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Dynamics in Dutch collective bargaining: practice and challenges

Peer Review “Towards a more dynamic collective bargaining”

Portugal, 23-24 October 2017



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Contact: Emilio Castrillejo

E-mail: EMPL-A1-UNIT@ec.europa.eu

Web site: <http://ec.europa.eu/social/mlp>

European Commission

B-1049 Brussels

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1 Background to collective bargaining in the Netherlands

Having the so-called 'Polder' model, the Netherlands has a long and fruitful history of social dialogue at both the national, sectoral and company level, with relatively harmonious relationship between the social partners and the government for the past 35 years (de Beer and Keune, 2017). The government has not intervened directly in the collective bargaining process since 1982. In that year, the social partners in the Dutch Labor Foundation (*Stichting van de Arbeid*) concluded an agreement (*Het akkoord van Wassenaar*) on moderate wage development linked to the reallocation of work in order to decrease unemployment and to improve the competitiveness of the Netherlands (CBS, 2007). Wages have been growing quite moderately ever since. This long history is important in order to explain and understand the 'DNA' of Dutch social partnership.

At present, the Dutch system seems stable, and the sector level collective bargaining continues to cover a high percentage of employees. However, the model also faces challenges, which might result in a need to change parts of the system to improve its legitimacy (Keune, 2016). The trade union density has been declining steadily the past decades. In 2011, less than one fifth of Dutch employees were a member of a trade union (ter Steege et al., 2012). The decline in union density has been mitigated by the relatively high level of collective bargaining coverage, related to the option to extend collective agreements to the whole sector (Dekker et al., 2017). In 2014, 85% of all employees were covered by a collective bargaining agreement negotiated by one or more trade union and employer's association (Ministry of Social Affairs and Employment, 2015). Sixty to seventy per cent of all companies are members of employers' organization with competences to reach collective bargaining agreements with employees' representatives (Dekker et al., 2017). It leaves the Netherlands among the countries with the strongest collective bargaining coverage rates in Europe (Eurofound, 2015). Challenges to collective bargaining are the increasing share of flex work, including the increase in self-employment, combined with a declining trade union membership. Employment based on an open-ended employment contract constitutes less than 70% of the total workforce (Dekker et al., 2017). It means that a relatively large share of the workforce either does not fall within the scope of a collective agreement (which is the case for self-employed) or may only benefit from the collective agreement temporarily (which is the case for people who have a temporary employment contract).

2 Assessment of collective bargaining

2.1 Structure of collective bargaining system

A similarity between the Dutch and the Portuguese system of collective bargaining is the primacy of sector level bargaining. In both countries company level bargaining is less relevant. In the Netherlands some large enterprises do have company level collective agreements (e.g. Philips and Heineken). A main difference between the countries is the national level, which is also quite relevant in the Netherlands (Keune, 2016). At the national level a *social akkoord* (social pact) may be reached that at times entails quite far-reaching ideas on labour market or social security reforms (see below). The main formal institutions of the consultation model were introduced shortly after the war and thus have a long history: The Bipartite Labour Foundation (Star) and the Tripartite Social and Economic Council (SER). These institutions have remained more or less the same since their conception (de Beer and Keune, 2017). Although the first decades after the Second World War may be characterized as a period with much contestation in social dialogue, the *Akkoord van Wassenaar* of 1982, as mentioned above, introduced a new phase in Dutch industrial relations with a more harmonious relationship between the social partners and the government (de Beer and Keune, 2017). De Beer and Keune (2017) summarise the characteristics of this new phase, starting from 1982, as follows:

- no government intervention in collective bargaining;
- wage (cost) restraint;
- a willingness to engage in dialogue and seek compromise;
- stable bargaining coverage.

The interviewees of the Dutch Ministry of Social Affairs and Employment commend this and state that both sides of industry usually take account of the broader economic context as well as (un-)employment levels when sharing views or bargaining on relevant issues. It means that parties are prone to search for sensible solutions. One of the results is that in times of economic downturn actors often decide to moderate wage increases or to install a wage freeze. The past decades are characterised by on average moderate wage growth (de Beer and Keune, 2017; Dekker et al., 2017; CBS, 2007). This includes the period of the past financial and economic crisis.

At the national level, the social partners may agree on quite large reforms or ambitious targets, however, they can merely set a framework or aim, which is non-binding (based on interview). The idea is that the social partners at the sector level will take these aims into account when they enter in sector level negotiations. Here, binding agreements are codified in collective labour agreements. It is a first explanation for the prime relevance of sector collective bargaining in the Netherlands. A second explanation for its dominance is the high bargaining coverage. This high coverage is supported by two features of the Dutch collective labour law (de Beer and Keune, 2017):

- Collective labour agreements apply to all employees of companies that are involved in collective bargaining¹, irrespective of trade union membership. As most parties negotiate sector-level collective agreements, a high coverage rate is guaranteed.
- Collective labour agreements are declared generally binding by the Minister of Social Affairs and Employment. An employer may ask to be exempted from this extension. The latter may happen if the company is a start-up for which the burden of the collective agreement would be too heavy to become a successful company, or if a company falls within the scope of another collective labour agreement (e.g. a company-level agreement, see example below). Also the collective labour agreement itself may contain the option to request for an exemption (see example below).

The social partners that concluded an agreement may request the Minister of Social Affairs and Employment to declare this collective labour agreement generally binding. The Minister checks whether certain requirements are met, among which:

- Are the various parts of the agreement consistent and do they fall within the scope of national law?
- Are the arrangements within the agreement representative for the economic sector? i.e. the arrangements or regulations should apply to the majority of workers in the economic sector.
- Are certain right already set within another collective agreement; i.e. is there overlap?

About 55 percent of employees fall within the scope of a collective labour agreement that was concluded at the sector level (STAR, 2010). Through extension of the collective labour agreements, another 10 percent fall within the scope of a sector level agreement. Approximately 10 percent of employees fall within the scope of a company level collective agreement, and another 11 percent is part of a collective labour agreement

¹ These are companies that are member of an employers' association.

for civil servants. About 15 percent of employees do not fall within the scope of a collective labour agreement (STAR, 2010).

Often, arrangements in collective labour agreements are more favourable to employees than the minimum provisions in Dutch labour law. In the Dutch wage-setting system wages set in collective labour agreements are often above the minimum wage. Also, employees who are covered by a collective labour agreement often have more days of leave (holidays) than the minimum amount set by Dutch law. Conversely, the Dutch labour law sets the minimum entitlements, and collective labour agreements are not allowed to go below standards set in Dutch labour law. Sometimes, Dutch law allows social partners to deviate from the standard in their negotiations. The interviewees mention the ability of the social partners to agree on offering flex workers a larger number of consecutive temporary employment contracts than the Dutch law prescribes (currently two contracts with a maximum duration of two years).

2.2 Social pacts in times of crisis

After 2008 the social partners at the national level, in joint dialogue with the national government, concluded three social pacts on important labour market and social security issues (de Beer and Keune, 2017; Dekker et al., 2017). The 2009 social pact was made in the bipartite setting of the Labour Foundation and agreed on wage moderation and on the preservation of jobs. The 2011 social pact addressed the Dutch pension scheme (Dekker et al, 2017), and the 2013 pact was a comprehensive pact including a range of issues, among other addressing the need to create a better balance between labour market flexibility and security. It aimed at improving the rights and the level of protection of people who have a flexible employment contract and to stop abusive forms of flex work (e.g. bogus self-employment) (de Beer and Keune, 2017; Dekker et al., 2017). However, a recent attempt (summer 2017) to conclude a social pact on labour market reforms did not result in an agreement.

2.3 Evolution and trends of the Dutch system of industrial relations

De Beer and Keune (2017) characterise the Dutch system of industrial relations as having continuity, stability, wage moderation and dialogue - at least since 1982. They claim that suggestions of a decentralization trend are hardly supported by evidence. What does point at decentralization is the growing number of clauses in sector-level agreements that allow companies to deviate from the conditions in a Cla, provided that the works council gives its consent (opt-outs) (de Beer and Keune, 2017). Also the interviewees see this as a main trend. However, there is no information about the use of such opt-outs by companies (de Beer and Keune, 2017), although a research by employers' association AWWN, which is summarised in section 3, does give some idea on the use of flexibility. The interviewees note that opt-outs give companies more flexibility to deviate from the Cla, however, that transaction costs increase if companies use the opt-out and (partially) develop their own employment conditions. Moreover, in such cases companies need good employment relations within the company, as the consent of the works council is necessary. If an opt-out cannot be made, then the company can fall back on the generally agreed conditions in the Cla.

2.4 Extending the validity of collective labour agreements.

Most collective labour agreements run for one or two years and their maximum duration is five years with an option to prolong the agreement for another maximum of five years (STAR, 2010). There are also rules about what happens if a collective labour agreement expires while a new agreement has yet to be made. For employees it is relevant that all collective labour agreements which set mutual obligations between an employer and an employee, remain valid (the normative arrangements within a collective labour agreement). These are obligations which are in fact (or normally) part of the individual employment contract, but which have been agreed in a collective labour agreement. These are thus key arrangements that employees who do not fall within the scope of a collective labour agreement, will find as a part of their employment contract (STAR,

2010). However, for employees who were not part of the collective labour agreement, the expiration has no consequences. Employers may negotiate their own terms with these employees. Likewise, when the extension of a collective labour agreement to the whole sector expires, employers who are not tied to negotiations (because they are not a member of an employers' association), are no longer bound to rules set out in the collective labour agreement (STAR, 2010).

3 Assessment of the success factors and transferability

3.1 Extension of collective labour agreements

One of the positive effects of a sector level collective labour agreement is that, via the legal extension, all employers within a certain sector offer the same employment conditions to employees. It means that there is no competition based on minimum employment conditions (STAR, 2010). As such the collective labour agreements contributes to relatively peaceful industrial relations within an economic sector. Moreover, agreements can be made to the benefit of all employers and employees within a sector may, such as agreements to have a collective fund for schooling and training of employees.

The interviewees of the Ministry of Employment and Social Affairs say that there are several different ways in which a country can design its industrial relations system. They point at a recent OECD (2017) study, which compares different systems, but also shows that different systems can generate good results. Still, they underline the conclusion of the OECD that sector level collective bargaining can be beneficial if there are options to have flexibility at the company level. Below, a list is given of different ways in which flexibility is inserted in sector level collective labour agreements in the Netherlands.

3.2 Flexibility of sector level collective labour agreements

Employers' association *AWVN* assessed 108 large collective labour agreements and concludes that these agreements largely have the benefits of collective arrangements, while giving sufficient flexibility to individual companies. According to the employers the benefits are clarity, predictability, lower transaction costs, and security. Downsides are that collective labour agreements can be less tailored to individual needs of employees and employers, e.g because employees would like to set their own employment conditions, or because employers want to react flexibly to globalization and individualization (*AWVN*, 2014). However, there are ample options in the current system to allow such flexibility, also when it comes to remuneration and working hours. However, such options are often underused (*AWVN*, 2014). Examples of flexibility are the company level agreements of the Dutch railways, which has a central company collective agreement, combined with more specific agreements for 13 different groups of personnel (e.g. personnel working on the train or providing services on train stations), for instance regarding working hours and rest periods. Other examples include various ways in which central parties leave more leeway to decentral parties, one of these is the opt-out. Yet also other forms exist, such as:

- Subdividing collective labour agreements. A sector level collective agreement may be subdivided into several company level or subsector level collective agreements. Sometimes this means that the sector level collective agreements ceases to exist, or that the sector level collective agreement becomes less broad in scope, addressing only certain issues (*AWVN*, 2014). An example of the latter is the banking sector which used to have a general collective labour agreement encompassing 125 000 employees. However, there were large differences between large and small banks. Large banks chose to leave the sector level collective agreement and to form their own individual company level collective agreements. Now, only the sector level collective agreements exists for smaller banks.

- Including personal budgets (*collective labour agreements à la carte*). Employees have the possibility to make individual choices from of a predefined set of employment conditions (AWVN, 2014). These choices and their sources are predefined by the central level bargaining parties, however, the effect is differentiation in employment conditions. About 75% of collective labour agreements contains this option (AWVN, 2014).
- Decentralised agreements. At times, agreements may be concluded at the level of the subsector or the company, following a predefined procedure. Then, these agreements are incorporated in the sector level collective labour agreement, giving them the status of a collective agreement (AWVN, 2014). Alternatively, the sector level collective agreement may include the option that the employer and the works council, personnel representative body or individual employee may make more detailed agreements on certain issues. Such decentral agreements fit within the framework of the collective labour agreement, however, they do not have the status of a collective labour agreement. A widely-used example of the latter are agreements on working hours and working times, for instance the collective labour agreement may state that beginning and end times of working days are set by the employer in joint agreement with the works council (AWVN, 2014). Such rules allow employers and employees to tailor agreements that fit their needs.

Another way in which flexibility may be incorporated is that sector level agreements at times contain the option that decentral parties may design certain aspects in their own collective labour agreement, if meeting certain preconditions. Some collective labour agreements have so-called "A-regulations" which set the minimum standard (e.g. wages), and "B-regulations" where deviation is possible, either in favour or not in favour of the employee (AWVN, 2014). An example is the Metalekto collective labour agreement, where about 90% of regulations are B-regulations. If parties want to deviate from the standard, then they are required to reach a B-collective labour agreement at the decentral level, with a trade union who was also involved in the sector level bargaining. Such a decentral B-collective labour agreement also has to be reported to the Ministry of Social Affairs and Employment, to make it legally binding. Should the parties at the decentral level not reach an agreement, then the conditions set out in the sector level collective labour agreement are valid.

There are numerous other forms to increase the flexibility of sector level collective labour agreements, and thus boost dynamics. In about half of the researched collective agreements by AWVN (2014), there are options to deviate from the standard in favour of the employee (e.g. wages or working hours). In 40% of the collective labour agreements, there are quite general remarks that allow for decentral deviation, e.g. including sentences such as that the regulation in the Cla set the standard, unless deviations are explicitly allowed. An example concerning wages is that most collective labour agreements provide the option to adjust remuneration to individual achievements or team performance. Moreover, most collective labour agreements determine working hours per week, which gives individual employers and employees flexibility to set daily working hours themselves (AWVN, 2014).

The long list of options displays that there is not one way to increase flexibility in sector level collective bargaining. Much depends on the specific advantages or disadvantages of a collective agreements, and on the characteristics of the industry (AWVN, 2014).

3.3 Stability of sector level collective bargaining

Interesting is how the Portuguese paper called for building on traditions in social dialogue, assessing that reforms that countered these historically build institutions and habits, were unsuccessful. Also in the Netherlands the tradition and long history of social dialogue is thought to be relevant (although one could also have more critical assessments of this) (Keune, 2016).

The relatively stable sector level collective bargaining in the Netherlands, while often allowing tailor-made design at decentral levels, may be another characteristic that both countries share. At the least, the Portuguese road taken, to restore sector level bargaining, while searching for flexibility, shows similarities with the current Dutch practice of relevance of sector level bargaining, while using various forms and ways to deviate from the standard. This does not mean that the Dutch system of industrial relations does not face challenges. One current debate addresses the downsides of limiting agreements to the sector level. For instance, at times labour mobility across sectors is welcome (e.g. if a sector faces large redundancies in certain professions whilst here are labour shortages in other sectors). In such cases it would be nice for instance to open up sectoral training and schooling funds to support mobility to other sectors (based on interviews). Another example is developing regional collective labour agreements where companies from several economic sectors could take part in. This is currently not an option in the Netherlands.

Building on the perceived interest of the main actors, as stated by the host country report, is obviously a good suggestion, which is also the case in the Netherlands. However, parties do not always agree on issues. The interviewees of the Dutch Ministry of Social Affairs and Employment point at the importance that the social partners, including the trade unions, are capable of taking the broader economic context and labour market developments into account when entering into bargaining. This helps at times, but not always, to reach agreements on difficult issues (e.g. pension system or wage moderation). The interviewees also mentioned that the bargaining parties are equipped well to play a constructive role in negotiation processes (i.e. experience, time, resources). Also trust plays an important role. Some dossiers take time to be tackled, and also actors have to get to know each other.

4 Questions to the host country in the Peer Review

- The host country report mentions 'unconditional' extension of collective agreements. What should and what should not be part of such extension? In the Netherlands there are clear preconditions for extending a collective labour agreement.
- The host country report mentions the possibility of introducing new content into collective bargaining. What does a broad agenda for collective bargaining mean?
- The host country report addresses the role of works councils at the company level. How much room can be given to works council for bargaining? The Netherlands does have the option for works councils to negotiate, yet, usually these neither address primary employment conditions nor discuss complex issues. Usually works councils have less knowledge and are less experienced in bargaining. What is the experience in this respect in Portugal?
- The host country report mentions that in the period after the MoU, employers wanted to keep their strong positions. At the same time employers said that sector level collective bargaining allowed them to reach their objectives. What are then the elements of the strong position that employers want to keep? Is there a contradiction between both aims?
- There have been large changes in collective bargaining laws, both before, during and after the crisis. What lessons can be drawn from these legislative changes? Are there any evaluations of the impact of these changes? What was the impact on the bargaining partners on either side of industry (e.g. trust), and what was the impact on the economy?

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Annex 1 Summary table

Background to collective bargaining in the peer country

- Similar is the prime relevance of sector level collective bargaining.
- Difference is that in the Netherlands the national level is relevant as well. At national level the Netherlands has a long tradition in bipartite and tripartite dialogue. Social partners and the government may conclude social accords.
- In the Netherlands there are many different examples of allowing flexibility in sector level collective labour agreements.

Assessment of collective bargaining

- De Beer and Keune (2017) characterise the Dutch system of industrial relations as having continuity, stability, wage moderation and dialogue. Important ingredients are a willingness to engage in dialogue and seek compromise; stable bargaining coverage (here the option to extend collective agreements to the whole sector is key); no government intervention in collective bargaining; wage (cost) restraint.
- Sector level social partners themselves may bargain on flexibility or dynamics in sector level collective labour agreements. This happens quite often.
- The national level agreements set the desired direction for sector level agreements, yet cannot determine them. Important national agreements at times include the decision to have moderate wage growth or a wage freeze. At sector level, parties may deviate from this.
- Dutch challenges are that sector level agreements neither necessarily stimulate cross-sectoral mobility nor are able to fully address regional challenges that go beyond the sector level; Moreover there is declining trade union membership and a growth in flex work and self-employment, and these groups are less well represented in collective labour agreements.

Assessment of success factors and transferability

- Tradition and long history of social dialogue - not easily transferable, but to be constructed over longer time period.
- Relatively stable sector level collective bargaining, while often allowing tailor-made design at decentral levels. This could be further developed in other countries, choosing a type of flexibility that works best in the context of the particular sector.
- Building on the perceived interest of the main actors.
- Capabilities of the social partners to take the broader economic context and labour market developments into account when entering into bargaining. This could be transferred as well, certainly at the national level.
- Trust.

Questions to the host country in the Peer Review

- Are there preconditions for extending a collective labour agreement, or is it really unconditional?
- What are the ingredients of a broad agenda for collective bargaining mean?
- How much space can be given to works council for bargaining at company level? Do works councils have sufficient knowledge and experience?
- What are the elements of the strong collective bargaining position that Portuguese employers want to keep?

- There have been large changes in collective bargaining laws, both before, during and after the crisis. What lessons can be drawn from these legislative changes? What was the impact on the bargaining partners on either side of industry (e.g. trust), and what was the impact on the economy?

Annex 2 Example of relevant practice

See section 3.2 for a long list of examples.

Name of the practice:	Subdividing collective labour agreements.
Year of implementation:	Not applicable - ongoing
Coordinating authority:	Sector level social partners
Objectives:	An example is the banking sector which used to have a general collective labour agreement encompassing 125 000 employees. However, there were large differences between large and small banks. Large banks chose to leave the sector level collective agreement and to form their own individual company level collective agreements. Now, only the sector level collective agreements exists for smaller banks.
Main activities:	Not applicable
Results so far:	Not applicable
Name of the practice:	Including personal budgets (collective labour agreements à la carte) in collective labour agreements.
Year of implementation:	Not applicable - ongoing
Coordinating authority:	Sector level social partners
Objectives:	Employees have the possibility to make individual choices from of a predefined set of employment conditions (AWVN, 2014). These choices and their sources are predefined by the central level bargaining parties, however, the effect is differentiation in employment conditions. About 75% of collective labour agreements contain this option (AWVN, 2014).
Main activities:	Examples are the option to trade a small number of holidays against pay or vice versa (while seeing to it that an employee keeps the nationally set minimum amount of leave days per year).
Results so far:	Not applicable

