

FLEXICURITY: LESSONS AND PROPOSALS FROM THE NETHERLANDS

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Dutch flexicurity: the “normalisation” of atypical work

Labour market performance

In the European flexicurity discourse, the Netherlands and Denmark are often referred to as flexicurity examples (European Commission 2006). Dutch flexicurity policies have been developed rather deliberately and can generally be reconstructed as the normalisation of atypical work while preserving flexibility in the labour market. This approach, combined with the relatively good labour market results over the past years, served as an example at the European level in the early stage of the flexicurity policy-making process.

Recent performance indicators show the following: in 2007, the Dutch employment rate was 74.3 percent and the unemployment rate 3.2 percent, compared to 64.5 percent and 7.1 percent respectively in the 27 EU member states (EU-27). In August 2008, the unemployment rate decreased even further to 2.6, and is now among the lowest in the European Union (Statistics Netherlands 2008). In recent years, economic growth has been modest to good and the inflation has been rather low at 2.0 percent compared to the EU average of 3.2 percent. Even now, in the context of a world-wide financial crisis, the economy still grew by 3 percent in the second quarter of

2008, while the inflation increased to 3.1 percent in September 2008 (Statistics Netherlands 2008). October 2008 showed, however, a sharp decline in both consumer and producer confidence.

In the Netherlands, contractual diversity, including part-time work, fixed-term work and agency work, is widespread. In 2007, 46.8 percent of the employed Dutch labour force worked part-time, which represents a significant increase compared to the 38 percent part-time employed in 1997 (Eurostat). It is also much higher than the 18.2 percent part-time employed in the EU-27 in 2007. In the Netherlands, working part-time is even regarded as a normal and desired type of employment, illustrated by the high amount of part-time workers who report that they voluntarily work in this type of employment. Especially women work part-time (75 percent in the Netherlands compared to 31 percent in EU-27 in 2006). Furthermore, the percentage of employees with a contract of limited duration increased from 12.3 percent in 1997 to 18.1 percent in 2007, which is higher than the EU-27 average of 14.5 percent in 2007 (Eurostat). Moreover, it is estimated that currently nearly 1 million workers conduct their activities outside the traditional employment relationship (self-employed), which is about 12.4 percent of the working population. In some sectors, this type of employment is growing rapidly. In the construction sector, for instance, the number of self-employed workers has increased by 31 percent over the past two years (Statistics Netherlands 2008).

Regulating and negotiating flexibility

Given the rather large number of atypical workers, a very relevant question is how the needs for the security of these workers are met. Security is provided in several ways, depending on the type of flexibility a worker faces. For part-time workers, the pro rata temporis principle (in proportion to the time worked) is strictly applied by law.¹ This holds true not only for the position of the employee under civil



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¹ See more comprehensively Visser et al. (2004).

law, but also for social security legislation and entitlements. Two laws are particularly relevant not only to part-time workers but also to fixed-term workers: the Prohibition of Discrimination by Working Hours Act (Wet Verbod onderscheid arbeidsduur; WVOA) and the Adjustment of Working Hours Act (Wet Aanpassing Arbeidsduur; WAA). The former act came into effect on 1 November 1996. One of the consequences of its introduction was the addition of Article 7:648 to the Dutch Civil Code. This article forbids employers to discriminate between employees on the basis of a difference in working hours in the conditions under which those employees enter, extend or terminate a contract of employment, unless there is objective justification for such discrimination. Clauses that conflict with this ban are void. If the employer terminates the contract in contravention of the ban or terminates it because the employee has invoked this ban, the termination is subject to annulment. The same ban also applies to government employers, now that a stipulation to the same effect has been incorporated into Article 125g of the Central and Local Government Personnel Act.

The Adjustment of Working Hours Act came into force on 1 June 2000. This act is the result of nearly nine years of political negotiation. It represents a very high-profile piece of legislation, as it gives employees the right (albeit under certain conditions) to unilaterally alter the terms of an already existing employment contract.

With regard to agency workers, on-call workers and the like, a new approach to labour market flexibility and security was adopted at the end of 1995. At that time, the Dutch Minister of Social Affairs and Employment made a deliberate attempt in a memorandum called “Flexibility and Security” to strike a better balance between flexibility and (social) security. This memorandum contains an interrelated set of starting points and proposals for modifying the dismissal protection enjoyed by employees in standard employment relationships, abolishing the permit system for temporary work agencies with respect to their placement activities and enhancing the legal position of temporary agency workers, whose relationship with the agency is to be considered, in principle, a standard employment contract.

The Dutch coalition government (a coalition of Labour, Liberals and Social Liberals at that time) was unable to reach agreement on the flexibility and security proposals. Subsequently, the Foundation of

Labour was asked for its advice on this matter. The Foundation of Labour is a consultation and advisory body at the central level, which was established at the end of the Second World War. Its members constitute the largest confederations of employers’ and workers’ organisations. Unlike the Socio-Economic Council, the Foundation of Labour has no independent members or representatives appointed by the crown. The Foundation of Labour is central to the Dutch “consultation” economy, or the “Polder Model”, as it is called nowadays. It is an institution that is remarkable for its strategies of positive-sum bargaining. The pursuit of so-called “win-win” strategies and results, as perceived from the point of view of both workers and employers, is at the core of the foundation.

Under the umbrella of the foundation, employees’ and employers’ confederations managed to draft a detailed agreement on flexibility and security. Moreover, at the same time, the employers’ organisations, the trade unions and the non-profit-making employment agency START reached an agreement on regulating the legal position of temporary agency workers after the new laws would come into force. This collective agreement would run for five years. On March 7 1997, the Flexibility and Security Bill was submitted to the lower house of the Dutch parliament, together with the Allocation of Workers via Intermediaries Bill, which provided for the abrogation of permits for temporary work agencies. Without much further debate, the new legislation came into force on 1 January 1999.

The new law abolished the permit system for operating temp agencies. On the one hand, more rights were attributed to flexible workforces. On the other hand, more leeway was created for (prolonging) fixed-term contracts. A key role was and is being played by the collective labour agreements in the temporary agency sector, concluded for the respective periods of 1999–2003 and 2004–09. Temporary agency workers have, depending on tenure, a right to a fixed-term or permanent contract with the agency, to training facilities (individual budget) and pension entitlements. After 26 weeks (or earlier) of working for the same company, they are entitled to the same wage as the employees of that company. The hiring company saves on hiring and firing costs, but pays more for a temporary worker than for their own employees (as the costs for the agency are added to the wage costs of the agency worker).

This example of a flexicurity policy clearly contains an explicit and well-considered trade-off between forms of flexibilisation (i.e., enhanced external numerical flexibilisation) and forms of security for weak groups (i.e., more employment and employability security for temporary agency workers and other non-standard workers such as on-call workers). Furthermore, it is safe to argue that this reform could never have been launched and implemented were it not for the joint efforts of the social partners at both the central and the sectoral levels.

A more recent example of flexicurity policy is the Life Course Savings scheme, which came into effect in 2006. It enables workers to save income or time to be spent on leave periods. Individuals can save a maximum of 12 percent of yearly gross income up to 210 percent of their annual pay, for a maximum of three years of leave (against 70 percent of the wage). Employers may contribute to such a scheme, which can be specified in collective agreements. The employee can save for periods of unpaid leave, e.g., care leave, sabbatical, terminal care, parental leave, training leave or early retirement. Collective bargaining parties are expected to incorporate and facilitate the Life Course Savings scheme into their agreements, and employers are obliged to offer the Life Course Savings scheme to their employees.

New challenges and new policy proposals

Current challenges in the Dutch labour market

Like any other country, the Netherlands continuously faces various labour market challenges and should therefore take the necessary steps for improvement. The European Commission's recommendations to the Netherlands point to the areas in which the Netherlands is lagging behind (Council of the European Union 2008). The latest recommendation strongly urges the Netherlands to raise overall labour supply, especially that of women, older workers and disadvantaged groups. The overall number of hours worked should also be raised. In previous years, the reduction of the gender pay gap and the reduction in rates of early school leaving were also recommended. The OECD and the IMF (2008) have made similar recommendations.

More specially, regulations and policies could be improved in order to strengthen the position of specific groups in the labour market, in particular the

position of ethnic minorities that have difficulties entering and progressing in the labour market. Although unemployment among non-western non-nationals decreased significantly in 2007, the unemployment rate of 9.1 percent is still almost three times higher than the unemployment rate under Dutch nationals.² In the age group of 15–25-year-olds, the unemployment rate amounts to 15 percent for non-western non-nationals and 8.1 percent for nationals. Early school leaving is a problem, particularly among non-nationals. Likewise, the unemployment rate of people with a low level of education is considerably higher than the Dutch average.

Older workers constitute another vulnerable group. Many of these workers have insufficient transition and employment security, meaning that they lack the security to make a timely transition to another job when the need arises, e.g., in cases of company restructuring. The weak labour-market position becomes especially evident once older workers have become unemployed. It usually takes them much longer to find new employment, which increases the risk of becoming long-term unemployed. Their position is further weakened by the lack of investment of Dutch companies in the skills and retraining of their older workers (Bekker et al. 2008). This calls for the development of a general and effective system of transition and employment security that is not limited to large firms, but is also accessible to and affordable for small and medium enterprises.

A third urgent concern in the Dutch context involves the career opportunities of women, including pay gaps and the lack of women in top management of companies and institutions. These poor career opportunities are to a large extent related to the effects of working part-time. The fact that part-time work is a highly desired form of employment and that longer working hours are required to warrant the sustainability of the social security system makes this an even larger challenge for the Netherlands.

A final concern, somewhat paradoxically, regards the position of atypical workers in the Dutch labour market. The growing part of the labour force that has a temporary employment contract or is self-employed, triggers new questions regarding their

² Data from Statistics Netherlands on the basis of the national definition of unemployment, which differs from the international Eurostat definition. The main difference is that Statistics Netherlands regards a person as unemployed only if that person is actively looking for a job involving at least 12 hours a week.

access to social security and the securities attached to open-ended contracts. In general, atypical workers have fewer rights to social security provisions, and their participation in training and education is lower. In addition, workers with a temporary contract do not receive severance pay when their contract expires. The position of individuals with a temporary contract improves if they manage to obtain an open-ended contract. The extent to which they succeed in making this transition seems rather difficult to calculate. The estimation is that in the Netherlands about 20 percent of people with a temporary contract will have an open-ended contract one year later. This percentage is probably somewhat higher for temporary agency workers. Especially young people make the transition to open-ended contracts, whereas low-skilled workers and those with a small part-time job face more difficulties in obtaining a permanent contract (Zijl and Van Leeuwen 2004). Research also shows that among temporary agency workers in the Netherlands about 61 percent would like to have a permanent job. Of these, 33 percent found a permanent job in 2004. Of those who did not look for a permanent job, 18 percent ended up in a job with an open-ended contract (Statistics Netherlands 2006). Even though some researchers would argue that this proves that atypical work is not a dead-end street, this type of employment clearly does not work as a stepping-stone for all. One study showed that although 25 percent of the temporarily employed made a transition to a permanent contract between 1991 and 2001, 20 percent of this group became unemployed.

Proposals from the Committee on Labour Market Participation

Given these labour market challenges and the Dutch tradition of negotiated flexibility, one might expect a new Dutch “package deal” in terms of a well-defined, encompassing strategy to revisit and redefine the flexibility-security nexus, guaranteeing the future adaptability of workers and companies. Yet, recent political debates have been characterised by a rather one-sided and narrow focus on employment protection legislation, leading to harsh confrontations between employers and trade unions and problems within the government coalition. The employers, often with the support of the Ministry of Social Affairs and Employment, maintain that less strict rules on dismissals will support employment creation as a result of a reduction in anticipated firing costs. The trade unions strongly criticise any such labour law modification, since they believe this would not

contribute to employment creation and would only substantially and effectively reduce employee protection. It seems that social partners are less confident today regarding the possibility of finding mutually beneficial solutions than they were in the 1990s.

A recent initiative to come up with a broad approach to labour market issues is the instalment of the Committee on Labour Market Participation by the Minister of Social Affairs and Employment. In June 2008 this committee published proposals and recommendations for raising the labour market participation rate to 80 percent by 2016.³ The proposals suggest labour market reforms while simultaneously alleviating workers’ feelings of insecurity, especially concerning the risk of losing their job. The committee’s report advocates a three-track approach.

The first track addresses the necessity of facilitating and stimulating, as soon as possible, vulnerable groups to find a job or to work more hours. The proposals encourage employers to hire long-term benefit recipients on the basis of temporary wage cost subsidies, including a so-called no risk policy and secondment arrangements. Benefit recipients will have a participation obligation, and part-time workers will be encouraged through tax incentives to extend the number of working hours. At the same time, facilities for combining work and family are being improved, including career, working-time and childcare arrangements.

The second track addresses more fundamental proposals for labour market reform. The basic philosophy of the second track is to give employers, employees and municipalities more responsibility at a decentralised level for employability and transitional security of workers. Additional decentralised responsibility is matched with additional instruments for these decentralised parties to work on employability and employment security. Employment insurance and a work budget are the two key elements in this second track. Concerning the Unemployment Insurance Scheme, the proposal is to turn this scheme into employment insurance, geared towards the prevention of unemployment and a smooth transition to a new job. Employers are required to continue to pay 80 to 100 percent of the worker’s wage payments for a maximum of six months after giving notice to the worker. During this so-called transfer

³ Committee on Labour Market Participation (2008). One of the authors of this paper, Lans Bovenberg, served as a member of this committee.

period, the worker can fully devote himself or herself to finding new employment. If this time span does not suffice, the worker is dismissed, but not before the efforts of both the employer and worker have been evaluated. The unemployed worker then enters a reintegration scheme where the sector of industry bears the financial responsibility and where private or public reintegration organisations can be relied upon. If a new job still has not been obtained after another six months, the responsibility is shifted to the municipality. This new system also benefits the employer, as employment protection legislation is eased by abolishing the current pre-emptive testing of dismissals, conducted by the public employment services. At the same time, during the notice period, the worker may petition the courts to challenge the reason the employer gives for the prospective dismissal, although this notice period is shortened to only one month. Moreover, as indicated above, a gatekeeper (probably the public labour office) evaluates the efforts of the employer to help the employee find a new job during the transfer period.

Regarding the work budget, the proposal suggests the introduction of a Work Budget that replaces the current Dutch Life Course Savings scheme, as explained above, and another tax-favoured employee savings system. The Work Budget has a larger scope than life-course saving and can also be utilised to provide additional income in case of job transitions, setting up one's own business, part-time retirement, training, unpaid leave, a new job or position with lower earnings. The Work Budget is also available to flexible workers, such as workers with a fixed-term contract. The Work Budget is personal and portable, which means that the worker can transfer it from one job to another. It is designed to maintain the worker's employability level and can be used to finance the actual costs of training and schooling. Both the worker and the employer make financial contributions to the Work Budget. The most important sources for the employer's contributions are current severance payments. In the new system with employment insurance, severance pay is paid in addition to the payments during the transfer period only in special situations in which employers do not meet their contractual and other responsibilities towards workers who are laid off. Lower severance payments thus provide room for contributions into the Work Budget. This makes workers less vulnerable to the risk of firm-specific shocks: if the firm that employs them goes bankrupt, workers have already received payments in their Work Budget.

The third and last track includes the proposal to raise the official pension age as of 2016 (by one month per year) in line with the population's increasing life expectancy. The goal is to counteract the decline of the labour supply, caused by a shrinking working population. Currently, Dutch people are entitled to a state pension at the age of 65. The recommended reform would gradually raise this age to 67.

The three tracks are to a certain degree interlinked: especially the second track is essential for the other two tracks. It ensures that the employment gains produced by the first track are in fact sustainable without substantial public spending on wage subsidies. As regards the third track, by enhancing the employability of older workers and the operation of the labour market for these workers, the second track will help to raise the effective retirement age in the future in line with increased longevity.

Conclusions

In the past, the Netherlands has served as an example of a European country with good labour market performance and flexicurity strategies. As codified in, for example, the Act on Flexibility and Security, this approach can be characterised, in hindsight, as the normalisation of atypical work, without doing away with flexibility. The social partners played an important role in developing this approach. However, new labour market challenges have surfaced. In view of the trends of globalisation, the ageing of society and the current financial crisis, there is a real urgency to face these challenges and to come up with a renewed, broadly based strategy to improve labour market performance and enhance labour market participation.

This paper has discussed recent policy proposals that were developed by the Dutch Committee on Labour Market Participation to reform the labour market in the Netherlands. These proposals can be portrayed as concrete suggestions to further develop a flexicurity pathway towards better transition security and more labour market mobility, i.e., the second ideal typical pathway as identified by the European Commission in its Communication on Flexicurity.⁴ In a concrete sense, the proposals illustrate the way in which a particular member state, i.e., the Nether-

⁴ Dated 27 June 2007 (COM (2007)0359).

lands, can continue its own path towards more flexibility combined with more employment and income security by taking notice of its particular path dependence (institutions, culture and political system) and responding to its particular challenges. The proposals are consistent with the traditionally high involvement of the Dutch social partners in employment and labour market policies and the large role played by individual employers. Moreover, the approach builds on regulatory policies based on financial incentives (mandatory continuation of pay during a certain period of time) that have proved rather successful in other domains of labour market policy and social security since the early 1990s, especially the reduction and prevention of disability cases and sickness absenteeism. The same holds true for the various public-private forms of collaboration, implementation and reintegration that have evolved in the Dutch labour market.

We wish to end this concluding section by very briefly addressing two major questions. The first is whether these reform proposals can be expected to further develop Dutch flexicurity by enhancing the adaptability of both workers and citizens? The answer to this question is not straightforward. The Dutch Committee clearly acknowledges that the transformation to the new system should take place slowly and gradually. Support from all major stakeholders, political parties, government, employers and workers and their organisations, courts and various labour market services is indispensable. At this moment (October 2008), the debate on the proposals, which were released in June 2008, has not progressed far yet. In their consultations, the social partners and government gave priority to securing wage moderation in view of a possible economic downturn as a consequence of the global financial crisis.

A second important question involves the relevancy of the proposed reform to other countries. Policy learning and mutual learning are key concepts within the European Employment Strategy. A straightforward transplantation of a country's policies and reforms to another country is generally seen as impossible and undesirable. Looking for inspiration rather than imitation seems to be the best strategy in this respect. To illustrate, the second track of the described Dutch proposals have been informed and inspired by the Austrian system of dismissal regulation and severance pay (*Abfertigung*). Many member states might have an interest in taking notice of the proposals from the viewpoint of mapping out

their own distinct pathway towards flexicurity. This applies especially to those member states that consider offering more employment and income security in their labour markets while simultaneously encouraging job mobility and transitions.

References

Bekker, S., M. Kerkhofs, A. Roman, J. Schippers, M. de Voogd-Hamelink and T. Wilthagen (2008), *Tendrapport aanbod van arbeid 2007*, OSA, Tilburg.

Committee on Labour Market Participation (2008), *Naar een toekomst die werkt (Towards a Future that Works)*, Rotterdam.

Council of the European Union (2008), Recommendation for a Council Recommendation on the 2008 update of the broad guidelines for the economic policies of the Member States and the Community and on the implementation of Member States' employment policies, no 7275/08, Brussels, 4 March 2008.

European Commission (2006), *Employment in Europe 2006*, Office for Publication, Luxembourg.

Eurostat, Website: <http://epp.eurostat.ec.europa.eu/>

IMF (2008), Kingdom of the Netherlands; The Netherlands 2008 Article IV Consultation: Preliminary Conclusions, March 17.

Statistics Netherlands (2006), *De Nederlandse economie 2005*, CBS, Voorburg/Heerlen.

Statistics Netherlands (2008), "Nederland laagste werkloosheid in de EU", *Webmagazine*, 22 October.

Visser, J., T. Wilthagen, R. Beltzer and E. Koot-van der Putte (2004), "The Netherlands: from Atypicality to Typicality", in S. Sciarra, P. Davies and M. Freedland, eds., *Employment Policy and the Regulation of Part-time Work in the European Union: A Comparative Analysis*, Cambridge University Press, Cambridge, 19–223.

Zijl, M. and M.J. van Leeuwen (2004), *Tijdelijk werk: tussenstap of springplank*, SEO, Amsterdam.