerable protection to the employee. In addition, it has already been written above that an employer who is bound by a company CLA is in principle excluded from the obligation to apply the CLA which has been declared to have general effect. These options are being utilised to an increasing degree. Publicity is paying increasing attention to this phenomenon. In the Eighties, in the tugboat sector a towing company made a company CLA with a trade union which had few members and which bore the name of the employer. This enabled the employer to avoid the CLA which had been declared to have general effect, which included an obligation to staff a boat with a minimum number of employees. As this employer could sail out with fewer people and could thus work a lot cheaper, he quickly gained a market share of 25%.
In the Netherlands a number of trade unions are operating which have not taken a clear position in the bargaining process on employment conditions and whose member base is not clear. A number of these trade unions make a company CLA, sometimes on the explicit request of the employer and for payment. This recently happened in the temp work sector, where a sector-wide CLA was made for temp workers and CLA parties asked the minister to declare this CLA to have general effect. A number of companies lodged an objection against this declaration of general effect, who believed they were entitled to dispensation because they were bound by a company CLA. For three of these companies the minister refused to grant dispensation from the CLA which was declared to have general effect because it turned out that on the employee side there was no trade union which was a party to a company CLA. The minister based its criteria for the trade unions on the provisions of Art. 2 of ILO Convention no. 98. The minister established that the relevant trade unions were controlled by the employer, were founded by him or on his initiative, do not have their own financial resources and do not possess strike funds. This refusal to grant dispensation, in December 2003, is the first in which the minister expressed a view on the question whether there is a party who has made a CLA which can lead to dispensation from the CLA which has been declared to have general effect. The minister's review is also very marginal: another temp agency employer who made a company CLA with a miners' union (the last mine in the Netherlands was closed down in the Seventies) membership of which was freely accessible, which levied a true contribution, managed a strike fund, had its own office and made more CLAs than just this one with the temp agency employer, was granted dispensation from the CLA which had been declared to have general effect. In the transport sector too use was made of this dispensation option on a wide scale: recently 25 CLAs made by transport companies with (to a great extent) the aforementioned miners' union were reported to the ministry, with the intention of obtaining dispensation from the CLA which had been declared to be generally binding with regard to professional goods transport.

2.1.4 The works council

Every employer who runs a company which, as a rule, employs more than 50 people, is obliged to establish a works council for the consultation with and the representation of the people working in the company. The works council has an advisory right with regard to important economic decisions which could effect the employees and a right of agreement with regard to the introduction of regulations which directly affect the employee's position. The Works Council Act (*Wet op de Ondernemingsraden*) stipulates that if a topic has already been substantively arranged in a CLA which applies for the employer, the works council has no advisory or agreement right with regard to that topic. The employer cannot agree a CLA with the works council, as the works council does not meet the requirements laid down in the CLA Act. The trade unions do thus possess the primate of the employment conditions bargaining

process. Several times the government has stated to be of the opinion that it is undesirable that the works council should have direct power to bind the employees. This would have meant too great a breach in the existing employment relationships in which the CLA forms the framework for making collective agreements which are binding on individual employers and employees. Nevertheless there is the possibility for the employer of making agreements with the works council on the employment conditions which apply to the employees, although under the law the works council has no authority to negotiate with the employer on primary employment conditions. Agreements between employer and employee made in the consultation cannot automatically bind the employees. They can bind the employees if the employees have contractually accepted such commitment. The employment conditions are regulated in this manner with a large number of companies, including the well-known Ikea. For the rest the works council generally consists of employees nominated by the trade unions. The law stipulates that a candidate list for the election of works council members must be drawn up by a trade union or by at least one-third of the employees working in the company who are entitled to vote. The trade unions make great use of the right to draw up a list of candidates for the election of works council members.
Three statutes which stem from the end of the Nineties include provisions which are sometimes called semi-mandatory law. These are provisions from which deviation is permitted by CLA; if there is no deviation by CLA the employer can deviate from the statutory provision in consultation with the works council. These are statutes in the area of working hours and the adjustment of working hours. The question is whether these provisions promote collective negotiations. Employers can also develop a preference for negotiating with the works council with regard to deviations from these provisions. Works councils appear to be more willing to discuss requests of the employer for deviation from statutory provisions that trade unions. The latter are also known as better negotiators.

2.1.5 Protection of trade union members

At the time of the introduction of the Flexibility and Security Act (*Wet flexibiliteit en zekerheid*) as of 1 January 1999, a provision was incorporated in the Civil Code which seeks to protect the employee as trade union member from unfair dismissal. It provides that the employer cannot terminate the employment contract with an employee because of the employee's membership of a trade union or because of the carrying out of or participation in activities on behalf of the trade union, unless such activity is carried out during the employee's working hours without the employer's consent. According to the government, the need to protect the employee from dismissal because of trade union membership ensues from ILO Convention no. 135, and the protection of the employee who participates in trade union activities is derived from ILO Convention no. 98. According to the published jurisprudence the statutory protection has never been invoked.

2.2 The employers and the employers' organisations

There are no restriction for the founding of employers' organisations in the Netherlands. Just as for the employees' organisations, employers' organisations who wish to be a party to a CLA must have full legal authority and the power to make a CLA must explicitly be laid down in the articles of association.
The employers have in specific started to organise themselves as a response to the trade unions and in order to be better able to influence government policy. In order to make a CLA the employer – contrary to the employee - is not required to be organised, pursuant to the CLA Act the employer also has the power to make a CLA on his own. Many hundreds of

companies still make use of this power, particularly the bigger companies. Some 835 company CLAs have been made in the Netherlands. These are primarily big employers, such as KPN and Philips. These company CLAs each cover approx. 30,000 employees. The big banks also have their own company CLA. These big employers who make their own company CLA are often members of an employers' (umbrella) organisation, so that by means of this organisation they can influence government policy. Some smaller employers, although to a lesser extent, also only wish to carry out CLA consultation with only one trade union on the basis of a special philosophy of life.
The medium and small-sized businesses sector in particular, partly in view of its less substantial negotiating position, leaves collective bargaining up to the employers' organisations. These employers' organisations were first – compared to the employees' organisations – divided by company activities and ideological (particularly religious) movement, but as of the Seventies of the last century many employers' organisations merged. Nevertheless these employers' organisations still often focus on a specific activity. If this is the case, these employers' organisations usually return to an umbrella organisation in order not to miss the advantages of scale. A good example is the construction sector, where the Nederlands Verbond van Wegenbouwers, the Vereniging van Boorondernemers en Buizenleggers and four other employers' organisations jointly founded the Algemeen Verbond Bouwbedrijf (General Construction Industry Association). In the industrial sector there is the FME-CWM, an umbrella organisation in which some 150 employers' organisations join their forces with 2,900 companies and approx. 300,000 employees. This umbrella organisation makes one of the biggest CLAs in the Netherlands, the CLA for the Metal and Electrical-technical industry. This latter CLA is only made by one employers' organisation. It is not always easy to achieve an increase in scale on the part of the employers, often because the small companies have the impression that the big companies do not take sufficient account of their interests. Sometimes the leading position of an employers' association or umbrella is contested by another employers' association. For example, in the temp agency sector, an important sector in the Netherlands purely and alone because on average some 200,000 temp workers are working in the Netherlands every day, the much smaller NBBU is active in addition to the big employers' organisation ABU (Algemene Bond van Uitzendondernemingen). The ABU makes CLAs for temp workers with the big trade unions, the NBBU makes CLAs with a few small trade unions. This CLA applies to approx. 5% of the temp workers.
The umbrella organisation is not always a party to the CLA. In addition to these types of divisions from the employers' organisations, there are also "explosions" of employers' organisations. A few years ago the employers' organisation for the banking industry ceased to exist, bringing to an end the CLA for the Banking Industry. At the end of the Nineties the employers' association in the health care sector "exploded", so that once again separate CLA negotiations have to be carried out with the organisations of employers in the psychiatric care sector, the disabled care sector, the old age homes sector and the home care sector.
To date the representativeness of the employers' organisations has hardly been an issue of concern. Precise information on the degree to which employers are organised is lacking. In general it is assumed that this degree of organisation is well over 50% in virtually all sectors and over all sectors the average is around 85%. Only in a few sectors, such as the ICT, was the degree in which employers are part of an association so low that no representative organisation can be designated and a CLA can only be made at company level.
Where the employees' trade unions, with the exception of the Unie MHP, have a three-tier structure (employee – trade union - trade union federation), the employers' organisations usually have a four-tier structure. The employer is a member of an employers' organisation, the employers' organisation is often a member of an umbrella organisation, the umbrella

organisation, or if there is none, the employers' organisation, is a member of the employers' federation. Until the beginning of the Eighties the division of the employers' organisations was substantial, but in the last decade there were many mergers which were particularly at the expense of the ideological divisions. As a result of mergers there are still three employers' federations in the Netherlands:
- the VNO-NCW association, with which primarily big employers are affiliated. This is the biggest employers' federation in the Netherlands,
- the Koninklijke MKB-Nederland, whereby MKB stands for medium and small-sized businesses,
- LTO-Nederland, which organises the agricultural and horticultural organisations, i.e. the entire agrarian sector.

2.3. Bodies for social dialogue

2.3.1 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 chairmen of the FNV and the VNO-NCW act as chairman of the Foundation. The Social Economic Council was established following the enactment of the Company Organisation Act (*Wet op de bedrijfsorganisatie*). 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 specific, 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 agreement 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 agreement. Thanks to the fairly moderate position taken by the big trade unions it is often possible to reach a central agreement. 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 agreement, 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 autumn consultation. This usually leads to vague agreements which give the CLA parties a lot of scope for fleshing out the agreement in accordance with their own wishes. Sometimes, however, often under pressure from the government, a very concrete agreement is reached. The central agreement 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 best example 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. Thereafter the Foundation often reached agreement on the maximum desirable wage increases. In 2002 it was agreed in the Foundation to ask the CLA parties not to allow the contract wages to increase by more than 2.5%. In November 2003 a central agreement was reached with the Foundation regarding the bargaining on employment conditions for the coming two years. This agreement too – somewhat prematurely – has already been referred to as historic. In this latter agreement the Foundation asks the employees' unions not to demand increases in contract wages in the year 2004 and for the year 2005 to increase "an increase close to nil". This agreement was reached under great pressure of the government. The government threatened that if such an agreement was not made to implement statutory measures which would make continued payment of wages during the second year of illness impossible and with a tightening of benefits for unemployment and illness. After making the 2003 central agreement the government stated it would not take such measures. To date it would appear that the CLA parties are, in general, in compliance with the central agreement. Previous agreements were also properly complied with by employers' and employees' organisations. These different cases show that although the government formally does not play a role in (the making of) a central agreement, the material influence of the government is substantial.
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 way that the flexible employee would be offered sufficient security while at the same time allowing 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 CLA negotiators. The recommendations relate to the way in which certain topics should be arranged in CLAs. 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 CLA 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 CLA negotiations and the specific conduct of employers and employees. A survey carried out in 1996 shows that these recommendations are of little influence on the negotiations of CLA parties and that they are barely reflected in CLAs. There is no reason to assume that the results of such a survey would be any different now. 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.

2.3.2 The SEC

The Social 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 which the 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 role was laid away for the 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 De Nederlandse Bank and the director of the 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 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 has the right to appoint seven employers' members, MKB-Nederland three members and LTO-Nederland one member. On the employees' side the FNV appoints eight members, the CNV appoints two members and the Unie MHP appoints one member. The advisory function is laid down in the Company Organisation Act and states that the SEC can be heard with regard to all important measures in social or economic area which the government intends to take. 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 sometimes leads to friction, social partners and government have not appeared willing to merge the Foundation and the SEC.

2.4 Public law business organisations

The Company Organisation Act not only established the SEC, but also created the possibility of founding executive institutions for (groups of) companies in the business community. These executive institutions can be established by an Order in Council, after the SEC has been allowed to present its case. The SEC is deemed the top body for the executive institutions. The executive institutions can take the form of a commodity board (for companies which carry out a different function in a production process) or a sector committee (for companies which make the same product or carry out the same work). The SEC designated the employees' and employers' organisations which are authorised to put together the management of a sector committee. Employers and employees are evenly represented in the management. The statutory task of the sector committee is the promotion of commercial operations by the companies for which they were established, with an eye on the public interest and the interest of those companies and the persons involved therewith. The executive institution is granted regulated powers in this respect, which are specified upon foundation.

These powers can relate to the labour market policy and facilities for the relevant sector and the wages and other employment conditions.
The expectations of the company bodies were very high in the Fifties of the last century. The concepts of the sovereignty of the own sector, relieving the government's burden by enabling decision making at the level to which the regulations are to apply and the resultant improved supporting base for decision making give rise to such. However, few of these expectations were realised. The most common explanation is that both employees and employers turned out not to be willing to transfer their powers with regard to social topics to another organisation. Moreover, employers' and employees' organisations viewed the executive institutions as competition, or in any event did not see them as partners. These briefly described developments led to a revision of the Company Organisation Act, whereby the prevailing view was that no public law regulations were necessary if a private law option is also adequate. The number of existing executive institutions was reduced to 17. They barely play a role for the forming of employment conditions.

2.5 The role of the government

The above has already shown that the role of the government in the making of the social agreements, 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 declaration 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. By reaching the central agreement with the Labour Foundation in 1982, in which wage moderation was agreed for the year 1983, there was no government intervention in that year. This type of approach started a trend: after this agreement the government did not 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.

3. Level of Collective Bargaining

3.1.1 At national level: the government

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. This led to an increasing degree to the government 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."[2] The government gives the minimum level of protection which it deems as part of its tasks form 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 CLA may not fall. The minimum wages for an employee of 23 years or older who works full time is € 1264.80 as of 1 January 2004. Other examples are the mandatory provisions laid down in the Civil Code with regard to wage payment, special conditions and dismissal. Previous mention has been made of the introduction of the Flexibility and Security Act which has led to a broader use of provisions of conditional mandatory law. The decentralisation trend led, in specific - as appears from a survey of 2000 - to an increase in the bargaining power of the social partners in the area of wage development, whereby it must be immediately noted 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 the 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 CLA with decentralisation provisions offers him the option of customising the CLA to his company. Employers and their organisations are increasingly expressing the desire to be able to form more tailor-made employment conditions.

3.1.2. At national level: the Labour Foundation and the recommendation "A New Direction".

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 CLA 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 agreement 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 CLA, in particular company CLAs, a contract wage increase is made in the central agreement.

[2] Parliamentary Documents I 1999-2000, no. 222a, pp. 10-11.

The Labour Foundation also makes recommendations to CLA parties. This too has been previously discussed (see Section 2.3.1). These recommendations, examples of which have already been discussed, do not always appear to be evenly implemented in the CLA by the CLA parties. Some recommendations are an exception to this rule. Such an exception appears to be the recommendation which the Foundation made in 1993 under the title "A New Direction". With this recommendation, social partners sought to make a contribution to economic recovery, by not arguing in favour of initial wage increases and, insofar as there is financial scope therefore, by recommending to use this for the improvement of employment opportunities. They presented the parties at decentral level with an agenda on behalf of the CLA consultation 1994 in the perspective of the mid-long term. The key words of this agenda are "decentralisation" and "tailor-made". The Paper sets out: "Motivated and independent employees who are involved and who feel involved in the continuity and the competitive position of the company and who want to put in efforts in this respect, will want to contribute to establishing what is 'tailor-made' with regard to their employment conditions." Although the "new employee" referred to in this Paper appears to a great extent to rest on a myth, this recommendation actually gave the tendency of decentralisation in CLAs a significant impulse. This relates to decentralisation of secondary employment conditions. In the paper "Toward Tailor-made Employment Conditions" the Foundation set out how further expansion of options for employees relating to the composition of employment conditions could be given substance. This Paper also includes the "wage" element as an option. See Section 5.7 with regard to increasing the employee's options relating to employment conditions: Section 5.7.

3.2.1 Sectoral level: parties to decentralisation

The first level where the employers' organisations and trade unions meet each other for the CLA consultation is at sectoral level. Some 230 CLAs were made at this level. These CLA parties are in fact being asked to relinquish part of their authority or be influenced by incorporating decentral provisions in order to offer greater scope for making suitable agreements at company level. Certainly if the authority to make additional agreements is fleshed out by the individual employer in consultation with the works council, some resistance has to be overcome on the part of the trade union. This leads to different forms of decentralisation whereby the relevant CLA parties are attempting to retain influence on the agreements made at decentral level. This takes place, inter alia, in the CLA for the Metal-electrical Industry. In this CLA the parties have made a distinction between provisions from which deviation is not permitted (A provisions) and provisions from which deviation at decentral level is permitted, including with regard to the detriment of the employee (B provisions). In any event the CLA stipulates that deviation at decentral level from the B provisions is only possible with the trade unions involved with the CLA. By doing so the CLA parties retain substantial influence on the contents of the agreements made decentrally. It is more common to have a provision laid down in the CLA that deviation from specific rules in the CLA is permitted in consultation with the works council. Sometimes the CLA stipulates how the deviation should read (thus: A applies, unless B is chosen together with the works council).

3.2.2 Binding employees to agreements made decentrally.

Due to the increasing decentralisation the question whether the employee is also bound to the agreements made at decentral level is topical. As already set out above, the provisions of the CLA apply (if the employee is bound, has contractually bound himself or if the CLA has been declared to be generally binding) in the employment contract. If the CLA does not set out the

specific rule, but such rule is established on the basis of the powers granted in the CLA in consultation with the works council, the question is whether the employee is bound to such rule. Precisely how the decentralisation provisions reads is relevant for answering the question. There are three possibilities:
a - The CLA offers a rule and the option of choosing an alternative laid down in the CLA. The alternative rule is set out in the CLA and if the employer applies this pursuant to the CLA, is in fact applying the CLA. The employee is then bound by the alternative rule.
b - The CLA offers a rule, whereby the option is offered of deviating in consultation with trade unions, without a compulsory alternative rule or choice being laid down in the CLA. The decentral scheme can then be established in the form of a CLA. In such case the employee can be bound pursuant to the rules of the CLA Act. If the deviation can also take place in consultation with the works council, then it is not possible to give the decentral agreement the form of a CLA. If the employer makes use of the option of deviation in consultation with the works council, the applicability of the CLA provision lapses and the employer can invoke the agreement made with the works council. The agreement made with the works council does not bind an employee unless the employee has contractually committed himself in this respect.
c - In the last case, which can arise in various versions, the CLA parties can take over the agreement at decentral level again, and designate it a CLA. In such case the employee will be bound again.
There is very little literature or jurisprudence on the problem of the binding of employees to decentral agreements. It may nevertheless be expected that at this point problems will arise because the statutory system of collective bargaining on employment conditions (the CLA Act) has not been adjusted to decentral provisions.

3.2.3 Decentral CLA provisions and declaration of general effect

In the first instance the minister refused to make a declaration of general effect for the aforementioned CLA provision in the CLA for the Metal-electrical Industry, which sets out an obligation to consult with the trade unions making the CLA to make use of the option of deviating from the CLA. The minister held this provision to be contrary to ILO Conventions 87 and 98. Said conventions stipulate that the government must guarantee that organisations of employees and employers must have or be given equal opportunities to develop and/or execute their activities on behalf of their members. The minister felt that he was not authorised to prescribe bargaining parties for individual employers by means of a decision to declare a CLA to be generally binding. After an ad hoc arbitration committee held that there was no contravention of said conventions, the minister proceeded to declare the CLA provision to be generally binding. Nevertheless the minister asked the ILO for further advice. It is also the question whether other decentralisation provisions are eligible for a declaration of general effect. The minister asked the Labour Foundation for advice on this matter. The Foundation gave its opinion that if a CLA contains decentralisation provisions with a fixed alternative (see 3.2.2.a) that this CLA provision could be declared to be generally binding. If there is a choice at decentral level for an alternative provision, such provision shall be deemed a CLA provision declared to be generally binding. Both the Foundation and the minister do not see any possibility for declaring the remaining decentral agreements to be generally binding. The Foundation does refer to the possibility that a decentral agreement be made with one or more trade unions. In such case the decentral agreement can be a CLA and the employee can be bound thereto pursuant to the CLA Act.

3.3 Company level

3.3.1 Company CLAs and decentralisation provisions

Decentralisation provisions can also occur in a company CLA. This does occur in a number of bigger company CLAs. Here too various versions are feasible. For example, a CLA can be made for the entire company, in addition to which a separate CLA can be made per business unit, specifically geared to the circumstances of that part of the company. A general CLA can also be made with options for deviating in consultation with a co-participation body which functions at department or division level. As company CLAs are virtually always declared to apply in the employment contract, there are seldom problems with regard to the employees being bound. The problem of a declaration of general effect also does not apply as a company CLA cannot be declared to have general effect.

3.3.2 Deviation at company level of the sector-wide CLA

Research (from 1998) shows that one-third of the works councils is involved in forming employment conditions by means of allocation of tasks in a CLA. It is noteworthy that the bigger the company, the greater the number of tasks allocated to the works council by the CLA. These tasks specifically relate to agreements on working hours. In any event, recent developments, such as decentralisation of the bargaining process regarding employment conditions and deregulation of labour law appear to be of relatively little significance for co-participation at company level. Research shows that these developments bypass the works council to a significant extent.

4. Incidence and Coverage of Collective Agreements

4.1. Overview of the CLAs occurring in the Netherlands

At present some 1020 CLAs are in effect in the Netherlands. Some 200 thereof are sector-wide CLAs and some 820 are company CLAs. In the last 20 years there was a shift from sector-wide CLAs to company CLAs but relatively speaking the issue does not concern a drastic change in the relationship between sector-wide and company CLAs, neither with regard to the number of CLAs, nor with regard to the division of the number of employees which fall under the two categories. Of the sector-wide CLAs, some 200 CLAs have been declared to be generally binding. Some 6 million employees fall under the area of application of all these CLAs, approx. 84% of the total. This percentage includes the "employees" (civil servants) who fall under a "public sector CLA". This covers some 10%. For the remaining employees, approx. 65% are directly subject to a CLA. In 11% of the cases the issue is a company CLA and in 54% a sector-wide CLA. The remaining 9% of the employees falls under the working of a (sector-wide) CLA after a declaration of general effect. This means that only 16% of the employees in the Netherlands do not fall under a CLA.

Table 1: Overview of the CLAs occurring in the Netherlands by type and sector in the year 2002:[3]

[3] Taken from: Labour Foundation, Collective Labour Agreements: The Ins & Outs? (*De CLA wat en hoe*), January 2004.

Sector	Bedrijfstakken		Ondernemingen		Totaal	
	CAO's	Werknemers (x 1.000)	CAO's	Werknemers (x 1.000)	CAO's	Werknemers (x 1.000)
Landbouw	11	116	-	-	11	116
Industrie	65	1.016	373	188	438	1.204
Bouwnijverheid	10	407	7	5	17	41
Handel en Horeca	54	1.275	64	77	118	1.352
Vervoer en Communicatie	14	247	142	423	156	669
Zakelijke dienstverlening	21	746	116	243	137	989
Over. Dienst-verlening	48	1.706	101	241	149	1.946
Totaal	223	5.512	803	1.1761	1026	6.687

It is noteworthy that in the last twenty years there has been a shift from sector-wide CLAs to company CLAs. In 1980 there were 185 (25%) sector-wide CLAs compared to 543 (75%) company CLAs. In 2002 there were 223 (18%) sector-wide CLAs compared to 803 (82%) company CLAs, while in 1980 the company CLAs applied to 15% of the employees and in 2002 to 18% of the employees. This fits in with the trend of conducting bargaining on employment conditions at company level. Some employers' associations have very clearly expressed their wish to give this trend further substance.

Overview of the biggest CLAs in the Netherlands in 2002:[4]

small metal industry	370,000 employees
catering	350,000
horticulture	225,000
nursing homes	180,000
construction	180,000
metal-electrical	180,000
home care	160,000
municipalities	150,000
temp agencies	150,000
cleaning	150,000

biggest company CLAs

KPN	32,000
Philips	32,000

[4] Taken from: A.T.J.M. Jacobs: Collective Labour Law (*Collectief arbeidsrecht*), Deventer 2003, p. 66.

Division and binding of employees by CLAs and other employment condition schemes; 2002[5]

Directly bound to the (generally binding) sector-wide CLA:	44%
Bound to sector-wide CLA via general binding:	9%
Directly bound to (non-generally binding) sector-wide CLA:	10%
Bound to the company CLA:	11%
Subject to government employment conditions regulations:	10%
Not bound to a CLA or employment conditions regulations of the government:	16%
TOTAL:	100%

It is noteworthy that employers and employees apparently continue to see the advantages of collective bargaining on employment conditions. Compared to twenty years ago, no noteworthy shift has occurred in the scope of the cover of the CLA. Although the CLA and, to a greater extent, the declaration of general effect are a topic of discussion with great regularity as an instrument of establishing employment conditions, practice shows no or little decrease in the use thereof. The only – not truly significant – shift has been that from sector-wide to company CLA.

5. Main Issues in Collective Bargaining

5.1. Introduction

In the Sixties and Seventies the main topic of collective bargaining was, in specific, wage increases. Many CLAs included the provision that the employees would automatically receive price compensation. Other topics played a considerably less significant role. The bargaining position of the trade unions was considerably weakened by the deterioration of the economy in the Seventies. Partly due to the central agreement of 1982 (see Section 2.3.1) wages were no longer the most prominent bargaining point, but the reduction of working hours also became an important issue. The central agreement of 1983 encompassed the recommendation that the automatic price compensation be exchanged for a reduction of the working week from 40 to 38 hours. This exchange has been laid down in many CLAs since 1984. In addition to the wage policy, since 1998 important topics in the area of employment conditions are training and career guidance, the number of working hours and holidays partly in relation to the combination of work and care duties, the policy for older employees and employment opportunities and employment conditions partly in view of the work pressure. Another important topic is the multiple choice conditions or the "cafeteria" model. In the framework of these topics which will be specifically discussed hereafter, the efforts of the legislator may not go unmentioned. Particularly in the period 1994-2002 the government (of the socialist PvdA, the liberal VVD and the social-democratic D’66) attempted by means of legislation to facilitate the combination of work and care duties. To wit the introduction of the Adaptation of Working Hours Act (*Wet aanpassing arbeidsduur*) in 2000, which gives the employee the right, if he has been in employment for a year, to reduce his working hours. The employer cannot object to this unless there are very substantial objections, which according to jurisprudence are seldom accepted. Increasing the working hours is also possible, albeit on

[5] Taken from: Labour Foundation, Collective Labour Agreements: The Ins & Outs? (*De CLA wat en hoe*), January 2004.

much more stringent conditions. The Work and Care Act (*Wet arbeid en zorg*), which regulates, inter alia, short-term and long-term leave to care for family members also applies. These statutes only provide limited options for deviation by CLA. The legislation in this area thus determines the CLA agenda.

5.2 Wages and flexible remuneration

The most obvious point of collective bargaining is the consultation on wage increases. In the Netherlands there is a Minimum Wage Act (*Wet minimumloon*), and it is prohibited to agree a wage lower than the minimum wage stipulated pursuant to said Act. The central agreements have always taken account of the interests of the profitability and competitive position of the relevant industry or company. The idea of responsible wage cost developments formed the basis of the agreements in 1982, 1993 and 2003. In a 1997 paper, the Foundation expressed its views in favour of a motivating remuneration policy within the framework of a function-oriented remuneration system, i.e. in favour of flexible remuneration. In 2001 the Foundation made a recommendation to CLA parties to have the remuneration take place on the basis of objective criteria. This does not affect the fact that the topic of "flexible remuneration" is not without discussion between employers' organisations and employees' organisations. There are two main problems: trade unions have difficulty with remuneration which is related to company profit, as this can be insufficient despite the efforts of the employee and the employer in principle bears the commercial risk, and trade unions have great difficulty with the fact that part of the "fixed" wages are made flexible, they believe that the flexible remuneration should be additional to the fixed wages. At the end of 2001, some 66% of the CLAs in the Netherlands had a system of flexible remuneration in one form or another. Profit sharing schemes have been included in 17% of the CLAs and agreements on performance bonuses are included in 11% of the CLAs.

5.3 Training and career guidance

As of the Nineties of the last century, the CLAs increasingly included agreements on employee training and education. The economy has developed into a knowledge economy which demands investment by employees and employees in increasing the expertise and knowledge. The paper "Agenda 2002 for the CLA Consultation in the Coming Years" of 1997 set out the recommendation that CLA parties make agreements which would lead to all employees having individual access to and in consultation with the employer, making use of the training facilities. In 2001 the Foundation made the recommendation to increase the "employability" of employees. Toward this end the Foundation ordered an intensification of the already existing schemes in the CLA. The CLA should regulate that every employee in principle has the right to a personal development plan with the concomitant budget. In consultation with the employer, the employee should use the budget allocated to him for training, on the basis of a pre-determined plan in which the employee has set out his wishes with regard to his personal development. Agreements on these personal development plans now - in 2002 - occur in approx. 33% of the CLAs.

5.4 Working hours, holidays and labour and care

Partly due to the central agreements of 1982 and 1993, the developments in wages in the Netherlands remained limited, but the average working hours were reduced. In the meantime the standard work week has some 36 hours. In the spring of 2000 the employees' trade union federation FNV tried to achieve a four-day work week, but did not get sufficient support for

this. However, a number of CLAs did arrange that for older employees, from the age of 55, the working hours could be limited with full or partial retention of wages. Virtually every CLA in the Netherlands has provisions on the number of working hours, the remuneration of working outside of normal working hours or work more than the normal number of hours. Provisions relating to holiday and leave occur in virtually all CLAs. Although the law stipulates the minimum number of paid holidays (with a full work week, 20 holidays, or four weeks a year), this number is increased in virtually every CLA to approx. 5 weeks holiday per year. In addition, many CLAs have provisions relating to short-term leave such as for deaths and anniversaries. Virtually all CLAs also include provisions on the reduction of working hours. When the average work week was reduced as of the Eighties, the CLA also laid down the manner in which the employee was to take this time. The reduction of the hours to be worked per week did not keep pace with the hours to be worked within the company. To date a 40-hour work week is often worked, and the employee saves up the hours which were to have been cut per week. With a 36-hour work week, employees are thus left with 4 hours a week. The CLA stipulates how the employee can take these hours. Usually the CLA stipulates that the employer will determine when the employee can take these hours. These hours are often referred to as a source for multiple choice conditions in a CLA.
As already set out above, the legislator has created a statutory framework in order to facilitate the combination of work and care. Nevertheless, many CLAs include provisions in this respect, i.e. the following:
- parental leave, for which the Netherlands already has the statutory rule that every parent is entitled during the first six years of the child's life to reduce working hours by 50% during a period of six months: there are similar agreements in 51% of the CLAs, whole or partial continued payment of wages is only agreed in 8 CLAs,
- care leave: for this too there is a statutory scheme for both short-term leave for emergencies and short-term care leave (2 weeks a year): Approx. 20% of the CLAs include agreements on continued payment of wages during care leave, almost 40% include agreements on care leave,
- birth leave for the partner, for which the law already provides that the partner is entitled to two days' paid leave: additional agreements are made on this point in 96% of the CLAs, almost always concerning paid birth leave.
In 2002 agreements on childcare were made in 68% of the CLAs. The statutory regulations for childcare, which were expected to come into force as of 1 January 2003, were never realised, so that the agreements in CLAs gained in importance.

5.5 Policy for older employees and employment

The basic principle that the employment contract of employees who have turned 65 ends has never been abandoned. As of this age an employee is entitled to an old age pension. In addition, virtually every CLA provides an additional pension scheme. Youth unemployment was considerable in the Eighties. This promoted the scheme of early retirement of older employees from the labour process. At the end of the Eighties virtually every CLA in the Netherlands contained a scheme giving employees the option of early retirement, the "VUT" scheme. The result of these schemes is that now approx. 30% of the employees between 55 and 65 are working. Social partners then started to realise that this development was not desirable, after which a recommendation was formulated within the Labour Foundation in order to introduce a flexible pension and the abolition of the VUT scheme. This process has now clearly started up. In addition the view has been formulated that employers should carry out a demotion policy. Employees (organisations) were not in favour of this for a long time, but following changes in the pension system, whereby the pension is no longer calculated on

the basis of the most recent salary but on the basis of the average wage earned, employees' objections to demotion decreased.
Since the Eighties many CLA agreements have been made regarding employment, but these agreements have not often led to concrete results. Agreements on employment have been made in approx. 58% of the CLAs, 22% of which relate to agreements on labour pools and mediation. Sometimes these agreements concern the use of temporary employees, temp workers or other personnel hired in. The introduction of the Flexibility and Security Act, which provides statutory protection for this flexible labour, but allows many options for deviation by CLA, has led to a small revival of such – tailor-made to the company or sector – agreements.

5.6 Working conditions and work pressure, absenteeism

CLA parties are expected, by means of CLA policy, to make a contribution to the prevention or reduction of absenteeism. This is possible by including financial encouragement for employees in the CLA, such as not continuing to pay wages during a number of sick days. The legislator has increasingly enabled the option of building in financial stimuli, but it does not look as if a lot of use will be made of this. In a series of statutes, as of 1996 the responsibility for wage payments to sick employees came to lie with the employer. The employer is obliged to continue paying 70% of the wages: virtually all CLAs include the obligation of the employer to continue paying the full wages during the first year of illness and during the second year to continue paying a supplement on the benefits, often up to 100% of the old wages. The employer was offered the possibility in this respect to charge "waiting days" and to build in other stimuli to prevent absenteeism of the employee, but such options in the CLA turned out not to be used or were made ineffective. The law now (as of 1 January 2004) stipulates that for a period of two years the employer must continue paying 70% of the wages to the employee and a provision has been included that if the employer pays a supplement during the second year, by doing so he is effecting an extension of the period by two years. In this manner the legislator hopes to prevent that agreements are made in CLAs that the employee is entitled to a supplement during the second year of illness and the legislator hopes to reduce (long term) absenteeism.
In CLAs agreements are being made to an increasing extent, now over 75%, regarding the employment of partly disabled employees.

5.7 Multiple choice employment conditions.

A relatively new topic on the CLA agenda is the multiple choice employment conditions. The key words of the recent CLA consultation are decentralisation and individualisation. In order to give substance to these points, more and more CLAs are including provisions which make it possible to apply the employment conditions to the employee. This is realised by enabling the exchange of employment conditions. Example: an employee uses the wages to which he is entitled in respect of overtime to buy extra holidays or an employee sells his ATV days (leave he is entitled to pursuant to the Reduction of Working Hours Act) to his employer for extra wages. After the paper "Toward Tailor-made Employment Conditions" of the Labour Foundation of 1999 this multiple choice model appears to have quickly been introduced into more CLAs. A variety of terms are used for the multiple choice model, such as CLA a la carte or the cafeteria model. The increase in the number of choices implies that existing parts of the standard package which will be eligible for an "exchange" within the employment conditions page of the employee are determined in advance. There is an exchange of one employment condition (the source) for the other (the target). In practice, time and money are one of the two

functions. By designating both the sources and the targets in the CLA and making them subject to regulations (e.g.: no more than 8 holidays may be used as a source) the collective organisation of employment conditions is not abandoned, while at the same time responsible "individualisation" of the employment conditions is possible.
This method allows for a multitude of individual choices. A survey from 2001 shows that 14 CLAs which cover approx. 10% of the employees include a multiple choice model. Now, three years later, this figure will be considerably higher. Nevertheless it may not be expected that the individualisation will lead to an exhaustive use of the multiple choice model. It appears that a significant part (approx. 85%) of the employees are satisfied with the basic scheme and make no individual choices about another use of the designated employment condition sources and targets. This aligns with the view that the "new employee" rests to a great extent on myth forming.

6. Closer European Integration

6.1. Collective dismissals and transfer of undertaking

The Dutch legislator implemented the Collective Redundancy Directive 1975 (Directive 75/129/EEC, Official Journal 1975, L 48/29) and the directive modifying the aforementioned directive (Directive 92/55/EEC of 14 June 1992) in the Collective Redundancy (Notification) Act (the MCO Act). This Act was discussed in Section 1.4, as was the SEC Merger Code of Conduct. No figures are known with regard to the numbers of social plans which are made in the framework of collective dismissals, but I suspect that there are approx. 1000 a year. Only a small number thereof are registered as a CLA in the framework of Art. 4 of the Wages Act. For the rest, the MCO Act does not impose an obligation on the employer to make a social plan with the trade unions. It is possible to agree otherwise in a CLA; a limited number of CLAs include social plans in the event of collective redundancy. To date there is no clarity regarding the legal nature of the social plan. In practice the employee is deemed to be bound to the agreements which are made in the framework of a social plan, made between employer and trade unions. Research into the contents of social plans leads to the conclusion that such a plan usually includes provisions which impose an obligation on the employer and the employee to look for other suitable work for the employee. In general, the social plan also includes a financial arrangement regarding dismissal. There is an impression that the duty of disclosure laid down in the Act will give the trade unions sufficient options to consult on a social plan.
The legislator has always implemented the directives relating to the transfer of undertakings in legislation. As the statutory regulations relating to the transfer of undertakings imply that the employees are transferred with the undertaking and retain all their rights and obligations, consultation on the rules to be taken into account with regard to the transfer is not prescribed. The matter is different if there is a merger, see in this respect Section 1.4. There is a provision for retention of the CLA already in effect upon the transfer of an undertaking. The new employer must apply this CLA even if he falls within the scope of another CLA, until the time that such CLA is terminated or ends or the time when another CLA comes into effect or is applied. The way in which this is regulated in the Netherlands can entail that the employer acquiring the undertaking is bound until the end of the employment contract to apply the CLA of the transferring employer, which is seen as undesirable.

6.2 European directives and the agreement on teleworking

As previously indicated, it is not a tradition in the Netherlands to implement European directives by means of CLAs. The implementation takes place by means of legislation. This is different with regard to the 2002 recommendation relating to teleworking. This first "voluntary" agreement which was drawn up by the European social partners on 16 July 2002 must be implemented by the members of the contracting parties in the member states, so that the legislator has no task in this respect. By recommendation of 11 December 2003 the Foundation brought the European framework agreement on teleworking to the attention of companies and business sectors and added a number of suggestions for implementation. At this point it is difficult to predict whether this will lead to successful implementation.

6.3 Internationalisation

It is predicted that the internationalisation of the production and labour market will force companies to increasingly draw away from national coordination mechanisms. It is also predicted that by the introduction of the euro the differences between wages and employment condition packages will be considerably more clear and that this will lead to a change in the forming of the current (national) employment conditions. This prediction relates to the long term. Without seeking to detract from the value of these predictions, at this point it cannot be stated that a trend in the predicted direction can be discerned. To date the national coordination mechanism has turned out to be fairly successful and there is little need, but also little reason, for switching to a different method. The trend toward decentralisation could also lead to a decreased influence of the central (national) coordination. This will partly depend on the question whether the coordination of the development of the employment conditions is not increasingly taken out of the hands of the national government and national social partners by European regulations. For the time being such a development on the basis of the directives which affect the possibilities for national coordination need not be expected in the short term.