

# Industrial relations and the adaptability of the Dutch economy

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# Industrial relations and the adaptability of the Dutch economy

Part of SER advisory report concerning social and economic policy for the medium term **Increasing prosperity by and for everyone**

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## The Social and Economic Council in the Netherlands

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# 1 Theme and structure

## 1.1 Introduction: the request for recommendations

The ability of the economy to adapt is to a significant extent determined by industrial relations. A question regarding the need to modernise industrial relations was therefore included in the Dutch Government's request for recommendations regarding the social and economic policy for the period 2007-2011. The Dutch Government has requested that the Council's advisory report should deal with the question of the extent to which the existing wage differentiation and decentralisation that apply when negotiating terms of employment should be the object of an extra incentive, as well as what this means for the distribution of responsibilities between government, the social partners, and individual employers and employees.

In order to answer that question, the Council has conducted an extensive analysis and assessment of the existing wage differentiation and the decentralisation that apply when negotiating terms of employment. That analysis and assessment are to be found in the present theme document, which also focuses on the way harmonisation and consultation operate at centralised level. The Council considers that while the local level offers effective opportunities for responding to specific circumstances and possibilities, harmonisation and consultations at centralised level can make a significant contribution to achieving socio-economic objectives.

Section 1.2 is the Council's response to the request for recommendations on decentralisation and differentiation when negotiating terms of employment. Section 1.3 takes this as the basis for explaining the structure of this theme document.

This document forms part of the Council's advisory report *Increasing prosperity by and for everyone* [Welvaartsgroei door en voor iedereen] and was adopted at a public meeting of the Council on 20 October 2006.

## 1.2 The position adopted by the Council

*The importance of further decentralisation of terms of employment*

The Council considers it important that the decentralisation of negotiations on terms of employment and various types of wage differentiation should take place in addition to and within a certain degree of macro-economic harmonisation of wage bargaining. The decentralisation introduced in 1982 with the Wassenaar Agreement – and supported by a series of follow-up memoranda by the Labour Foundation [Stichting van de Arbeid] (including *The New Course* [De nieuwe koers] in 1993) – is irreversible. The Council considers decentralisation and wage differentiation as essential conditions for a resilient economy. They make it increasingly possible to adopt a tailor-made approach, thus increasing the

options open to employees and improving the adaptability of companies. Wage differentiation is desirable with a view to a satisfactory allocation of labour. In this context, the main consideration is wage differentiation according to the type of work (educational level, qualifications) and performance. In addition, the social partners have been given more leeway to conclude agreements at sector or company level regarding working hours and conditions, temporary work, and the “life course”.

An increasing number of collective agreements include arrangements for results-related pay. Such partially results-related types of remuneration can be seen in the context of wage restraint and policy to boost productivity, as the Labour Foundation emphasised in its report *Towards a more productive economy* [*Naar een meer productieve economie*] (autumn 2004). Introducing more types of results-related pay will increase productivity and prevent wage costs from being structurally too high in an unfavourable economic situation. A link can also be made to employability policy. Remuneration systems based on labour market value and demonstrated career investment on the part of the individual fit into the framework of motivating employability policy.

The process of decentralisation and differentiation is in full swing. Decentralisation when negotiating terms of employment is primarily within the existing negotiating frameworks for company or sectoral collective agreements (controlled decentralisation). This type of decentralisation makes it possible to combine a tailor-made approach at company level with harmonisation between the social partners and government at the highest level.

The Council also considers decentralisation and a tailor-made approach to be important with a view to the better utilisation of human resources. Creating more opportunities for employees to divide their time between work, care tasks, and private life demands such an approach. Social innovation also requires there to be sufficient scope for this approach and for a variety of options at company level.

The Council believes that it is necessary to seek further opportunities for decentralisation and differentiation within the existing institutional frameworks – the opportunities for doing so have not yet been exhausted. They include such things as more collective agreement arrangements at company level; less detailed rules in collective agreements; a greater variety of options in collective agreements; and more results-related pay systems. A future-oriented policy on collective agreements also requires there to be scope for social innovation at company level. Finally, greater use could be made of the experience gained with framework collective agreements, which offer greater leeway for making decentralised arrangements at company level, perhaps with the involvement of the works council.

*Negotiated wage increases and the macro-economic slowdown*

The rise in negotiated wages in 2005 was the lowest for twenty years. The downward trend in negotiated wages began in 2002 and accelerated primarily after the 2003 autumn agreement [between the Government and the social partners]. Given the substantial slowdown in growth that already commenced in 2001, this would seem to have been somewhat on the late side. One needs, however, to remember first of all that the labour market was still a very tight one in 2001, meaning that the rise in unemployment really made itself felt only in the longer term. Secondly, the full seriousness of the macro-economic situation became apparent only in the course of 2002, with the macro-economic prospects then being adjusted significantly. Thirdly, it was and still is the rise in pension contributions, above all, that is leading to wage costs rising more rapidly than negotiated wages.

Wage restraint is nevertheless being reflected – to a restricted but not insignificant extent – in an improvement in price competitiveness. The appreciation of the euro also plays a role in the competitiveness of the Netherlands vis-à-vis the non-euro countries. It should also be noted that the earned income ratio has remained stable since 2001; the rise in negotiated wages was at an unprecedentedly low level in 2005; and the earned income ratio is falling as expected in 2006. The central recommendations of the Labour Foundation have definitely had a major role to play in all this.

Although wage growth in response to the cyclical movement has not been ideal, there is no evidence of a failure in wage coordination. The Council therefore considers that the macro-economic harmonisation of wage bargaining can continue to play a major role in wage restraint at local level, as it has done in recent years. This harmonisation sets limits to the further decentralisation of wage bargaining. An increase in the workforce will be necessary to prevent a shortage of labour and wage inflation in a coming period of buoyant economic activity.

*Significance of the consensus economy*

The Council wishes to emphasise the added value of the consensus economy. In a rapidly changing international context, adaptability is, more than ever before, a necessary condition for maintaining prosperity. In its 1991 advisory report on *Convergence and the consensus economy* [*Convergentie en overlegeconomie*], the Council gave an extensive description of the possibilities and limitations of the Dutch consensus economy. Advice, harmonisation through consultation, and cooperation in implementing policy can make a major contribution to improving the ability of the Dutch economy to adapt. This applies to consultations at both centralised and local level.

Where the local level offers good opportunities for responding to specific circumstances and possibilities, harmonisation and consultations at centralised level can contribute to achieving socio-economic objectives, for example by making recommendations to the parties at local level. Consultation at centralised level also offers excellent opportunities

for broadly-supported solutions to social and economic problems. The breakthroughs should be noted regarding statutory invalidity insurance and the medical expenses system, which were ultimately achieved on the basis of the recommendations made by the Council. The social partners are also accountable for their contributions to an effective labour market policy, of which training and the development of employee skills are important components.

In line with the increasing significance of the European Union, the importance of cross-border policy coordination has also increased. The subsidiarity principle is the emphatic starting point in this regard: the preference for decision-making at the lowest level appropriate for a given issue (or – in the “horizontal variant” – a preference for self-regulation by civil-society organisations, including the social partners). In its advisory report on evaluation of the Lisbon strategy (04/10, p. 17), the Council states that policy coordination at EU level must lead to objectives regarding economic growth, employment, social cohesion and the environment being achieved more effectively than would be possible by means of separate national policy.

#### *Policy on universal applicability of collective agreements*

The Council sees no reason at the moment to amend the policy on declaring collective agreements to be universally applicable (“AVV policy”). There are no indications that this policy has the effect of driving up wages. A study by the Labour Inspectorate [*Arbeidsinspectie*] of trends in terms of employment in 2004 showed that – when corrected for background features – there are hardly any wage differences between employees who are subject to a collective agreement because it has been declared universally applicable and those not covered by a collective agreement in companies without a collective agreement or between those who are and are not covered by a binding agreement in sectors with a sectoral collective agreement.

Every collective agreement needs to be the object of critical consideration by the parties to determine whether its provisions should be made universally applicable, and if so which provisions. A realistic exemption policy is the cornerstone of a responsible policy for declaring collective agreements universally applicable. It should be noted that the conditions under which companies can be exempted from the collective agreement for their sector are being questioned. On 31 March 2006, the Minister of Social Affairs and Employment wrote to the Labour Foundation proposing changes to the exemption conditions. Companies would be required to demonstrate the need for a tailor-made approach involving exemption on the grounds of their having their own collective agreement. Partners that request an exemption should also be required to demonstrate that they are independent of one another. The minister requested the Foundation to respond to his proposal.

### 1.3 Structure of the theme document

As indicated in the introduction, the Council's views are based on an extensive analysis of both the decentralisation and differentiation of negotiations on terms of employment that have already commenced and on the functioning of central harmonisation and negotiation.

#### *Decentralisation of negotiations on terms of employment (Sections 2 and 3)*

Sections 2 and 3 deal with the current situation regarding decentralisation of negotiations on terms of employment. Decentralisation of negotiations on terms of employment has two dimensions. Section 2 focuses on the “vertical” dimension, in other words the structure of negotiations between employers and employees. Decentralisation can mean either a shift in decision-making powers from a higher to a lower level – for example when there is a shift from sectoral collective agreements to company collective agreements – or delegation, within certain frameworks, of powers or options to a lower level, as in the case of a “mix and match” collective agreement. Section 3 deals with the “horizontal” dimension, i.e. the distribution of responsibilities between government and the social partners. The 1982 Wassenaar Agreement – which finally abandoned government intervention in the setting of wages – is generally seen as a turning point as regards the centralisation of negotiations on terms of employment, with self-regulation by the social partners becoming more important from then on. Section 3 focuses self-regulation on collective agreement arrangements that do not primarily relate to pay, this being against the background of the scope that the relevant legislation allows. Specifically, this section deals with recent developments in the area of working hours and conditions, work and care, and the practical effects of the Flexibility and Security Act [*Wet Flexibiliteit en Zekerheid*].

#### *Wage differentiation and wage coordination (Sections 4 and 5)*

Sections 4 and 5 deal with two aspects of wage formation. Section 4 looks at the situation regarding wage differentiation. Two questions are considered:

- How do the generic pay components relate to those pay components that can differ from one employee to another, for example allowances, promotion, and special remuneration?
- What direction (education, position, sector) do wage differences between employees actually take?

Section 5 focuses on the macro-economic significance of negotiated wage increases. It supports the view of the Council that wage coordination has not been a failure and that the macro-economic harmonisation of wage bargaining can continue to play a major role in wage restraint at local level.

*The balance between decentralised negotiations and centralised harmonisation (Section 6)*

Section 6 explains why the Council believes that scope needs to be found within the existing institutional frameworks for further decentralisation and differentiation. The Council finds that controlled decentralisation – i.e. decentralisation within the existing negotiating frameworks – makes it possible to combine a tailor-made approach at company level with harmonisation by the social partners and government at the highest level. Continuing on from Section 5, the Council emphasises the importance of coordination at the highest level – the consensus economy. The importance of this sets limits to the further decentralisation of wage bargaining. Opportunities for such decentralisation and the associated differentiation will therefore need to be found within the existing institutional frameworks; the possibilities have not yet been exhausted.

*Policy regarding universal applicability of collective agreements (Section 7)*

In conclusion, the Council explains why it sees no reason at the moment to amend the policy on declaring collective agreements universally applicable (“AVV policy”). Important aspects here are the possible effect that this policy may have of driving up wages and the need for sufficient opportunities for exemption.

## 2 Decentralisation: current situation regarding collective agreement structure

### 2.1 Introduction

#### *Theme addressed*

The 1982 Wassenaar Agreement is generally seen as having been an important step towards the decentralisation of policy on terms of employment. The agreement finally abandoned centrally directed wage policy. The decentralisation involved primarily concerned the distribution of responsibilities between the government and social partners. The main impetus for decentralisation in the negotiating structures themselves came from the *New Course* agreement concluded by the social partners within the Labour Foundation in December 1993<sup>1</sup>. That agreement requires future consultations on terms of employment to take place in accordance with a “tailor-made approach” and diversity. This was confirmed in the *Agenda 2002* agreement concluded in 1997<sup>2</sup>. In its 2003 advisory report on declaring decentralisation provisions in collective agreements to be universally applicable, the Foundation once more expressed itself positively about the decentralisation process regarding terms of employment that it said had taken place in the past few decades<sup>3</sup>.

This section focuses on the question of the extent to which decentralisation exists in the structures for negotiation between employers and employees. It considers the following elements:

- The coverage of collective agreements. Have these become less important?
- The relationship between sectoral collective agreements and company collective agreements. Have company collective agreements become more important, relatively speaking?
- Developments within sectoral collective agreements and company collective agreements. Are the details of the agreed framework increasingly being left to companies or individuals? Do collective agreements offer an increasing range of options?

#### *General picture*

Decentralisation occurs primarily within the existing negotiating frameworks for company or sectoral collective agreements and does not lead to the breakdown of these frameworks or to a substantial shift between them. There is, however, an increase in the absolute number of company collective agreements. Decentralisation within the existing

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1 Labour Foundation (1993) *Een nieuwe koers: Agenda voor het cao-overleg 1994 in het perspectief van de middellange termijn*, publication no. 9/93, The Hague.

2 Labour Foundation (1997) *Agenda 2002: Collective bargaining agenda for the years ahead*, publication no. 13/97, The Hague.

3 Labour Foundation (2005) *Op weg naar een meer productieve economie*, publication no. 1/05, The Hague.

frameworks mainly leads to the majority of collective agreements now including the possibility of individual options for terms of employment, expressed in money and free time. There are also collective agreements in which framework agreements are made at a higher negotiating level which are then filled in at lower level, or which can be deviated from at a lower level under certain conditions.

## 2.2 Development of sectoral collective agreements and company collective agreements

Table 2.1 presents a number of key statistics regarding the development of collective agreements that clarify the importance and composition of collective agreements. The table gives the number of collective agreements, the number of employees covered by collective agreements, the coverage of the collective agreements (i.e. the number of employees covered by the collective agreement as a percentage of all employees), and the relative numbers of sectoral and company collective agreements.

table 2.1 Development of collective agreements, 1951–2004

	Number of collective agreements	Employees	Coverage of collective agreement	Sectoral collective agreement		Company collective agreement	
				collective agreements	employees	collective agreements	employees
		under collective agreement					
		(x 1000)	(%)	(%)	(%)	(%)	(%)
1951	364		81	34		66	
1960	686		82	42		58	
1970	746		81	35		65	
1980	728	2762	85	25	85	75	15
1990	903	3345	82	22	82	78	18
2000	952	5695	86	19	86	81	14
2003*	1067	6838		22	81	78	19
2003*	712	5768		27	89	73	11
2004	759	6052		26	88	74	12
2005	748	6166		23	86	77	14
2006**	538	4814		25	81	75	19

\* A different reporting method was adopted in 2003, with collective agreements only being registered that have not expired more than a year ago.

\*\* Significantly fewer collective agreements were registered in 2006. The social agreements concluded by the Government and the social partners in the past two years and their implementation in collective agreements have slowed down registration of new agreements with the Ministry of Social Affairs and Employment.

Columns 5 and 7: number of sectoral and company collective agreements as a percentage of the total number of collective agreements. Columns 6 and 8: number of employees covered by a sectoral and company collective agreement as a percentage of the total number of employees covered by a collective agreement.

Sources: K. Schilstra, A. Jongbloed (2003) *Geslaagde decentralisatie*, in: A. Nagelkerke, W. de Nijs (ed.) *Sturen in het laagland*, Delft, Eburon, p. 106. For the years 2003–2005: Ministry of Social Affairs and Employment (2004) *Voorjaarsrapportage cao-afspraken 2004*, appendix 7; *Voorjaarsrapportage cao-afspraken 2006*, appendix 6.

*Development of the number of collective agreements and coverage*

The table shows that the absolute number of collective agreements has risen almost continuously. Only in recent years has there been an absolute fall in the number of collective agreements. The fall in 2006 can be traced to the delayed registration of collective agreements due to the inclusion in them of the social agreements on such things as life-course schemes. With the exception of 2006, there has been a continual increase in the number of employees covered by a collective agreement.

It also appears that the coverage of collective agreements – i.e. the number of employees covered by collective agreements as a percentage of all employees – has risen slightly with time. Coverage has been steady at 85% since about 1980. Coverage can largely be explained by the extent to which the employees are unionised<sup>4</sup>. Declaring collective agreements to be universally applicable adds approximately 11 percentage points to the level of coverage<sup>5</sup>. The most far-reaching type of decentralisation – a reduction in collective agreements – is therefore not taking place.

*Sectoral collective agreement still dominant*

Table 2.1 shows that the proportion of company collective agreements within the total number of collective agreements is increasing slightly. It is striking, however, that this trend occurred mainly in the period prior to the Wassenaar Agreement. Even so, the great majority of employees covered by a collective agreement are covered by a sectoral agreement. In that sense, therefore, the sectoral agreement is still the dominant type. In 2005, the importance of sectoral collective agreements fell somewhat, with an increase in the proportion of employees working for companies covered by a company collective agreement. It is not clear whether this trend will continue or is merely incidental.

Banking and the public sector provide examples of the decentralisation of negotiations due to the break-up of sectoral collective agreements. In 2000, the collective agreement for the banking sector was broken up to give a general banking collective agreement and separate collective agreements for the major bank groups (ABN-AMRO, the Rabo group, the ING group, Fortis, and SNS-REAAL). As far as can be determined, this break-up process was not copied in the private sector. The fact that the major financial groups left the banking collective agreement is probably due to a number of specific circumstances, for example the merging of banks and insurance companies, each with their own collective

4 European Commission (2004) *Industrial Relations in Europe 2004*, Brussels, table 1.6, p. 31. OECD (2004) *Employment Outlook 2004*, p. 147.

5 In 2004, 13% of employees covered by sectoral collective agreements worked for companies that were not a party to collective agreement negotiations. These employees were covered by the collective agreement because it has been declared universally applicable. See Ministry of Social Affairs and Employment (2004) *Voorjaarsrapportage cao-afspraken 2004*, appendix 7, table 7.9. The influence of this on the level of coverage is  $13\% \times 0.85 = 11$  percentage points. According to the Netherlands Bureau for Economic Policy Analysis (CPB), the number of employees covered by a sectoral collective agreement because it has been declared universally applicable constitutes only 5% of the total number of employees. See CPB (2005) *Macro Economische Verkenning 2005*, p. 99.

agreement, within a single group. In the public sector, the “sector model” was introduced in 1993, with the negotiating structure being decentralised into eight separate sectors<sup>6</sup>. In the case of Netherlands Railways, there would seem to be a shift towards recentralisation, with the six company collective agreements being turned into a single one for the whole of Netherlands Railways.

#### *Outsourcing and differentiation*

In recent years, there has been a major growth in the number of people working in such sectors as security, cleaning, ICT, and catering. This is partly because companies now outsource these activities. In these sectors, an increasing number of employees are covered by a sectoral or company collective agreement. This has led to a certain differentiation according to activities that in the past were concentrated within a single company and therefore within a single collective agreement.

### 2.3 Developments regarding sectoral collective agreements and company collective agreements

Decentralisation and differentiation can also take place *within* sectoral and company collective agreements. Two basic types can be distinguished:

- The layered collective agreement structure. The collective agreement specifies topics and negotiating partners that can be worked out at a lower level; that level will be the company in the context of a sectoral collective agreement or a business unit in the case of a company collective agreement.
- The “mix and match” collective agreement. The collective agreement includes individual options in the form of a number of different “packages” of terms of employment within which, for example, time and money can be exchanged within certain limits.

The “mix and match” collective agreement is the most frequent. The number of collective agreements of this kind has increased greatly in recent years, now amounting to almost 60%<sup>7</sup>. Taking account of the level of coverage of collective agreements, this implies that almost four out of ten employees work for companies with a “mix and match” collective

6 These eight sectors are Government, Defence, Education and Science, Police, Judiciary, Municipalities, Provinces, and Water Authorities. For the background to this process, see K.M. Becking (2001) *‘Grand Design’: Een onderzoek naar processen van normalisering en decentralisering in de arbeidsverhoudingen voor overheidspersoneel in de periode 1990-2000*, The Hague, Centre for Labour Relations (CAOP).

7 See G. van Sloten, A. Nauta, P.R.A. Oeij (2005) *Arbeidsvoorwaarden en arbeidsverhoudingen op ondernemingsniveau*, AVON Monitor 2004, pp. 31-33.

agreement. Between 2001 and 2003, the percentage of layered or decentralised arrangements fluctuated at about 2%<sup>8</sup>.

#### *Layered collective agreements*

A number of sectoral and company collective agreements have a structure allowing actual negotiating powers to be decentralised to lower levels. Table 2.2 (see page 18) gives a number of examples of major collective agreements.

There are no indications that the number of collective agreements with a layered structure has increased in recent years<sup>9</sup>. One of the reasons for this is that this model causes an increase in transaction costs – negotiations are, after all, required at several different levels – that need to be weighed up against the advantages of a tailor-made approach<sup>10</sup>.

The Labour Foundation has recommended that collective agreement provisions that allocate powers to parties to make arrangements at lower level should be declared universally applicable only if the collective agreement includes alternatives to the provisions from which one can deviate<sup>11</sup>.

#### *Options in collective agreements*

Most collective agreements do now include various options. Employees can make individual choices between terms of employment within frameworks determined by the collective agreement and statutory provisions. The collective agreement indicates the resources that can be deployed and for what objectives this can be done. Both the resources and the objectives can relate either to time or money. Table 2.3 (see page 19) gives an idea of the resources and objectives, listed according to the extent to which they occur in collective agreements<sup>12</sup>.

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- 8 K. Tijdens, M. van Klaveren (2004) *Een onderzoek naar cao-afspraken op basis van de FNV cao-databank en de AWVN-database*, AIAS working paper 19, Amsterdam, p. 80. Rojer points out that there is no indication whatsoever of a trend towards an increasing number of framework or umbrella collective agreements. See M. Rojer (2000) *De wonderde wereld van de cao*, *Tijdschrift voor HRM*, 2000 - 4, pp. 104-105. Schilstra and Jongbloed (2003) *Geslaagde decentralisatie*, op. cit., pp. 107-108, refer in this connection to the high transaction costs involved in a layered negotiating system.
- 9 More recent examples are the collective agreements for Forestry and Nature, EDS, TPG, and Housing Services.
- 10 Cf. K. Schilstra, A. Jongbloed (2003) *Geslaagde decentralisatie*, op. cit., pp. 107-108.
- 11 Labour Foundation (2003) *Advies inzake algemeenverbindendverklaring van decentralisatiebepalingen in cao's*, publication number. 5/03, Den Haag.
- 12 A study commissioned by the FNV Bondgenoten union showed that exchanging salary for extra leave is popular. See C. Hillebrink, J. Schippers, J. van Stigt (2004) *Keuzes in arbeidsvoorwaarden: Een onderzoek onder leden van FNV Bondgenoten naar cao à la Carte*, p. 31. According to the AVON Monitor, the opposite type of exchange (time for money) is also frequent. See G. van Sloten, A. Nauta, P. Oeij (2005) *Arbeidsvoorwaarden en arbeidsverhoudingen op ondernemings-niveau*, op. cit., pp. 32-33.

table 2.2 Collective agreements with decentralised structures (situation as of mid-2001)

Collective agreement	Structure
<i>Sectoral collective agreements</i>	
Books and magazines printing sector (10,500 employees)	Tailor-made approach <ul style="list-style-type: none"> <li>– At the initiative of the employer, detailed arrangements can be made with the works council regarding business hours and working hours, salary structure, job evaluation, overtime regulations, “mix and match” terms of employment, training, etc.;</li> <li>– Applying a tailor-made approach must not cause any deterioration in terms of employment.</li> </ul>
Energy and utility companies (35,000 employees)	Framework structure: <ul style="list-style-type: none"> <li>– In framework collective agreement, term definitions, terms of employment regarding pensions and pre-pensions, illness, occupational disability and unemployment, and a number of framework and protocol agreements;</li> <li>– The 5 sectoral collective agreements regulate the other terms of employment, including pay and remuneration;</li> <li>– Additional company arrangements can be agreed on with the works council at company level.</li> </ul>
Graphimedia (54,300 employees)	Layered structure (framework collective agreement): <ul style="list-style-type: none"> <li>– Framework provisions for whole sector;</li> <li>– Sector provisions for 5 sub-sectors;</li> <li>– Decentralised arrangements on company basis.</li> </ul>
Metal industry and electro-technical industry (187,500 employees)	Tailor-made structure: <ul style="list-style-type: none"> <li>– A provisions: non-negotiable;</li> <li>– B provisions: freely negotiable at lower level; deviation possible from basic collective agreement in both negative and positive sense.</li> </ul>
<i>Company collective agreements</i>	
ANWB (4035 employees)	Umbrella structure: <ul style="list-style-type: none"> <li>– Umbrella collective agreement with five subordinate collective agreements;</li> <li>– Options available for additional arrangements (not contrary to umbrella structure) regarding various terms of employment.</li> </ul>
Unilever Netherlands (4400 employees)	Framework structure: <ul style="list-style-type: none"> <li>– Agreements at group level on pay, shift work, flexibility and security, Disabled Persons Reintegration Act [<i>Wet REA</i>], and career policy;</li> <li>– Decentralised agreements on work pressure, telework, travel costs, childcare, consignment (individual);</li> <li>– Local negotiations on deviation only possible between local management and unions.</li> </ul>
Getronics (9000 employees)	Framework structure: <ul style="list-style-type: none"> <li>provisions in framework collective agreement applying to whole group;</li> <li>other matters to be negotiated by works councils.</li> </ul>

Sources: *Sociale Nota 2002*, Lower House of Dutch Parliament, Session Year 2001–2002, 28 001, nos. 1-2, p. 179; M. Rojer (2003) (Over)leeft de cao?, *Tijdschrift voor HRM*, Theme number winter 2003, pp. 63-88. This list does not include the collective agreements for the hospitality industry or Netherlands Railways. No agreement has been reached on a new collective agreement for the hospitality industry, while the layered collective agreement for Netherlands Railways has now been reversed.

table 2.3 Most frequent resources and objectives in “mix and match” collective agreements, listed according to occurrence in the collective agreement (2004)

Resources	Objectives
Holidays/leave hours above legal minimum	Extra days off
Salary (gross)	Days off paid out in money
Allowances	Saving for extra pension accrual
Holiday pay/allowances	PC purchase projects for employees
Days off/working hours reduction days (“ATV days”)	Long-term leave

Source: M.H.M. Sorée (2004) *Individualisering binnen collectieve arbeidsvoorwaarden: Vormgeving en gebruik keuzemogelijkheden door werknemers*, working document, Ministry of Social Affairs and Employment, p. 69. This study is based on a random sample of 123 collective agreements covering 5.2 million employees on 1 January. Of those 123 collective agreements, 70 (56%) comprise a “mix and match” system. Of those 70 collective agreements, 12 do not provide sufficient information on sources or objectives. The above ranking is therefore based on 58 collective agreements.

The number of options differs from one collective agreement to another. The Philips collective agreement, for example, contains nine resources and fourteen objectives; that for TPG Post defines only three resources and four objectives. An above-average rise in the number of “mix and match” collective agreements is taking place in the following sectors: government, health and welfare services, building, and commercial and financial services. The hospitality sector was the only sector in which there was a drop in the percentage of employees with various options open to them in their package of employment terms. By no means all employees make use of the options open to them, although that percentage is rising, from 13% in 2002 to 19% in 2004. Employees who actually make use of the “mix and match” system generally value it more (giving it 7.6 out of 10) than other employees (6.9 out of 10)<sup>13</sup>. A study commissioned by the FNV Bondgenoten union showed that there is broad support among members for alternative options in collective agreements<sup>14</sup>.

#### *Collective agreements aid social innovation*

Trends in recent years show that the agenda for negotiations on terms of employment is far from static. In its memorandum *Towards a more productive economy* (February 2005), the Labour Foundation argues that a future-oriented policy on terms of employment demands an approach that promotes the growth of productivity and challenges employees to fully utilise their talents, while at the same time doing justice as far as possible to their personal circumstances and preferences. These elements form the core of social innovation<sup>15</sup>. In order to promote this future-oriented approach, the Foundation

13 G. van Sloten, A. Nauta, P. Oeij (2005) op. cit., p. 33.

14 C. Hillebrink, J. Schippers, J. van Stigt (2004) *Keuzes in arbeidsvoorwaarden*, op.cit., p. 30.

15 The theme of social innovation is dealt with at length elsewhere in the advisory report on mid-term socio-economic policy. Social innovation focuses on renewal of the labour organisation and the work process. Maximum utilisation of competencies and the development of talents can lead to greater productivity and employee satisfaction. The economic and social aspects are therefore interlinked. Social innovation can take various different forms. Employers' associations and trade unions make use of the concept of “working more cleverly”, for example, which focuses on improvements in technology, organisation and employees, as well as on interaction between these elements.

attaches a great deal of importance in this context to a modern social policy. Collective agreement issues that relate to social innovation include the organisation of work (working hours), health management (absenteeism due to sickness), employability (lifelong learning, career planning), and performance-related pay (see text box). It is important here that increased productivity is accompanied by good internal industrial relations that are shaped by, amongst other things, a modern social policy.

### Increased productivity through negotiations on terms of employment

The Labour Foundation refers to the following productivity-boosting factors in the context of negotiations on terms of employment:

- *Management of working hours.* Management of working hours makes it possible, in consultation with the works council and the employees concerned, to coordinate the work that needs to be done with the availability of personnel. This can be done, for example, by means of effective timetabling that links up with the dynamics of the work process but also takes account of employees' wishes regarding working hours and the number of hours to be worked. The increasing use of the Internet and mobile communication services also demands that employees arrange their work and personal activities more flexibly (telework).
- *Policy on absenteeism due to illness.* Partly with a view to productivity and costs, it is necessary to pay specific attention to promoting the health of employees. This can be done by creating a working environment in which people can be productive and creative, thus increasing their deployment potential. Employees also have their own responsibility for preventing absence due to illness as far as possible. It is important for them to be able to carry out their work in a pleasant working environment in which they can make optimum use of their abilities, so that they feel a shared responsibility for how the company is doing.
- *Training and employability.* Increasing the qualification level of employees is one of the most important ways for an organisation to boost its productivity. In that light, the company should develop a more active policy on training and employability. The range of instruments for recognising competencies acquired elsewhere is valuable in this regard. The extent to which training is utilised, and the effects it has, can be increased if the training is the result of a personal development plan with the associated budget. An individualised development plan should preferably be the result of a focused careers policy within the company, with such a policy being developed if necessary.
- *Results-related remuneration.* Where higher earnings are generated jointly, they can also be shared by means of results-related remuneration for all employees (or for a group of employees). The indicators that are the basis for determining results-related remuneration will in many cases be related to the priorities in the company's operations. Those indicators will in any case need to be open to being influenced by the employees if they are to have

the intended effect. Steps must also be taken to prevent the introduction of results-related pay system leading to constant excessive work pressure or to a worsening of the working atmosphere.

- Source: Labour Foundation (2005) *Op weg naar een meer productieve economie*, publication no. 1/05, The Hague, especially pp. 11–14.

The memorandum by the Labour Foundation points out that collective agreements must offer sufficient scope for productivity-boosting initiatives at company level and must also supports such initiatives. The memorandum also states<sup>16</sup>: “Productivity improvement requires constant attention and shared efforts by employers and employees and their organisations. A climate must be created for negotiation and cooperation that makes it possible to reconsider existing views on codetermination.”

## 2.4 Summary and conclusions regarding structure of collective agreements

On the basis of the above considerations, the questions regarding decentralisation of the negotiating structure that were raised in Section 2.1 can be answered point by point:

- Collective agreements have not become less important. The absolute number of collective agreements has increased in recent decades. The coverage of collective agreements remains constant at about 85%.
- The absolute increase in the number of collective agreements can be traced to the increase in the number of company collective agreements. Even so, the great majority of employees covered by a collective agreement are covered by a sectoral collective agreement. In a number of sectors, for example banking, the sectoral collective agreement is split up into company collective agreements, although there is in fact no trend in that direction.
- Decentralisation within sectoral and company collective agreements takes a number of different forms. The two basic forms are a layered collective agreement structure and a “mix and match” collective agreement. This “mix and match” collective agreement – in which employees can make individual choices regarding time and money, within certain frameworks – is the most common. This type of decentralisation has grown rapidly in recent years, with almost 60% of collective agreements now offering individual options.
- A future-oriented policy on terms of employment demands an approach that promotes the growth of productivity and challenges employees, while at the same time doing justice as far as possible to their personal circumstances and preferences. This demands joint efforts by employers and employees and their organisations.

16 Labour Foundation (2005) *Op weg naar een meer productieve economie*, op. cit., p. 10.

Decentralisation therefore occurs primarily within the existing negotiating frameworks of a company or sectoral collective agreement and does not lead to the breakdown of these frameworks or to a substantial shift between them. This is sometimes referred to as controlled decentralisation. This type of decentralisation is also found in a number of case studies<sup>17</sup>. All of this also fits in with the recommendations made by the Labour Foundation. In its *New Course* memorandum, the Foundation points out that the social partners do not see the sectoral collective agreement as being open to discussion. It is stated that the need for a tailor-made approach in some sectors will lead to more general rules and/or fewer rules in collective agreements which can then perhaps be filled in at company level. *Agenda 2002* points out that collective agreements are still valuable as a structuring and directing framework for negotiations on terms of employment. However, depending on the extent to which the need for differentiation and a tailor-made approach makes itself felt, greater scope will need to be provided for more detailed consideration on a company basis, or within the company. This is worked out in greater detail in the 1999 memorandum *Towards tailor-made terms of employment [Naar arbeidsvoorwaarden op maat]*<sup>18</sup>. The recent memorandum *Towards a more productive economy* also points out that the decentralisation process is taking place within a general framework set by collective agreements.

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17 See for example Frank Tros (2001) *Arbeidsverhoudingen: decentralisatie, deconcentratie en empowerment*, *Tijdschrift voor Arbeidsvraagstukken* 2001 - 17, no. 4, pp. 304-318; Frank Tros (2002) *Decentraliserende Arbeidsverhoudingen: De casus arbeidstijden*, *SMA 2002* - no. 1, pp. 57-69; René Torenvlied, Agnes Akkerman (2002) *Doorwerking in de diepte: De doorwerking van Agenda 2002 in de agenda en onderhandelingen van de cao grootmetaal 1998*, *BenM*, 29 - 4, pp. 218-231.

18 Labour Foundation (1999) *Naar arbeidsvoorwaarden op maat: Vergroting van de keuzemogelijkheden voor werknemers betreffende het samenstel van arbeidsvoorwaarden*, The Hague.

## 3 Decentralisation: situation regarding collective agreements and social/labour legislation

### 3.1 Introduction

#### *Theme addressed*

This section deals with the extent to which the tendency towards decentralisation and differentiation in Dutch industrial relations is apparent in collective agreement arrangements that do not relate primarily to pay. Consideration takes place against the background of the scope offered by the relevant legislation and regulations. Specifically, this section deals with recent developments in the areas of working hours and conditions, work and care, and the practical effects of the Flexibility and Security Act. As the following description shows, this basically concerns the shift in responsibilities between the various parties involved (government, the social partners at sector and company level, and individual employers and employees).

#### *General picture*

Where the policy fields of working hours, working conditions, and flexible work are concerned, the general picture would seem to be that the legislature is giving the parties at sector or company level greater leeway to make their own arrangements. The picture is unclear regarding the extent to which those parties actually make use of that increased leeway, i.e. whether there is in fact further differentiation. As far as the policy field of work and care is concerned, the Government has in recent years taken on more of the responsibility, meaning that one is in fact dealing with a case of centralisation. The legislation that has been passed does, however, provide for the possibility of concluding tailor-made agreements at local level.

### 3.2 Working hours

Working hours are a significant component of employment contracts. One is dealing here with arrangements concerning working hours and rest periods as they relate to the agreed number of hours to be worked. A brief summary is given below of the legal framework regarding working hours and rest periods. Consideration is also given to trends in the arrangements that the parties actually make in this regard.

#### *Legal framework*

The legislation on working hours provides a framework within which employer and employee can reach agreement on working hours and breaks. The legislation takes account of the provisions of the EU's Working Hours Directive, which includes specific minimum standards. The main objectives of the current Dutch Working Hours Act [*Arbeidstijdenwet*] are to ensure the safety, health, and welfare of employees in relation to

their working hours and rest periods and to make it easier to combine work and care tasks, as well as other responsibilities apart from work. The act includes concrete standards for working hours and rest periods.

In recent years, there have been major changes in the legislation on working hours. The 1996 Working Hours Act simplified the rules and restricted the role of government in implementing them. The system comprised in the act gives employers and employees a certain freedom at sector or company level to deviate from the standard rules set out in the act and to conclude agreements on working hours and rest periods (see text box). The thinking here is that those concerned can collectively make a proper appraisal of the matters that play a role in this regard, for example working conditions, pay, and rules on leave<sup>1</sup>.

### Normal system and negotiating system

The 1996 Working Hours Act provides for a double system of standards. This means that there are, for example, two standards for the maximum number of hours to be worked per shift: the normal standard and a negotiating standard. The normal standards jointly comprise the normal system, while the negotiating standards constitute the negotiating system.

In principle, the normal system applies. During collective negotiations, however, a decision can be taken to deviate from the standards set out in the normal system. In doing so, the broader standards contained in the negotiating system of the Working Hours Act must not be exceeded. A collective system is taken to include a collective agreement. The act deems a written agreement between the employer and the works council or employees' representatives to be equivalent – *under certain circumstances* – to a collective system.

The Cabinet is currently in favour of further simplification of the Working Hours Act. In April 2006, it submitted a bill to the Lower House<sup>2</sup> in which it endorsed the proposals in the Council's advisory report *Simplification of the Working Hours Act [Vereenvoudiging Arbeidstijdenwet] (2005)*<sup>3</sup>. In that report, the Council argued in favour of a simplified system of standards which, in accordance with the objectives of the act, would give employers and employees more options for flexibility and a tailor-made approach. The Council considers that the Working Hours Act should, for example, provide better options for deviating from certain statutory standards in the course of collective negotiations. This would involve agreements concluded by the parties to a collective

1 Where Sunday work was concerned, the legislature ultimately decided to tighten up the legislation.

2 Lower House, Session Year 2005-2006, 30 532 ff. (Amendment of the Working Hours Act in connection with simplification of that act).

3 SER advisory report (2005) *Vereenvoudiging Arbeidstijdenwet*, publication number 05/03.

agreement and written agreements between the employer and the body representing the employees (i.e. the works council or the employees' representatives)<sup>4</sup>.

The Council considers that such a system would encourage consultations on working hours between employers and employees and would give them greater responsibility for setting standards at local level. This makes greater flexibility and a more tailor-made approach possible for both employers and employees. The proposed system would also have an effect as regards enforcement (partly as regards public law and partly private law). The proposals also imply a significant reduction in the amount of government regulation.

#### *Arrangements in collective agreements*

Evaluation of the Working Hours Act (2001)<sup>5</sup> showed that the double system of standards introduced in 1996 has made a positive contribution to new collective agreement arrangements regarding greater flexibility, reduction of working hours, and a more tailor-made approach to working hours and rest periods. In collective agreement negotiations in the second half of the 1990s, greater flexibility regarding working hours and business hours was mainly desired by employers, with reductions in working hours being pressed for by the unions. These interests can, however, coincide: increasing the length of business hours (i.e. a longer working day) can, for example, reduce the length of the working week for employees to four days (36 hours).

The evaluation report concludes that the double system of standards included in the Working Hours Act provides positive support for the parties to collective agreements in their attempt to make a more tailor-made approach possible in the area of working hours and rest periods. A number of cases show that in practice the success of the system depends on the specific circumstances at companies in the sectors concerned. It is primarily employers that take the initiative to make use of the broader standards provided for in the negotiating system. In many sectors, however, the unions consider that the system of internal consultation within companies is not sufficiently developed for employees to be able to stand up effectively to employers as regards greater flexibility in working hours. There has, nevertheless, been a trend towards greater readiness on the part of the unions to leave decision-making on working hours to employers and employees (or their representatives) at company level. In a number of sectors in which important company interests or *force majeure* applied, the unions preferred exemption from the section of the collective agreement on working hours rather than a broadening of the collective agreement standards.

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4 No deviation from the statutory standard agreed on by the employer and the representative body is permissible if it is not compatible with any collective agreement that may apply.

5 J.W.M. Mevissen, R. Knegt, W.S. Zwinkels [et al.] (2001) *Arbeidstijden in overleg? Evaluatie van de Arbeidstijdenwet*, The Hague, Elsevier Bedrijfsinformatie/Regioplan.

According to the evaluation, the collective agreement standards have indeed been broadened since the introduction of the 1996 Working Hours Act but this has been primarily within or up to the standards in the normal system. The study by the Ministry of Social Affairs and Employment of the Working Hours Act and collective agreements in 2006<sup>6</sup> revealed striking changes compared to the situation in 1998. The picture of collective agreements including concrete arrangements regarding working hours and rest periods is a varied one. The level of the agreed standards varies from “below the normal standards” to “above the standards in the negotiating system”. About half the collective agreements studied include a general provision explicitly stating that there will be consultation with the works council/employees’ representatives to draw up detailed rules on maximum working hours, Sunday work, night work, or rest periods and/or breaks. Compared to the situation in 1998, this represents a significant increase in such provisions. The reduction in specific collective agreement arrangements regarding the matters referred to has been accompanied by an increase in the number of collective agreements including provisions regarding the drawing up of detailed rules at local level.

#### *Negotiation at company level*

According to the evaluation of the Working Hours Act, workers on the shop floor were not really interested in that piece of legislation in 2001. Only a slight majority of organisations with a works council or employees’ representatives had made arrangements in that year regarding working hours and rest periods. That was primarily the case in large organisations and in organisations with variable work schedules. Many organisations with a works council or employees’ representatives had made no arrangements. The main arguments given for this are that the collective agreement offered sufficient scope, that fixed working hours applied (no overtime or night/Sunday work), or that there was no need for arrangements to be made because the parties were satisfied with the applicable working hours and rest periods. No more recent data is available on the extent to which arrangements are made at company level. Given the fact that the legislation at company level is complex and considered not to be sufficiently clear, the Council pressed in 2003 for improvements to that legislation<sup>7</sup>. The advice it gave in 2005 (referred to above) implies a further broadening of the options at company level for making tailor-made arrangements.

#### *Agreements at individual level*

Some two-thirds of employees are in a position to alter their working hours as they require (AVON Monitor 2004)<sup>8</sup>. That proportion was somewhat higher in 2004 compared to

6 S. Pott [et al.] (2004) *De Arbeidstijdenwet in 2003: Een onderzoek naar de Arbeidstijdenwet en het Arbeidstijdenbesluit in cao's*, Ministry of Social Affairs and Employment publication, The Hague.

7 SER advisory report (2003) *Aanpassing Arbeidstijdenwet*, publication number 03/03.

8 See G. van Sloten, A. Nauta, P.R.A. Oeij (2005) *Arbeidsvoorwaarden en arbeidsverhoudingen op ondernemingsniveau*, AVON Monitor 2004, p. 19 ff.

2002 (2002: 63%; 2004: 67%). The public sector and the financial services sector are the ones in which the greatest proportion of employees can make use of this option (8 out of 10 employees); the proportion is lowest in the building trade (5 out of 10 employees). The greater the number of hours they work, the more often employees can adjust their working hours. In most cases, arrangements regarding adjusting working hours are made orally with the employee's superior or employer.

#### *Conclusion*

A trend can be seen since the introduction of the 1996 Working Hours Act whereby social partners make use of the increased leeway offered by the legislation and regulations to make arrangements by mutual agreement. A study of the situation regarding collective agreements in 2003 revealed, amongst other things, that half the collective agreements examined now include a general provision expressly stating that detailed arrangements regarding working hours will be agreed on at company level with the works council or employees' representatives. This represents a significant increase in such provisions compared to the situation in 1998. As already pointed out, the Government – in line with the Council's advisory report of February 2005 – is in favour of a further broadening of the options for making arrangements at collective agreement or company level. The Government submitted a bill to that effect to the Lower House in April 2006.

### 3.3 Working conditions

Increasing decentralisation and differentiation/customisation is also taking place in the area of working conditions.

#### *Statutory framework*

The second half of the 1990s saw a reorientation as regards working conditions policy and the Working Conditions Act [*Arbowet*] with a view to increasing the efficiency and effectiveness of that policy. In its advisory report *Reorientation of the Working Conditions Act* [*Heroriëntatie Arbowet*]<sup>9</sup> (1997), the Council argues that certain target requirements can be implemented in a different manner than by compliance with associated statutory rules regarding the means, on condition that arrangements have been laid down on this matter in the collective agreement or that the employer has reached agreement with the works council or the employees' representatives. The 1998 Working Conditions Act<sup>10</sup> subsequently gave employers and employees greater responsibility for drawing up working conditions policy, with tailor-made arrangements being negotiated collectively.

At the same time, the Working Conditions Act introduced an obligation for employees to bring in support on working conditions and absenteeism policy from a certified

9 SER advisory report (1997) *Heroriëntatie Arbowet*, publication number 97/03.

10 This act came into force on 1 November 1999.

occupational health and safety service<sup>11</sup>. In its advisory report on *Occupational Health and Safety Services [Arbodienstverlening]*<sup>12</sup> (2004), however, the Council recommended that companies should be given greater freedom as regards bringing in occupational health and safety services. The condition would be that agreement has been reached on this matter within the company or at sector level. Given, amongst other things, the increased responsibilities that the employer has in the event of an employee becoming sick or incapacitated for work, the Council considered that the statutory obligation to call in a certified occupational health and safety service was unsuitable. The Council's recommendation was in fact made into policy. The amendment to the Working Conditions Act that came into effect on 1 July 2005 gives companies more options for a tailor-made approach when calling in occupational health and safety services.

The Council's advisory report *Evaluation of the 1998 Working Conditions Act [Evaluatie Arboret 1998]* (17 June 2005) proposes a further shift in responsibilities onto employers and employees<sup>13</sup>. In that report, the Council argues in favour of a new structure regarding working conditions that gives employers and employees greater scope for taking the relevant responsibility themselves. The structure that the Council proposes would require the Government to impose target requirements regarding the desired level of protection. Employers and employees at sectoral or central level would need to establish methods for achieving the set targets. Tailor-made arrangements would then be made at company level.

The proposed shift in responsibilities implies a reduction and simplification in the amount of government regulation regarding working conditions.

The Government informed the Lower House in mid-July 2005 that it was adopting the proposal for a different approach to working conditions legislation; on 9 May 2006, it submitted a bill to the Lower House for amendment of the Working Conditions Act<sup>14</sup>. The Lower House has since approved the bill.

#### *Collective agreements and working conditions covenants*

The tendency towards decentralisation in working conditions legislation links up with trends in actual practice whereby arrangements regarding working conditions are increasingly agreed on during negotiations at local level. Increasingly, a clear decision is made to harmonise with adjacent policy fields such as social security. Successive changes to the social security legislation on sickness and incapacity for work have meant, after

11 The intention of this is to do justice to the European Framework Directive and also to comply with the wish expressed by the Lower House for there to be an obligation – in conjunction with the introduction of obligatory continued payment of wages during illness – for the employer to provide a form of occupational health care for all employees.

12 SER advisory report (2004) *Arbodienstverlening*, publication number 04/03.

13 SER advisory report (2005) *Evaluatie Arboret 1998*, publication number 05/09.

14 Lower House, Session Year 2005-2006, no. 30 552 no. 1 ff., *Wijziging van de Arbeidsomstandighedenwetgeving 1998 en enige andere wetten in verband met het vergroten van de verantwoordelijkheid van werkgevers en werknemers voor het arbeidsomstandighedenbeleid*.

all, that it has become increasingly important for both the employer and the employee to make sufficient efforts to prevent sickness and incapacity.

Working conditions covenants are an important instrument in this regard. These involve employers, employees and government (i.e. the Ministry of Social Affairs and Employment) making arrangements on a sector basis to improve working conditions. Employers and employees at sector level take the primary responsibility, with the Ministry of Social Affairs and Employment being able to provide financial support and initiate activities.

In consultation with the social partners, the Government decided in 1998 to give working conditions covenants a more task-setting character. The covenant approach is intended to bring about a substantial improvement in working conditions, a drop in absenteeism due to sickness and the number of people claiming disability benefit, as well as to promote collective agreement arrangements regarding working conditions policy at sector level and to encourage the provision of occupational health and safety services. Government policy on working conditions covenants forms part of the broader policy aimed at preventing absenteeism due to sickness and occupational disability and the associated shift in emphasis as regards the distribution of powers.

Evaluation studies of working conditions covenants allow one to draw certain provisional conclusions. The parties to such covenants generally succeed in achieving the objectives regarding absenteeism and the number of people claiming disability benefit. The process of tackling risks at work has also been effective in a number of sectors. Working conditions covenants would also seem to bring about changes that are less easy to quantify, for example by opening up important problems in the sector to discussion and getting them on the agenda. A study is currently under way of the sustainability of the results of completed covenants and how they can be entrenched<sup>15</sup>.

Compliance with arrangements in working conditions covenants cannot be compelled. This is one reason why the Labour Foundation considers it desirable for such arrangements to be provided for at collective agreement level<sup>16</sup>. Another reason for this is that the covenant approach will come to an end by 2007 at the latest, whereas collective agreements are constantly being renewed.

It is also seen as an advantage that the scope of collective agreements can be increased by declaring them universally applicable, with the provisions no longer applying solely

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15 See Ministry of Social Affairs and Employment (2006) *Rapportage 2005/2006, Arboconvenanten, Versterking Arbeidsveiligheid en Versterking Arbeidsomstandighedenbeleid Stoffen*.

16 In a statement by the Labour Foundation on 5 November 2004, the combined employers' associations and unions say that they consider it desirable for there to be additional initiatives and investment within the context of the centralised negotiations between employees and employers – if such is not already the case – with a view to improving working conditions and converting existing working conditions covenants into collective agreements.

to the contracting parties but to the whole sector<sup>17</sup>. Studies of collective agreements show that since 2002 there has been an increasing number of covenant programmes in which social partners devote one or more provisions in the associated collective agreements to the arrangements made in the form of covenants. There was also a percentage increase in 2004<sup>18</sup>.

#### *Conclusion*

There is a tendency in the field of working conditions towards ongoing decentralisation in the sense that the Government reduces its involvement in certain respects, leaving greater leeway for employers and employees to make their own arrangements at sector or company level within the applicable statutory frameworks. The Government will only play a role in the context of the covenant approach until 2007 at the latest. The policy aims to ensure that individual companies take responsibility for the working conditions within their organisation. At sector level, the arrangements that are concluded can be made applicable on a sector-wide basis by being declared universally applicable.

### 3.4 Work and care

In recent decades, the policy field of work and care, in particular, has regularly led to discussion of the roles to be played by government/legislature, social partners/parties to collective agreements, and bodies representing employees. During parliamentary debate on the Working Hours Amendment Act [*Wet aanpassing arbeidsduur*] in 2000, the Upper House requested clarification of the changing roles of the various parties and the relationship between legislation, collective arrangements and the scope allowed for a tailor-made approach. The Government complied with the Upper House's request with its *Memorandum on regulation/self-regulation* [*Notitie (zelf)regulering*]<sup>19</sup>, which examined in detail the changing roles on the basis of crucial developments in the 1990s (see text box).

While there is less government involvement in the area of working hours and conditions in favour of employers and employees, there is in fact a greater role for the Government as regards work and care. Serving the public interest by increasing the options for combining work and care formed the background, for example, to the 2001 Work and Care Act [*Wet arbeid en zorg*] and the 2005 Childcare Act [*Wet kinderopvang*].

17 See Ministry of Social Affairs and Employment (2005) *Jaarrapportage arboconvenanten 2005*, The Hague, pp. 11-13.

18 See Ministry of Social Affairs and Employment (2005) *Jaarrapportage arboconvenanten 2005*, The Hague, pp. 11-13. See also Ministry of Social Affairs and Employment (2005) *Terugdringing van ziekteverzuim en arbeidsongeschiktheid in cao's (2004)*, The Hague, p. 51 ff.

19 *Notitie (zelf)regulering: relatie wetgever, sociale partners/medezeggenschapsorgaan in de arbeidsverhoudingen*, Upper House, Session Year 1999-2000, no. 222a.

### Memorandum on regulation/self-regulation (2000)

In this memorandum, the Government concluded that there had been a trend – especially since the publication of the Labour Foundation’s *New Course* document in 1993 – towards greater leeway for parties to collective agreements and greater powers for works councils. The greater powers for works councils are based both on legislation and on collective agreement arrangements. The conclusion is that there are various movements underlying the trend towards self-regulation and decentralisation. Efforts are made for each dossier to ensure complementarity between government and other parties, something that in practice can lead to various “mixes” of regulation and self-regulation. According to the memorandum, increased government involvement in work and care is associated with the need for more – and more effective – options for combining work and care. Apart from the interests of employers and employees, this also involves public interests. The Government’s intention is to create frameworks and remove barriers. The memorandum argues that employers and employees themselves will need to give concrete shape and substance to this on the shop floor.

#### 3.4.1 *Leave and changes to working hours*

The *Memorandum on regulation/self-regulation* already referred to asserts that there has been insufficient progress in policy on work and care towards removing the barriers confronting people when they attempt to combine these two activities. There has, for example, been a stabilisation rather than increase in the percentage of collective agreements that include leave provisions. The memorandum states that the Government therefore felt that it had a responsibility to encourage the relevant changes and to set a standard<sup>20</sup>.

##### *Leave*

The *Work and Care Act* incorporates a number of existing rules on leave<sup>21</sup>, together with new ones (short-term care leave and, since 1 June 2005, long-term care leave). The basic principle of the act is that responsibility should be shared by employees, employers, and government. The act also attempts to do justice in an even-handed manner to the various different interests involved (see text box).

20 *Notitie (zelf)regulering*, op. cit., p. 9.

21 For example for pregnancy and maternity leave, emergency leave and other types of short-term leave, and parental leave.

### Differing interests

The Work and Care Act serves *collective interests* because it provides for a leave system allowing work and care tasks to be coordinated, thus promoting greater labour participation by both women and men. The *interests of the employee* are given shape through provisions for individual rights. Statutory regulation promotes equality between employees, as well as legal certainty and clarity. The rules take account of the *interests of employers* by strictly formulating the conditions for determining the extent of leave rights and the employees concerned. Entitlement to certain rights is also subject to certain conditions. The financing structure, moreover, attempts to create an appropriate balance between the costs incurred by government, the employer, and the employee.

- Source: Cabinet position paper on evaluation of Work and Care Act, 10 February 2005.

In order to make a tailor-made approach possible, some sections of the act provide for deviation from collective agreement arrangements to be allowable in consultation with the works council or employees' representatives. There are also differences between the various sets of rules on leave. Depending on the particular set of rules, the collectively agreed arrangements may involve a restriction on the length of the leave period, payment during that period, the conditions that leave is subject to, or the option of exchanging leave for holidays over and above the legal requirement.

As part of the evaluation of the act, there was also a study of the work and care rules in *collective agreements*. The 122 largest collective agreements in 2003 were analysed to see whether they included rules on leave. The study showed that 22% of these collective agreements included arrangements going beyond the statutory requirements and therefore offering employees more than is required by law.

Collective agreements also regularly include arrangements for restricting leave rights rather than extending them: 26% of the collective agreements studied included provisions to restrict the conditions, duration, or payment applying to leave. In 23% of cases, the agreement included provisions that both went beyond what is required by law and also deviated from the statutory rules<sup>22</sup>.

A survey of employers carried out in the context of evaluation of the Work and Care Act showed that in actual practice employers interpreted the statutory rules regarding leave in very different ways, with some offering more and some less than what is required by law. Whether the latter practice is or is not based on a collective agreement or on arrangements agreed on with the works council or employees' representatives was not investigated<sup>23</sup>.

22 Ministry of Social Affairs and Employment (2003) *Arbeid en zorg in cao's 2003*.

23 See Cabinet position paper on evaluation of Work and Care Act, 10 February 2005.

### *Changes to working hours*

The Work and Care Act includes a chapter covering the Working Hours Amendment Act [*Wet Aanpassing Arbeidsduur, WAA*], which came into force on 1 July 2000, although the latter continues for the present to be a separate piece of legislation. Under the Working Hours Amendment Act, employees have a right (subject to certain conditions) to modify their working hours (by increasing or reducing the agreed number of hours). An employer can refuse an employee's request to work more or fewer hours only if there are important reasons for doing so from the point of view of the company's business or the services it provides. Where the right to work more hours is concerned, it is possible to deviate from the standard by means of a collective agreement or – if no collective agreement applies or the applicable collective agreement does not include any relevant provisions – by reaching agreement with the works council or employees' representatives. Unlike the Work and Care Act, the Working Hours Amendment Act does not apply to companies with fewer than ten employees.

A study of the arrangements in collective agreements regarding reducing or increasing the number of hours worked (2003)<sup>24</sup>, showed that seven of the 122 collective agreements studied included divergent or supplementary provisions regarding increasing the number of hours an employee works; two of the 122 collective agreements had supplementary provisions regarding reducing the number of hours worked. Four collective agreements included arrangements regarding companies with fewer than ten employees; of these, two stipulated that the Working Hours Amendment Act applied to companies with fewer than ten employees, while two others stated explicitly that the act did not apply. It should also be noted that a number of collective agreements go into detail regarding when an employer can refuse an employee's request to change the number of hours worked.

### **3.4.2** *Childcare*

#### *Legal framework*

The Childcare Act [*Wet Kinderopvang*], which came into force on 1 January 2005, provides for the cost of childcare to be shared between employees (i.e. parents), employers, and the government. The basic principle is that the employers of the parents concerned each pay one sixth of the cost of childcare, with the rest (i.e. two thirds) being covered by the government and the parents. The employer is not legally obliged, however, to pay one sixth of the cost. Arrangements in this regard are left to the parties to the collective agreement. This distribution of costs is in line with the proposals made by the Council in its advisory report *Work, Care, and Economic Independence* [*Arbeid, Zorg en Economische Zelfstandigheid*] (1998).

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24 Ministry of Social Affairs and Employment (2003) *Wet aanpassing arbeidsduur: Een onderzoek naar in cao's vastgelegde afspraken om de arbeidsduur te verminderen of te vermeerderen*, The Hague.

*Collective agreement arrangements*

Since 1990, there has been a major increase in the number of collective agreements including provisions regarding childcare. In 1990, 21% of collective agreements included such provisions; by 1999, that figure had risen to 63%; in 2002 it was 85%; and by 2003 it was 89%<sup>25</sup>. In 76% of collective agreements, there are centralised provisions, while 13% of collective agreements include decentralised agreements that must be specified in detail at company level.

In 1999, the Labour Foundation made recommendations to the collective agreement parties and companies regarding childcare. In its evaluation of those recommendations in October 2004, the Foundation found that the increase in the number of collective agreement arrangements for childcare shows that childcare is taken very seriously by the parties to collective agreements, despite the fact that childcare is only one of the many topics on the agenda during collective agreement negotiations. Against the background of the introduction of the Childcare Act, the Foundation published updated recommendations on childcare in October 2004. Amongst other things, it recommended that the employers of both parents should contribute to the cost of childcare. The Foundation referred in this connection to the possibility of introducing a “multiple choice” system when establishing or altering a childcare scheme<sup>26</sup>.

The most recent study of collective agreement arrangements on childcare concerns the contribution made by employers<sup>27</sup>. This shows that the great majority of childcare schemes include arrangements regarding payment of one sixth of the cost of childcare. Most collective agreements do not, however, include any provisions to deal with cases in which the partner’s employer fails to make a contribution. In the past, such provisions were often included. The Government submitted a bill to the Lower House on 27 June 2006 to amend the Childcare Act. One of the provisions of the amendment would be to make it compulsory, with effect from 1 January 2007, for the employer to contribute<sup>28</sup>.

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25 Ministry of Social Affairs and Employment (2003) *Afspraken over kinderopvang in cao's: Een stand van zaken medio augustus 2003*; Labour Foundation (2004) *Evaluatie van de Aanbeveling kinderopvang 1999*, appendix 1 with Labour Foundation (2004) *Aanbevelingen Kinderopvang 2004*, publication number 12/04.

26 Labour Foundation (2004) *Aanbeveling kinderopvang 2004*, The Hague.

27 See the letter from the Minister of Social Affairs and Employment to the Lower House on the topic of trends in collective agreements (1 June 2005), Lower House, Session Year 2004-2005, 29 800 XV, no. 83.

28 Lower House, Session Year 2005-2006, 30 613, no. 1 ff. (*Wijziging van de Wet kinderopvang en enige andere wetten in verband met de invoering van een heffing ter financiering van een werkgeversbijdrage in de kosten van kinderopvang*). The Government considers it extremely important for this amendment to come into force on 1 January 2007. Given the restricted number of sittings that the Lower House will have before the elections, the Government decided to include the substance of the bill in the Tax Plan [*Belastingplan*] for 2007 and to withdraw the bill itself.

### 3.4.3 Conclusion

Government has assumed greater responsibility in recent years in the area of work and care so as to help deal with the problems faced by those who combine work and care and to increase labour participation by women in particular. Unlike other policy fields, one is therefore dealing here with centralisation rather than decentralisation. The basic principle has been, however, to do justice in an even-handed manner to the responsibilities of employers and employees. This expresses itself, in particular, in the possibility of making arrangements in collective agreements, or between the employer and the works council/ employees' representatives, to deviate from some of the legal provisions. Where the Childcare Act is concerned, the Government submitted a bill to the Lower House in mid-2006 that would make it compulsory for employers to contribute to childcare.

There are various opinions on this more central role of government in the policy fields of work and care. It has been argued, for example, that government is interfering too much in the responsibilities of employers and employees, who have in fact achieved significant progress in this regard through negotiations on working conditions. The latter is not in any doubt, but the legislature considers it to be its responsibility in the relatively new policy field of work and care to impose a basic system of universally applicable rules with a view to creating the conditions for combining work and care.

Evaluation of the Working Hours Amendment Act and the Work and Care Act has not revealed any specific problems regarding the distribution of responsibilities. The government is currently concerned mainly with the provision of more information. Studies of collective agreement arrangements regarding leave and changes in the number of hours worked show that only limited use is made at collective agreement level of the deviation options provided for by law.

It has been argued in the literature that Dutch companies are subject to relatively few institutional obligations regarding care and leave schemes. Compared to other countries, the authorities in the Netherlands exercise restraint as regards imposing statutory obligations, restricting themselves to a great extent to encouraging companies to make care and leave schemes possible. On the other hand, the options for part-time work and for flexible working hours in the Netherlands compare favourably to those in other countries<sup>29</sup>.

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29 E. Jongen, D. van Vuuren (2004) Kinderopvang, verlofregelingen en arbeidsparticipatie, *Tijdschrift voor Politieke Economie*, 2004 - no. 4, p. 93 ff.

### 3.5 Flexibility and security

The 1999 *Flexibility and Security Act* [*Wet Flexibiliteit en zekerheid*] introduced a number of changes in employment law. Its intention was to implement a balanced modernisation of the work system so as to combine flexibility with security. Amongst other things, the act regulates the use of temporary contracts, casual labour, and employment agency workers. A collective agreement can deviate in certain respects from the statutory provisions so as to allow a tailor-made approach. (One is dealing here with a “three-quarters mandatory” provision, i.e. one that can only be deviated from in a collective agreement.)

Initially, the parties to collective agreements made use of this deviation option primarily so as to bring existing collective agreement provisions into line with the Flexibility and Security Act, with new divergent provisions being introduced only to a lesser extent. Individual employers have mainly used the broader statutory options for concluding and terminating flexible employment contracts so as to conclude more successive temporary contracts and to hire in staff from employment agencies<sup>30</sup>.

A study of deviation from the “three-quarters mandatory” provisions in collective agreements shows that the extent to which this option is utilised was approximately the same in 2004 as in 2001, with 84% of collective agreements deviating from one or more provisions of the Flexibility and Security Act. Compared to 2001, however, greater use was made in 2004 of the option for concluding several successive temporary contracts (i.e. diverging from the “chain provision”). In 2001, this option was available in 21% of collective agreements, while in 2005 it applied to 57%. The proportion of diverging collective agreements that provided for an increase in the maximum total duration of such contracts rose from 12% to 20%<sup>31</sup>.

In a letter to the Labour Foundation (29 April 2005), the Minister of Social Affairs and Employment noted that a number of collective agreements have made “very extensive” use of the option for deviating from the chain provision. In the view of the minister, this is contrary to the purpose of the chain provision. The minister considers it important to prevent collective agreement arrangements being made that can be considered problematical in the light of that purpose; he believes that it is the social partners themselves who, in the first instance, should take responsibility for this. Before considering supplementary legislation, the minister asked the Foundation what efforts will be made by the social partners to actually achieve the objective of the chain

30 J.P. van den Toren, G.H.M. Evers, E.J. Commissaris (2002) *Flexibiliteit en zekerheid: Effecten en doelstreffendheid van de Wet flexibiliteit en zekerheid*, The Hague (study commissioned by Ministry of Social Affairs and Employment).

31 Ministry of Social Affairs and Employment (2004) *De wet flexibiliteit en zekerheid: Een onderzoek naar de mate waarin en de wijze waarop in de collective agreements van 2004 is afgeweken van ¾ bepalingen*, The Hague.

provision<sup>32</sup>. The Foundation dealt with this matter in its letter to the minister dated 18 July 2005<sup>33</sup>. The Foundation notes that it had written to the collective agreement parties the same day, reminding them of its earlier recommendations regarding the chain provision in collective agreements and of the desirability of giving reasons for any deviation from the statutory provisions.

### *Conclusion*

The options for deviating from certain provisions of the Flexibility and Security Act would seem to meet a certain need. As regards the chain provision, the Minister of Social Affairs and Employment has questioned whether the parties to a number of collective agreements have not made too lavish use of the option. The Labour Foundation has therefore recommended that the parties to collective agreements should give reasons for any deviation from the relevant provisions<sup>34</sup>.

## 3.6 Conclusion

This section has looked at trends in four policy areas in which there have been noticeable shifts in the distribution of responsibilities or a tendency towards decentralisation. Where three of these policy fields are concerned, the general picture would seem to be that the legislature is giving the parties at sector or company level greater leeway to make their own arrangements. The picture is unclear regarding the extent to which the parties concerned actually make use of the increased leeway provided for in the legislation, and there is therefore further differentiation. To some extent, this may be because of a lack of familiarity with the options for diverging from the rules; it is also still too early to establish what the effects actually are (a tailor-made approach in occupational health and safety services). Studies to evaluate the relevant legislation have not revealed any specific problems in this regard. Another issue is the extent to which the decentralisation provided for in the legislation actually leads to satisfactory results. In that connection, for example, one can refer to the option for deviating from the chain provision in the Flexibility and Security Act.

As far as the policy field of work and care is concerned, the Government has in recent years taken on more of the responsibility, meaning that one is in fact dealing with a case of centralisation. The legislation that has been passed does, however, provide for the possibility of concluding tailor-made agreements at local level. It would seem advisable to continue to keep track of trends in the distribution of responsibilities in this policy field.

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32 Letter (29 April 2005) from the Minister of Social Affairs and Employment to the Labour Foundation regarding evaluation of the Flexibility and Security Act.

33 Letter from the Labour Foundation (18 July 2005) to the Minister of Social Affairs and Employment regarding evaluation of the chain provision (Flexibility and Security Act).

34 Labour Foundation (2005) advisory memorandum *Evaluatie ketenbepaling Wet flexibiliteit en zekerheid*, 18 July 2005.



## 4 Differentiation: current situation regarding wage formation

### 4.1 Introduction

#### *Theme addressed*

This section looks at the situation regarding wage differentiation in the Netherlands. Two questions are considered:

- How do the generic pay components relate to those pay components that can differ from one employee to another, for example allowances, promotion, and special remuneration?
- What direction (education, job, sector) do wage differences between employees actually take?

After this introduction, Section 4.2 looks at the significance of the trend towards incidental wages and flexible pay as part of overall wage growth. Section 4.3 deals with wage differentiation according to educational, professional, and job level. Section 4.4 considers sectoral wage differentiation.

#### *General picture*

If a correction is made for the “comers and goers effect”, then the trend in incidental wages (i.e. “wage drift”) is of substantial importance for existing employees. Given that wage drift is influenced by factors that can differ from one employee to another, this is directly relevant to the extent of wage differentiation. Almost three quarters of collective agreements include arrangements for flexible pay. This mainly involves one-off or structural payments such as annual gratuities and pay for the “thirteenth month”. In recent years, however, there has been a major growth in the number of results-related payments made, for example profit-sharing and performance-related pay. Because an employee’s gross salary is still largely made up of the basic wage he receives for his job, the macro-economic significance of this trend is as yet only modest.

There was an increase in the period from 1997 to 2002 in the spread of pay according to educational level. On average, pay increases in line with the employee’s level of education. Continuing one’s education is therefore increasingly profitable. The lowest pay levels on the scales included in collective agreements are now almost at the level of the statutory minimum wage.

There is a structural sectoral wage effect. Even if one corrects for the background features of the relevant employees, some sectors consistently pay higher wages than others. This sectoral effect is fairly constant and is associated, amongst other things, with the difference in profitability between sectors. Compared to the United States, where wages

are set entirely at local level, the sectoral wage effect in the Netherlands is relatively minor.

## 4.2 Incidental wages and flexible pay

### 4.2.1 Introduction

Wage drift is of direct relevance to the extent of wage differentiation. Wage drift is determined, after all, by factors that can differ from one employee to another, for example individual allowances, promotion, and special remuneration. Wage drift is also indirectly important for the extent of wage differentiation due to the linking of the statutory minimum wage to the increase in negotiated wages. If wage drift is positive, this leads to an increase in the difference between the average rise in gross salaries and the minimum wage.

This section first surveys the trend in incidental wages (wage drift). It then deals with flexible types of pay as one of the sources of wage drift.

### 4.2.2 Wage drift

#### *Definitions of incidental wages*

Wage drift is calculated as the difference between the rise in gross pay and the generic or initial wage growth. It should be noted that Statistics Netherlands [CBS] and the Labour Inspectorate [Arbeidsinspectie], both of which investigate wage drift, apply different definitions of initial wage growth:

- The CBS equates initial wage growth with the rise in negotiated wages. The Labour Inspectorate's definition is a broader one that equates initial wage growth with the generic wage growth that applies to all employees. This implies that there is also an initial wage growth for employees who are not subject to a collective agreement.
- The rise in negotiated wages comprises not only the rise in the wage for the job/basic wage but also changes in unconditional allowances and one-off payments. The Labour Inspectorate does not include allowances and payments made on an annual basis as part of initial wage growth.

This means that according to the Labour Inspectorate's definition the rise in negotiated wages is greater than the initial wage growth. Wage drift is consequently greater according to the definition applied by the Labour Inspectorate than according to that applied by Statistics Netherlands (see text box).

### Differing methods for calculating wage drift (Labour Inspectorate and Statistics Netherlands)

Figures for trends in wage drift in the Netherlands are provided by Statistics Netherlands and the Labour Inspectorate (in its “AVO” survey of terms of employment). These two sources apply different definitions. Statistics Netherlands calculates wage drift as the difference between the growth in gross wages – taken from the Organisation’s Employment and Wages Survey [*Enquête werkgelegenheid en lonen*] – and the *rise in negotiated wages*. The Labour Inspectorate, working on the basis of the payroll records of a representative sample of companies, calculates wage drift by taking the growth in gross wages and deducting the *initial wage growth* (i.e. the generic wage trend applying to all employees). Given that the initial wage growth calculated by the Labour Inspectorate is lower than the rise in negotiated wages (see below), wage drift is higher according to the Inspectorate’s definition than it is according to the definition applied by Statistics Netherlands (quite apart from other differences in definitions and estimates).

According to the Labour Inspectorate, the initial wage growth in 2002 came to 2.2% and the rise in negotiated wages to 3.5%. Wage drift is consequently greater according to the definition applied by the Labour Inspectorate than according to that applied by Statistics Netherlands by 1.3 percentage points (3.5% minus 2.2%). According to the Labour Inspectorate, there were three reasons why the initial wage growth in 2002 was lower than the rise in negotiated wages.

- The average initial wage growth does not include the initial wage growth enjoyed by workers who are not covered by a collective agreement. This is lower than the initial wage growth for those who are so covered. Pay rises enjoyed by workers who are not covered by a collective agreement are often individual rises and are determined on the basis of specific circumstances in the company concerned.
- The rise in negotiated wages comprises not only an initial or generic component but also changes in (unconditional) allowances and one-off payments.
- Differences in the way the population to be studied is defined: the rise in negotiated wages relates to employees who are covered by the 115 largest collective agreements. The “AVO” survey also includes workers covered by other collective agreements. There are also differences in the point at which sampling/measurement takes place and sample effects.

The Labour Inspectorate compares employees’ monthly wage in the October of two successive years. Statistics Netherlands calculates the rise in hourly pay on the basis of the average rise in the monthly wage in a given year.

- Sources: For Statistics Netherlands' survey of wage drift, see (amongst other sources) M. Zuiderwijk (2004) *Incidentele loonontwikkeling van jaarlonen, 1996–2001*, CBS (2004) *Sociaal-economische trends, 1e kwartaal 2004*, pp. 32-36. For the survey by the Labour Inspectorate, see (amongst other sources) P.M. Venema, A. Faas, J.A. Samdhan (2003) *Arbeidsvoorwaardenontwikkeling in 2002: Een onderzoek naar de ontwikkelingen in de bruto-uurlonen en de extra uitkeringen*, ("AVO survey") Labour Inspectorate office The Hague. Venema, [et al.], op. cit. (2003), footnote 20, p. 15 deals with the difference between the initial wage growth and the rise in negotiated wages.

### *Significance and trend in wage drift*

Figures produced by the Netherlands Bureau for Economic Policy Analysis [*Centraal Planbureau*] show that, on average, the growth in gross wages over lengthy periods is for about three-quarters determined by negotiated wage increases and for about a quarter by wage drift. Between 1990 and 2005, for example, the average annual increase in gross wages was 3.4%. Of that figure, 2.7% was due to the rise in negotiated wages and 0.7% to wage drift. These macro-economic figures for the growth in gross wages are influenced by the "comers and goers effect", i.e. the difference in pay between workers entering and leaving employment. New employees generally earn less, on average, than those leaving employment, who are usually older. This effect is reinforced if the number of workers entering is greater than that of those leaving; it consequently plays a greater role in periods when there is a growth in employment. The "comers and goers effect" is by definition negative and consequently moderates the growth in gross wages for all employees. Conversely, correcting for this effect produces a higher growth in gross wages and therefore also higher wage drift for "stayers". Both the Labour Inspectorate and Statistics Netherlands provide figures for wage drift that have been corrected for the "comers and goers effect".

### *Labour Inspectorate wage drift figures for "stayers"*

The make-up of the growth in gross wages in 2004 as calculated by the Labour Inspectorate is given in table 4.1. For "stayers", wage drift in 2004 was much greater than initial wage growth.

table 4.1 Make-up of the trend in average gross hourly pay in 2004 (figures from Labour Inspectorate)

Components of trend in gross hourly pay	%
Trend in gross hourly pay	2.3
"Comers and goers effect"	-0.9
Trend in gross hourly pay for "stayers" of which	3.3
Initial	0.7
Incidental, of which	2.6
Fixed incidental	0.5
Variable incidental	1.9
Other incidental	0.2
Price effect of changes in hours worked	-0.1

Source: Labour Inspectorate (P.M. Venema, A. Faas, J. Hoeben, J.A. Samadhan (2005) *Arbeidsvoorwaardenontwikkeling in 2004: Een onderzoek naar de ontwikkeling van de bruto-uurlonen en extra uitkeringen*, The Hague, p. 25).

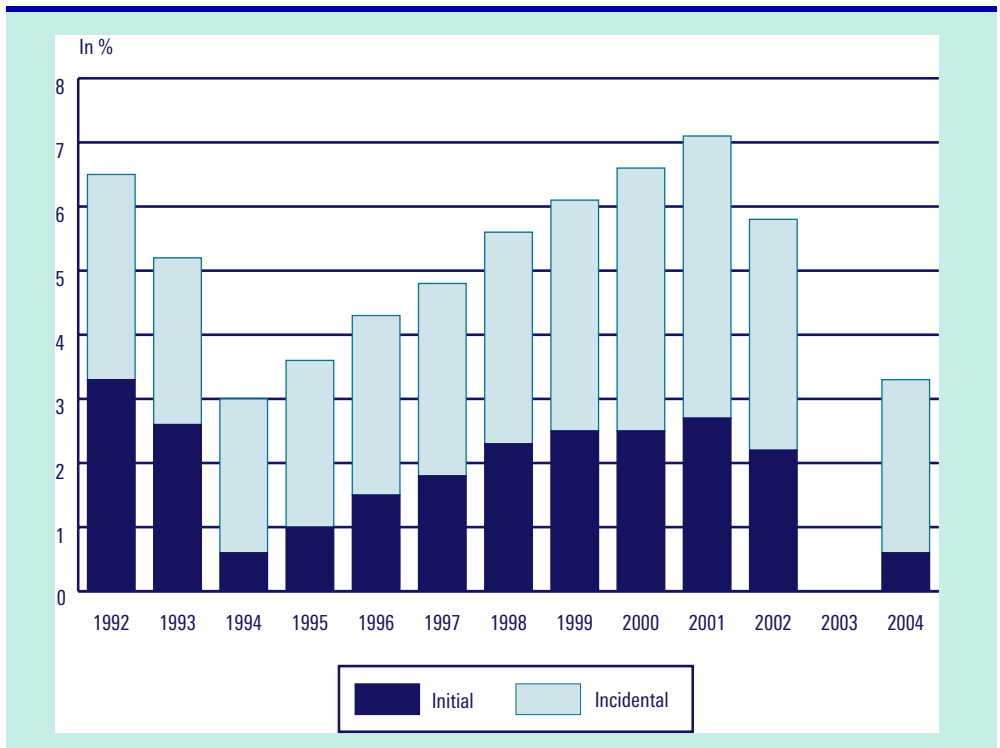
“Stayers” are defined as employees who remained with the same employer between the reference dates for the annual sample survey. “Stayers incidental” is subdivided into three components:

- *Fixed incidental*: contractually agreed increases in the job/basic wage that can differ from one employee to the next, for example periodic age-based or service-based rises.
- *Variable incidental*: increases in the job/basic wage that can differ from one employee to the next and which are directly influenced by the employer, for example rises based on effort or promotion. This component was the largest.
- *Other incidental*: changes in other pay components that do not belong to the basic wage the employee receives for the job.

The price effect of changes in hours worked relates to the effects these changes have on the composition of the population sampled. This may produce a change in hourly pay, even if the hourly pay remains the same for all employees.

In other years too, wage drift for “stayers” was also significant, although the differences between wage drift and initial wage growth was lower than in 2004. Figure 4.1 suggests that in the case of “stayers” more than half their increase in pay since 1992 consisted of incidental components.

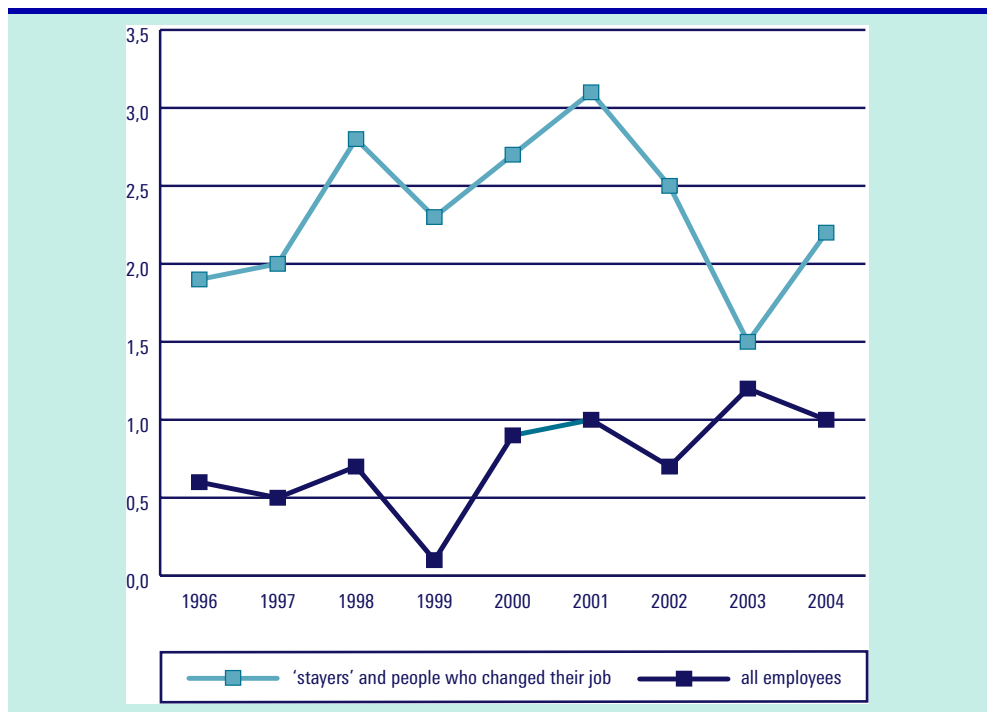
figure 4.1 Increase in initial wage and wage drift for “stayers” in business and industry (1992–2004)



Source: Labour Inspectorate (Venema [et al.] (2005) *Arbeidsvoorwaardenontwikkeling in 2004*, op. cit., p. IV).

The figures published by Statistics Netherlands also show that wage drift for “stayers” is far higher than would appear from the macro-economic figures (figure 4.2). Statistics Netherlands takes “stayers” to be people who continued to work on the labour market between the two reference dates. This therefore includes people who changed their job, a group for which Statistics Netherlands also provides separate figures.

figure 4.2 Wage drift (hourly) according to labour market status (1996–2004, annual average)



Source: Statistics Netherlands.

### 4.2.3 Development and significance of flexible types of pay

#### *Development of flexible types of pay*

Wage drift is the result of employees being promoted to a different salary scale, individual allowances, and special types of pay. The Labour Inspectorate’s spring and autumn reports on the provisions in collective agreements bring together standard data on flexible pay. Flexible pay includes types of remuneration that are not directly reflected in job scales, for example one-off payments, annual gratuities, pay for the “thirteenth month”, and conditional allowances such as profit-sharing and performance-related pay. Table 4.2 shows that there has been a significant increase in various types of flexible pay in the past few years. The most rapid growth has been in the number of collective agreements that include results-related pay.

table 4.2 Percentage of collective agreements including arrangements for flexible pay (2000–2005)

	One-off allowances and structural payments	Results-related pay	Total number of collective agreements including arrangements for flexible pay
2000	41	19	53
2001	54	26	64
2002	52	26	64
2003	59	23	64
2004	61	37	73
2005	62	34	70

Source: Ministry of Social Affairs and Employment (Voorjaarsrapportage cao-afspraken 2005, p. 17; *Najaarsrapportage cao-afspraken 2005*, p. 9).

Arrangements regarding flexible pay are more frequent in company collective agreements (90%) than in sectoral collective agreements (61%).

The most frequent types of one-off or structural allowances are year-end bonuses and one-off allowances. These are included when calculating the rise in negotiated wages, but results-related payments such as performance-related pay and profit-sharing are not.

#### *Significance of flexible types of pay*

As expected, the development of flexible pay elements is far more erratic than the basic wage an employee receives for his job. Between 1992 and 1995, flexible pay elements rose by 5% more each year than did the basic wage.<sup>1</sup> In 1999, the growth in flexible pay elements was even as high as 16%. The higher increase in flexible pay systems is as yet of only minor macro-economic significance; its annual contribution to the macro-economic rise in wages between 1992 and 1999 came to an average of only 0.1%. The reason for this is that an employee's gross pay consists largely (90%) of his basic wage for the job. In 1999, flexible pay made up only 4% of the total wage cost. The general impression is that the importance of flexible pay as regards the total gross wage cost has not increased significantly since 1999<sup>2</sup>.

1 See CPB (2001) *Centraal Economisch Plan 2001*, The Hague, p. 69.

2 This impression is based on the following considerations. In the first place, the portion of the gross hourly wage that was made up of the basic wage remained constant between 1999 and 2004 at 97%. Secondly, one-off annual payments (whether or not profit-related) for all employees as a percentage of gross annual pay excluding extra allowances rose slightly between 1999 and 2004 from 0.6% to 1.8%. That is still only a slight increase. See I. M.J. Pieters, P.M. Venema (1999) *Arbeidsvoorwaardenontwikkelingen in 1999*, The Hague, Labour Inspectorate The Hague, pp. 9 and 28; P.M. Venema, A. Faas, J. Hoeben, J.A. Samadhan (2005) *Arbeidsvoorwaardenontwikkeling in 2004*, op. cit., pp. 6 and 35.

### 4.3 Wage differentiation according to educational, professional, and job level

This section deals with wage differentiation according to educational, professional, and job level. Section 4.3.1 looks at the trend in wage differentiation according to educational level, while Section 4.3.2 focuses on the minimum wage.

#### 4.3.1 Differences in pay according to educational level

*Pay structure survey by Statistics Netherlands*

The pay structure survey produced by Statistics Netherlands provides figures for the growth in gross wages for employees as it relates to their professional and educational level<sup>3</sup>. These two levels are shown to be closely related. In 2002, 80% of employees who had been through higher education also worked at a high professional level. The correlation between educational level and job level is somewhat less at the middle and lower levels (70% and 60% respectively). This is also expressed in differences in hourly wages. Employees with a *degree* earned an average of 62% more than the average hourly wage. That figure was identical for employees whose *job* was at degree level. At lower levels, the percentages differ somewhat, with employees with only elementary training earning 24% less than the average and those with an elementary job earning 34% less.

*Differences in pay according to education from a long-term perspective*

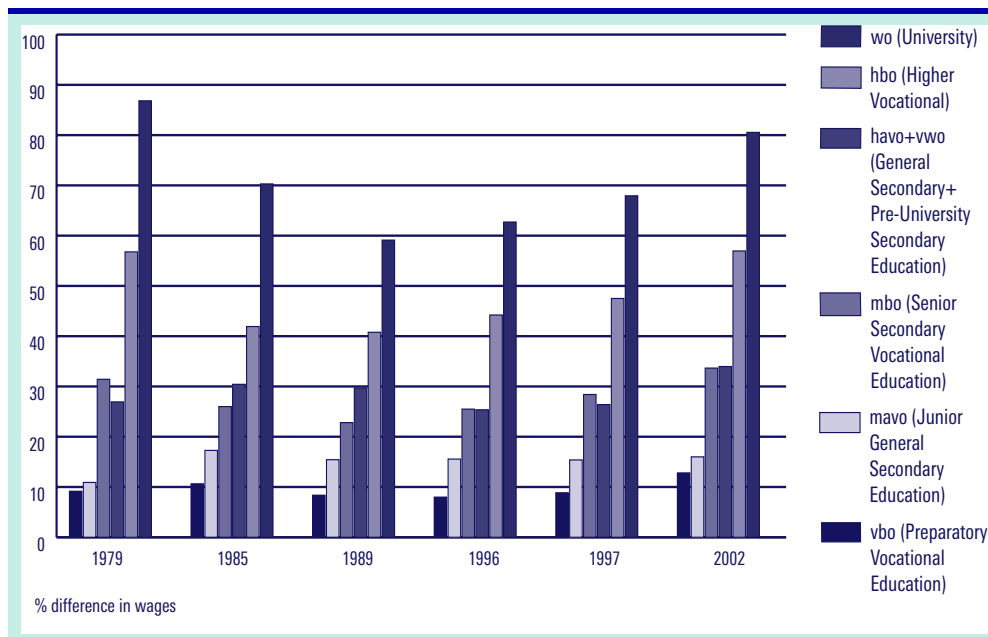
Wage differences in line with employees' education have increased in the past decade (see figure 4.2), whereas in the previous few decades there was in fact a fall in such differences. It would seem that the financial benefit of higher education, in particular, is increasing. This is in line with the view that education is losing the race with technology, meaning that differences in income between those with a high and a low level of education are increasing<sup>4</sup>. Whether that trend will continue is however uncertain<sup>5</sup>. As far as the qualification structure of the *workforce* is concerned, there has been a recovery since 1995 as regards participation in higher education, which will lead to an increase in the supply of graduates, albeit somewhat delayed. There is, however, a polarisation in the qualification structure: if there is no change in policy, the number of young people without even basic qualifications will continue to increase. As far as the qualification structure of the *demand* for work is concerned, it is particularly unclear whether the speed with which jobs and qualifications are upgraded will continue at the same rate and what the effects will be of outsourcing and off-shoring.

3 See W. Advocaat, J. van Cruchten, J. Gouweleeuw, E. Schulte Nordholt, W. Weltens (2005) Loon naar beroep en opleidingsniveau: het Loonstructuuronderzoek 2002, CBS *Sociaal-economische trends*, second quarter 2005, pp. 39-51; A. Corpeleijn (2005) Ontwikkeling van beloningsverhoudingen, 1997-2002, CBS *Sociaal-economische trends*, second quarter 2005, pp. 52-59.

4 See B. Jacobs (2004) The lost race between schooling and technology, *The Economist* 152 - no. 1, pp. 47-78.

5 For a more extensive discussion, see the Theme document on qualification structure.

figure 4.3 Percentage difference in wages in comparison to employees with only elementary training 1979–2002



Source: B. Jacobs, D. Webbink (2006) *Rendement onderwijs blijft stijgen, ESB 2006 - 25 August, p. 523*. Based on pay structure survey by CBS.

### 4.3.2 Minimum wage and lower end of labour market

Pay ratios at the lower end of the labour market are determined primarily by the trend in the statutory minimum wage and the lowest pay scales, and the use made of these in collective agreements.

#### *Trend in minimum wage*

Between 1984 and 1995, the statutory minimum wage lagged behind negotiated wages. In the following period, there was hardly any uncoupling of the statutory minimum wage and negotiated wages. In the latter period, the percentage increases in the statutory minimum wage and (weighted) negotiated wages remained virtually the same (see table 4.3). In 2004 and 2005, uncoupling led to the minimum wage falling behind the trend in negotiated wages.

tabel 4.3 Cumulative trend (as %) in statutory minimum wage and weighted negotiated wages (1984–2002)

	1984–2002	1995–2002
Statutory minimum wage	32.5%	21.7%
Weighted negotiated wages	52.5%	23.7%

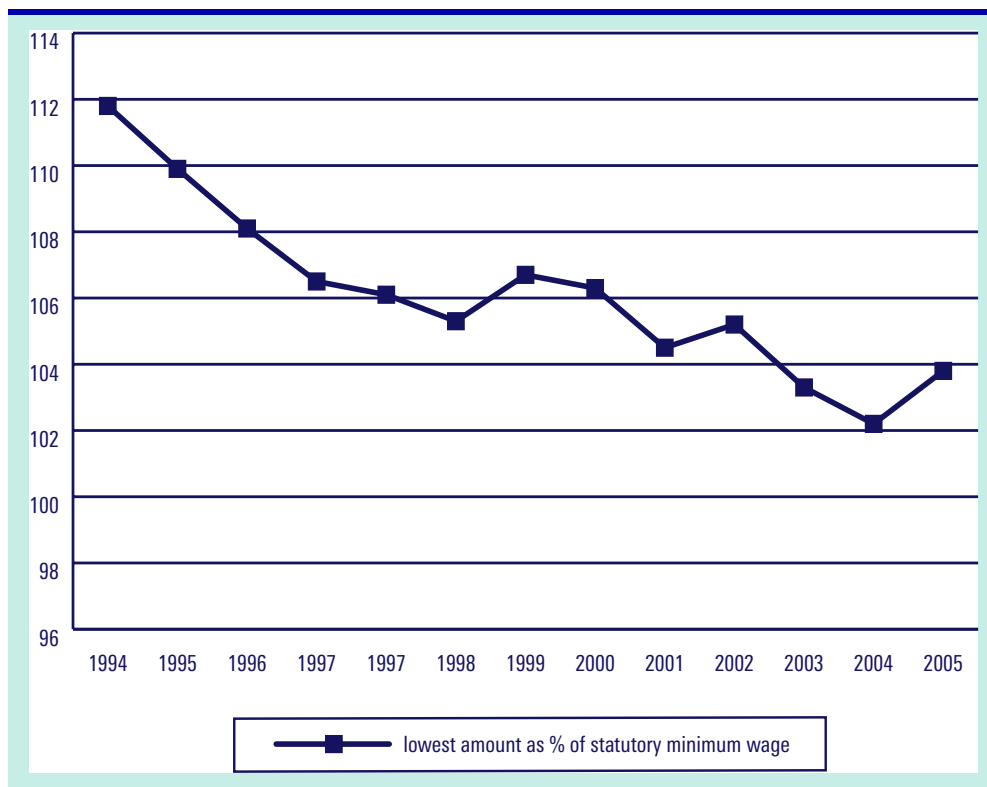
Source: Ministry of Social Affairs and Employment.

*Trend in lowest collective agreement pay scales*

In the course of the 1990s, the Labour Foundation and the Social and Economic Council repeatedly argued for a reduction in the difference between the minimum wage and the lowest pay scales<sup>6</sup>. The trend in the lowest pay scales is tracked by the Labour Inspectorate in its spring and autumn reports on the provisions in collective agreements. Figure 4.4 is based on the information in those reports and shows that the difference between the statutory minimum wage and the lowest pay scales has fallen continuously since 1994 and is now only very slight (3.8% 2005). The “target group” and “preliminary” scales are now almost at the level of the statutory minimum wage. The lowest regular scales in 2004 were almost 108.2% of the statutory minimum wage<sup>7</sup>.

The figures provided by the Labour Inspectorate also show that the level of the lowest pay is relatively high in agriculture and the building trade (approx. 110% and 107%, respectively,

figure 4.4 Lowest pay scales amounts in collective agreements as % of statutory minimum wage



Sources: Ministry of Social Affairs and Employment (*Voorjaarrapportage cao-afspraken* 2006, p. 8), for 1999–2005; SER (1999) *Bijzondere Aanpassing Minimumloon*, op. cit., p. 38, for figures for 1994–1998.

6 See, for example, SER advisory report (1999) *Bijzondere aanpassing minimumloon*, publication number 99/11, The Hague, p. 37.

7 Ministry of Social Affairs and Employment, Department for Implementation of Legislation on Terms of Employment (2005) *Voorjaarsrapportage cao-afspraken* 2006, p. 10.

of the statutory minimum wage in 2003), while the lowest pay is relatively low in business services and other service industries (approx. 102%)<sup>8</sup>.

#### *Application of statutory minimum wage*

The Labour Inspectorate has also investigated the application of the statutory minimum wage in Dutch business and industry<sup>9</sup>. Its study took a sample of 2650 companies (reference date October 2001) and looked at the extent to which employees receive a gross wage that is at the same level as the statutory minimum wage (“minimum wage earners”) or below it (“underpaid workers”). Table 4.4 shows the main findings.

table 4.4 Percentage of minimum wage earners and underpaid workers in October 2001 (as percentages of total number of workers in each category)

	Minimum wage earners	Underpaid workers
Total	2.1	1.1
Women	2.9	1.7
Men	1.4	0.6
Young people	8.5	3.8
Adults	1.2	0.7

Source: Labour Inspectorate (Venema (2003) op. cit., p. 11).

Underpayment of workers would appear to be associated, amongst other things, with agreements on net wages between employers and part-timers. If the net hourly wage is based on full-time employment, the gross wage may then turn out to be less than the applicable minimum gross wage. Reasons for this include the tax-free sum and exemptions in social security insurance. Another reason for underpayment is that when setting the pay for part-timers the employer assumes an incorrect normal or usual number of hours.

The survey gives the following profiles for minimum wage earners and underpaid workers. Part-timers are mainly women and young people (students and school pupils with a part-time job). They often work at the lower job levels in a production or technical position or a care or service position in small businesses in the retail trade or for repair firms, in the hospitality industry, or in agriculture.

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- 8 A new collective agreement was concluded in the greenhouse horticulture industry in July 2005; this includes a new pay structure in which pay in the lowest scale is based on the statutory minimum wage. The lowest scale applies mainly to temporary workers, including seasonal employees; these make up some 10 to 20% percent of those working in this sector.
- 9 P. Venema (2003) *Werknemers met een bruto-loon op en onder het wettelijk minimumloon in 2001*, The Hague, Labour Inspectorate, Central Office, Department for Monitoring and Policy Information.

## 4.4 Wage differentials between sectors

### *Consistent wage differentials between sectors*

Differences in the structure of employment mean that the wage differentials between sectors can be partly explained by wage differences according to educational level (described above). If a correction is made, however, for these and other background features (for example age and gender) of employees working in a particular sector, certain wage differentials still remain between sectors. A highly qualified employee in the financial sector earns an average of 20% more than a similarly qualified employee in other sectors. Highly qualified employees in the hospitality industry – the other extreme as regards wage differentials between sectors – earn 35% less than the average<sup>10</sup>. The standard deviation of this “pure” sectoral effect in the Netherlands is between 6 and 7%<sup>11</sup>, a figure that is relatively constant. Sectors that paid relatively well (or badly) twenty years ago continue to do so.

One factor contributing to the consistency of inter-sector wage differentials is the only minor sectoral differences between them as regards the increase in negotiated wages (see table 4.5). Negotiated wages have risen almost everywhere by an average of 40% since 1990, with only the non-commercial services sector lagging behind. All this would suggest that differences in productivity trends between sectors are expressed primarily in the selling prices they charge<sup>12</sup>.

table 4.5 Annual average negotiated wages per month in 2002 (index figure for 1990 = 100), total of young people and adults

	Including special remuneration*	Excluding special remuneration*
Total	140.3	139.1
Agriculture	143.7	143.7
Industry and building	143.2	142.2
Commercial services	140.8	140.2
Non-commercial services	136.8	133.9

\* Includes all mandatory non-monthly remuneration such as holiday allowances and year-end bonuses.

Source: CBS-Statline.

- 10 See W. Advocaat [et al.] (2005) *Loon naar beroep en opleidingsniveau*, op. cit. pp. 40-41. The figures given are for 2002. It should be noted that similar wage differentials also apply to workers with only a low level of training. Workers with only a low level of training who work for a financial institution earn (on average) a quarter more than the average. In the hospitality industry, workers with only a low level of training earn 15% less than the average.
- 11 See J. Hartog, R. van Opstal, C.N. Teulings (1994) *Loonvorming in Nederland en de Verenigde Staten*, *ESB*, 1994 - 8 June, pp. 528-533; J. Kouwenberg, R. van Opstal (1999) *Inter-industry wage differentials*, *CPB Report 99/3*, pp. 26-29. Wage differentials between sectors are naturally much greater if one does *not* correct for the background features of employees. See H.P. van der Wiel (1999) *Loonverschillen tussen bedrijfstakken*, *ESB*, 1999 - 25 June, pp. 492-494.
- 12 H.P. van der Wiel (1999) *Loonverschillen tussen bedrijfstakken*, *ESB*, 1999 - 25 June, pp. 492-494; H.P. van der Wiel (1998) *Inter-industry wage differentials in the Netherlands*, *CPB report 98/4*, pp. 27-30; H.P. van der Wiel (1999) *Loondifferentiatie in Nederland na 1969 een sectorale invalshoek*, CPB research memorandum no. 154, The Hague.

*Comparison with inter-sector price differentials in the United States*

In the United States, “pure” inter-sector wage differentials are much larger, with the standard deviation for the “pure” sectoral effect being almost twice that in the Netherlands. In the Netherlands too, sectors that generate relatively high profits, for example the financial sector, pay relatively high salaries, meaning that one is dealing with “rent sharing”. In the United States, this effect is much greater: wages there correlate more with company-specific profits, meaning that inter-sector wage differentials are also much larger.



# 5 Macro-economic harmonisation of wage bargaining

## 5.1 Introduction

### *Theme addressed*

In order to assess the desirability of incentives to encourage further decentralisation and differentiation, it is worth considering the situation regarding macro-economic harmonisation. Harmonising policy on terms of employment and the Government's socio-economic policy is intended to promote balanced economic growth in conjunction with more jobs and a properly functioning labour market<sup>1</sup>.

For an open economy, a certain amount of wage coordination and wage restraint remains necessary. What can be considered wage restraint is determined for one thing by the economic situation, competitiveness, and the profitability of companies<sup>2</sup>. It is against that background that this section deals with the trend in negotiated wages over the past ten years.

### *General picture*

The rise in negotiated wages in 2005 was the lowest for twenty years. The downward trend in negotiated wages began in 2002 and accelerated primarily after the autumn agreement [between the Government and the social partners] in 2003. Given the serious slowdown in growth that already commenced in 2001, this would seem rather on the late side. It should be noted, however, that the current slowdown in growth was abrupt and has been unexpectedly protracted and that there had been buoyant growth and a shortage of labour in the preceding period; these factors meant that the lower level of growth took some time to make itself felt on the labour market. The shortage of labour in the late 1990s led to companies bidding against one another, as a result of which one can now say that wage growth was excessive. This was further encouraged by the procyclical policy pursued by the Government. This buoyant wage growth during a period of strong economic growth contributed to the longer macro-economic slowdown during the slowdown in growth. It was only in the course of 2002 that the full seriousness of the macro-economic situation became apparent, with the macro-economic prospects then being adjusted significantly. One specific element was the increase in the burden of taxes and social security contributions, which made it difficult to exercise wage restraint. In addition, it was and still is the rise in pension contributions, above all, that leads to wage costs rising more rapidly than negotiated wages. Partly for that reason, wage restraint is expressing itself to a limited extent in an improvement in competitiveness. The appreciation of the euro also plays a role in the competitiveness of the Netherlands

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1 Labour Foundation (2005) *Bijdrage van de Nederlandse sociale partners aan het Nationaal Hervormingsprogramma 2005-2008 in het kader van de Lissabon-strategie*, The Hague, p. 3.

2 Compare: Labour Foundation (1999) *Verklaring van de Stichting van de Arbeid ten behoeve van het Arbeidsvoorwaardenoverleg 2000-2001*, The Hague, point 3.

vis-à-vis the non-euro countries. It is striking that the latest figures published by Statistics Netherlands show that the earned income ratio has not risen in recent years, unlike what happened during previous economic slowdowns.

All in all, it would seem justifiable to conclude that the macro-economic coordination of wage bargaining is open to improvement but is worth retaining. This harmonisation sets limits to the further decentralisation of wage bargaining. Further recovery of the country's competitiveness still demands pay restraint. An increase in the workforce will be necessary to prevent a shortage of labour and wage inflation in a coming period of buoyant economic activity.

## 5.2 Wage coordination

### 5.2.1 Institutions

The recommendations made by the Labour Foundation are an important instrument for wage coordination (see table 5.1). Those recommendations affect wage bargaining in sectors and companies through internal coordination within the parties concerned.

table 5.1 Labour Foundation recommendations regarding wage growth (1993–2005)

Collective agreement seasons	Recommendation
1994	Leeway for initial wage growth extremely limited, sometimes even non-existent.
1996 -2001	Pay restraint must be exercised.
2003	Increase in negotiated wages no higher than 2.5%. One-off, results-based payments remain an option.
2004–2005	No increase in negotiated wages in the case of collective agreements renewable in 2004, increase in negotiated wages virtually zero in 2005. Option still exists of agreeing on one-off results-based payments.

One important aspect of this is the way the recommendations are used by the trade union federations in setting maximum wage demands, which basically apply to all the unions that are affiliated to a federation<sup>3</sup>. In years when the Foundation does not formulate recommendations, the trade union federations set the maximum wage demand for collective agreement negotiations on the basis of the expected macro-economic scope for wage increases. This pay demand concerns the initial wage growth, i.e. the structural rise in employees' salary scales. An affiliated union that decides to demand more than the maximum wage increase can, in extreme cases, be made subject to sanctions preventing it from accessing strike funds in the event of a conflict arising with the employers regarding the union's demands. The maximum wage demand

3 See M. Rojer, L. Hartevelde (2002) *Doorwerking via actieve looncoördinatie: De maximale looneis van de vakcentrale FNV sinds 1994*, *BenM* 29 - 4, pp. 191-201.

remains one of the factors determining the average result of negotiations on the initial portion of wage bargaining. One-off payments are often used as “release valves” to maintain coordination and to counteract the potential rigidity-inducing effect of the central wage demand or the central recommendations made by the Foundation.

### 5.2.2 How does wage coordination operate?

#### Introduction

In order to determine how wage coordination operates, it is necessary first to consider movements in negotiated wages in the light of the economic situation. We will then consider wage growth in relation to competitiveness and profitability. A number of conclusions will then be drawn.

#### Negotiated wages and economic growth

Figure 5.1 shows the relationship between the increase in negotiated wages in the market sector and the growth in GDP between 1996 and 2006. There is a delay in the response of negotiated wages to economic trends. The peak in increase in negotiated wages in 2001, for example, came three years after the peak in economic growth in 1998.

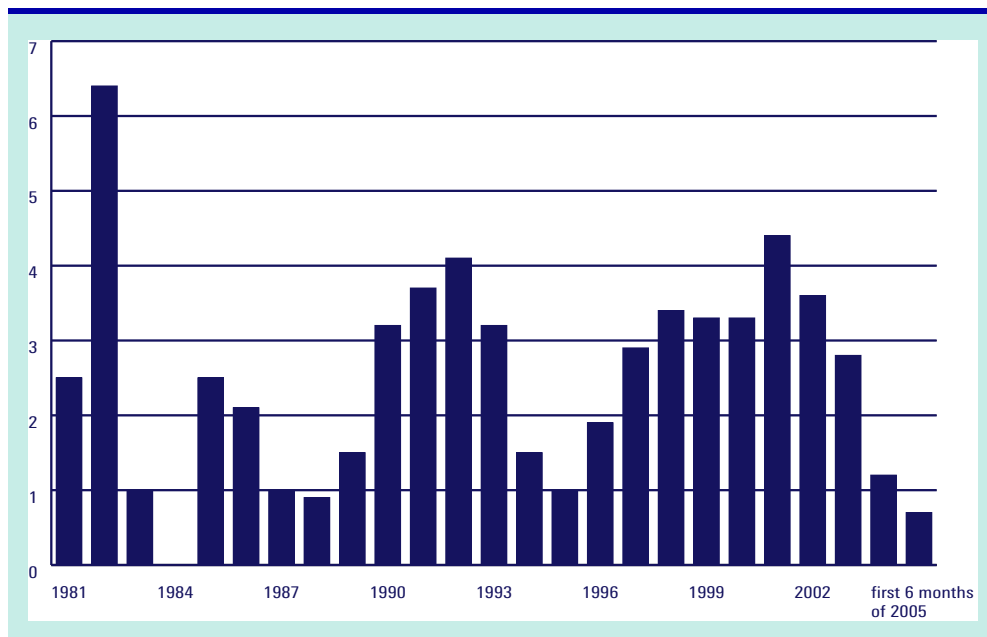
figure 5.1 Percentage growth in negotiated wages (market sector) and GDP (1996–2006)



Source: CPB.

Note: figures for 2006 are estimates.

figure 5.2 Trend in negotiated wages, 1981–2005 (in %)



First six months of 2005.

Source: Statistics Netherlands

Wage growth in the period from 1996 to 2001 was largely influenced by the tight labour market. In addition, wage growth in 2001 was forced up by the inflationary effects of the increase in value-added tax. In 2002, prices were also forced up by the introduction of the euro. These effects occurred just at the point when economic growth slumped sharply. Since the central recommendations by the Labour Foundation in 2003, there has been obvious wage restraint. This delayed response was also partly due to the abrupt and unexpectedly protracted nature of the slowdown in growth after 2001. The growth figures for the period 2001–2003 in the predictions by Statistics Netherlands and other institutes, for example, were significantly overestimated<sup>4</sup>. Wage restraint was also impeded by the increase in the burden of taxes and social security contributions, which put pressure on purchasing power<sup>5</sup>. The increase in negotiated wages in 2005 was the lowest since 1984 (see figure 5.2). A higher increase in negotiated wages is expected for 2006.

#### *Wage growth and competitiveness*

Competitiveness is affected not only by the rise in negotiated wages but especially by changes in employers' costs, wage drift, and labour productivity. The rise in the wage and salary bill per employee in the market sector is determined both by negotiated wages and by wage drift and the social security contributions payable by the employer. Table 5.2

4 See H. Kranendonk, J. Verbruggen (2006) *Trefzekerheid van korte-termijnramingen van het CPB voor de jaren 1971-2004*, CPB Document 106, The Hague, pp. 36-37.

5 Cf. CPB (2003) *Macro Economische Verkenning 2004*, The Hague, p. 98.

shows the contribution made by these components to the rise in the wage and salary bill per employee in the market sector. Column 3 shows that up to 1999 the difference between the change in the wage and salary bill and negotiated wages was fairly small. In other words: in the period from 1996 to 1999 the rise in the wage and salary bill per employee in the market sector was largely determined by the trend in negotiated wages. In the period from 2000 to 2004, that difference increased. As far as 2000 and 2001 are concerned, that rise was to a considerable extent due to wage drift<sup>6</sup>. The increase in the social security contributions payable by the employer also played a role in 2002–2004. This involved particularly the increase in pension contributions that was necessary after 2001 to restore the financial position of pension funds after the slump in share prices and the low interest rates.

table 5.2 Movements in components of wage and salary bill per employee in market sector, 1996–2006

	Wage and salary bill per employee in market sector	Negotiated wages	Difference between wage and salary bill per employee and negotiated wages	Wage drift	Social security contributions payable by employer
1996	1.1	1.9	-0.8	0.7	-1.5
1997	2.3	2.3	0	0.7	-0.7
1998	3.9	3.1	0.9	0.5	0.4
1999	3.7	2.9	0.7	0.7	0
2000	5.1	3.2	1.9	1.6	0.3
2001	5.5	4.2	1.3	2.8	-1.5
2002	5.5	3.5	2	0.5	1.5
2003	4.3	2.7	1.6	0.8	0.8
2004	3.5	1.5	2	0.9	1.1
2005	1.5	0.8	0.7	0.4	0.3
2006	0.75	1.5	-0.75	-1	0.25

Source: CPB.

Note: figures after 2002 have been revised. Figures for 2006 are forecasts.

Column 3 = Column 1 - Column 2 = Column 4 + Column 5.

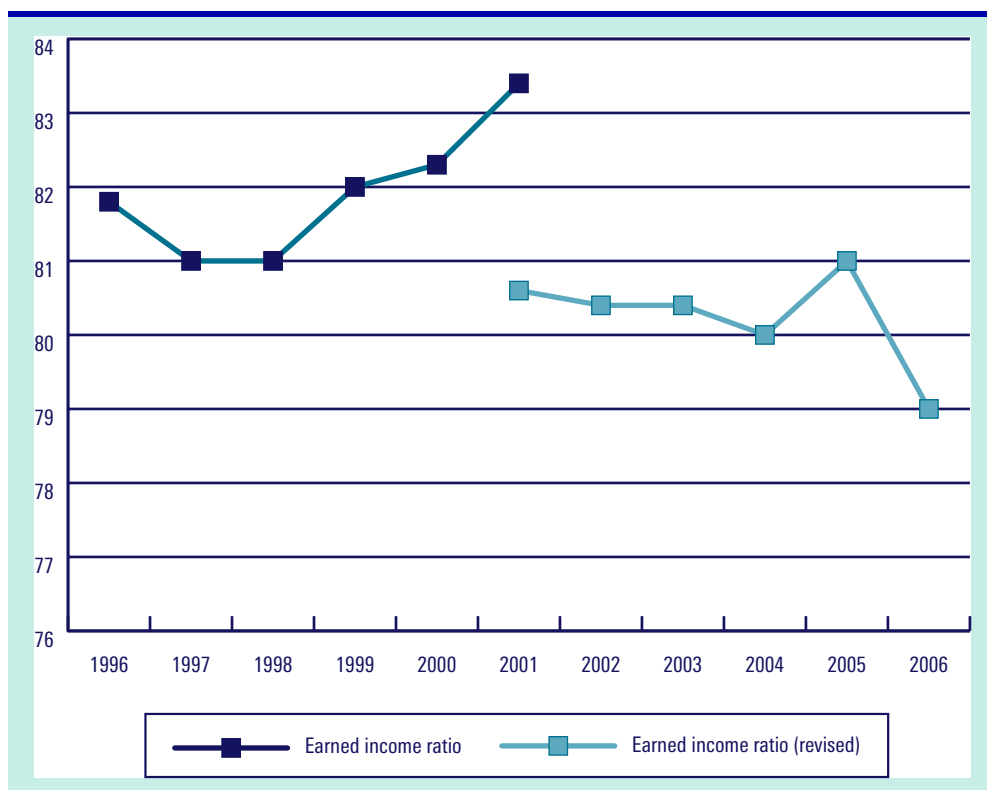
Compared to the other countries that have adopted the euro, competitiveness already began to worsen in 1998. This was due to the tight labour market in the Netherlands, leading to negotiated wages rising more than elsewhere in the euro area, where growth in the late 1990s was less buoyant. Since 2000, this rise in negotiated wages has been reinforced by increased wage drift and the social security contributions payable by employers. In conjunction with the slump in growth of labour productivity and a major appreciation of the euro, this contributed to a sharp fall in price competitiveness. Wage restraint in recent years, coupled with a recovery in the growth of productivity, has led to a certain recovery in price competitiveness.

6 The major increase in wage drift in 2001 was partly the result of the “grossing up” of the premium transfer allowance. This led to a 1.7% increase in wage drift. This grossing up also caused employers’ costs to fall in 2001. See CPB (2001) *Centraal Economisch Plan 2001*, The Hague, p. 68.

*Wage growth and the earned income ratio*

The earned income ratio in the market sector is an indicator of company profitability. Figure 5.3 shows movements in the earned income ratio between 1996 and 2006. One relevant point is the break in the trend in the figures (see text box). When revising the national accounts in 2005, Statistics Netherlands adjusted the earned income ratio with retroactive effect from 2001.

figure 5.3 Earned income ratio in market sector (1996–2006)



Source: CPB.

Note: for 2001, both the old and the new figures are given. The value for the earned income ratio in 2006 is an estimate.

In the tight labour market in the second half of the 1990s, the earned income ratio rose, with profitability coming under pressure. The major rise in wages in 2001, in particular, led – in conjunction with the collapse in the growth of productivity as a result of lower growth in GDP – to a major increase in the earned income ratio.

### Background to the revised version of the earned income ratio

The earned income ratio in 2001–2004 in fact developed entirely differently to what was booked up to 2005; in the market sector it was also at a different level. The Macro-Economic Outlook [MEV] for 2006 goes into the background and interpretation of these alterations in detail:

The fall in the earned income ratio in the market sector in 2001 was primarily due to the change in the method for measuring the production of banks. From that point on, payments to banks for financial services (FISIM) in the context of loans and savings have been explicitly calculated and booked as sales by the banking sector. As a result, the earned income ratio in 2001 was 3.8 percentage points lower. If the calculation had been carried out without FISIM, this key figure (after revision) would in fact have been 1 percentage point higher. Revision and regular adjustments have, however, changed not just the level of the earned income ratio but also its trend. Before revision, the ratio in 2004 was still 3 percentage points higher than in 2001; after revision it displayed a fall of 0.6 percentage points. Approximately 40% of this difference (i.e. 1.5 percentage points) can be ascribed to the movement in FISIM. The other 60% was almost entirely due to the labour productivity in the market sector, which – after revision – turned out to have risen (cumulatively) by approximately 2 percentage points more in the period 2001–2004 than Statistics Netherlands had estimated. This higher growth in productivity was primarily due to a higher estimate of the development of production (1.3 percentage points) but also to a lower estimate of the increase in the number of jobs (0.6 percentage points).

- Source: CPB (2005) *Macro Economische Verkenning 2006*, The Hague, p. 22

Revision of the national accounts produced a lower earned income ratio. According to the revised figures, the earned income ratio stabilised after 2001 and will fall in 2006. During the slowdown in growth in the early 1990s, there was a sharp rise in the earned income ratio. In its *MEV 2006*, (p. 35), the Netherlands Bureau for Economic Policy Analysis concludes:

*In retrospect, the market sector seems to have adjusted quite quickly to the worsening in the economic situation after the year 2000. The earned income ratio remained fairly stable, with the slow growth in production expressing itself in greater unemployment. According to the new figures, labour productivity increased more rapidly each year than had been estimated until recently. There is still, nevertheless, a significant fall in price competitiveness vis-à-vis companies in other countries.*

This conclusion regarding the quite rapid adjustment of the market sector contrasts with that reached by the OECD in its recent country report on the Netherlands<sup>7</sup>. According to the OECD, the market sector is adapting too slowly, specifically as regards adjusting

7 OECD (2005) *Economic Survey of the Netherlands*, Paris.

employment to production. This conclusion does not, however, relate to the current slowdown in growth but to experience over the past 35 years. The OECD also bases this conclusion on the old rather than the revised figures, which show a far more rapid adaptation of employment to production in the most recent period.

### *Conclusion*

During the past decade, there has been a delay in the response of wages to the economic situation. In the tight labour market of the late 1990s, it was difficult to curb wage growth in good time, all the more so because it was encouraged by inflation-boosting measures such as the increase in value-added tax. The seriousness of the slowdown in growth only became fully apparent in 2003. This also has to do with the abrupt and unexpectedly protracted nature of the slowdown in growth. The increase in pension contributions – necessary to restore the financial position of pension funds after the stock market crash – made wage restraint difficult. Among the positive factors are the fact that the earned income ratio has remained stable since 2001; the rise in negotiated wages is at an unprecedentedly low level; and the earned income ratio is falling as expected this year. The central recommendations of the Labour Foundation have definitely had a major role to play in this. Pay restraint continues to be necessary with a view to further recovery of competitiveness. Although wage growth has not been ideal given the delays, a failure in wage coordination has not become evident. Maintaining wage coordination continues to be worthwhile. It is difficult, however, to keep wage growth under control in a tight labour market. Partly against this background, it is important to prevent tight conditions on the labour market and to mobilise a greater supply of labour in good time.

## 6 The balance between decentralised negotiations and centralised harmonisation

### 6.1 Further opportunities for decentralisation and differentiation

#### 6.1.1 *The importance of decentralisation*

The decentralisation that commenced in 1982 (see Sections 2 and 3) is irreversible. Decentralisation and wage differentiation are essential conditions for a resilient economy. They make it increasingly possible to adopt a tailor-made approach, thus increasing the options open to employees and improving the adaptability of companies. In its New Course memorandum (1993) the Labour Foundation has the following to say in this regard:

*The needs of both companies and employees will lead to greater differentiation within the arrangements agreed on and to a greater variety of options. Responding to the changing needs of employees and companies must be viewed in a positive light and can contribute to economic growth, higher employment, and increased labour participation.*

Decentralisation and a tailor-made approach are also important with a view to the desired shift from aftercare to prevention as regards covering income risks. The precautions involved will largely need to be structured at company level. Better use of human resources by creating more opportunities for employees to divide their time between work, care tasks, and private life demands a tailor-made approach. The desired social innovation also requires there to be sufficient scope for this approach and for a variety of options within the labour organisation. It presupposes that the positive outcomes of that policy are applied partly by means of results-related pay in favour of those who have made a relevant contribution<sup>1</sup>. As far as employee insurance schemes (social security) are concerned, a shift of responsibility to a lower level can help prevent the insured risks actually arising or continuing for a long period. Wage differentiation may be desirable with a view to the better allocation of labour. In this context, the main consideration is wage differentiation with respect to type of work, i.e. according to educational level.

#### 6.1.2 *Further opportunities for decentralisation and differentiation within the negotiating structure*

The opportunities for further decentralisation and differentiation within the existing collective agreement frameworks have not yet been exhausted and it is important that they should be further utilised.

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1 Cf. Labour Foundation (2005) *Op weg naar een meer productieve economie*, publication number 1/05, The Hague.

- Not every collective agreement allows employees to trade off money and free time (Section 2.3). The options provided by the new life-course savings scheme [levensloop-regeling] are also relevant in this regard.
- Not every collective agreement includes flexible pay elements (Section 4.2.3). Flexible pay elements could be utilised more frequently, particularly within sectoral collective agreements, where the need for differentiation is probably greatest.
- Flexible pay should focus more on results-related elements and less on such automatic payments as the “13th month” or age-related pay rises. One should also note the positive effect that performance-related pay has on productivity (see text box). Steps do however need to be taken to prevent the introduction of a results-related pay system leading to constant excessive work pressure or to a worsening of the atmosphere at work<sup>2</sup>. Results-related pay is one of the mechanisms for encouraging social innovation and can be embedded in the broader long-term agenda that can be created at company level.
- Greater use could be made of the experience gained with framework collective agreements, which offer greater leeway for making decentralised arrangements at company level, perhaps with the involvement of the works council. More generally, detailed rules in collective agreements could be subjected to critical analysis, with the emphasis being placed, wherever possible, on target requirements.

### Higher production by means of performance-related pay

According to researchers at Tilburg University, the introduction of performance-related pay at Dutch companies and government institutions leads to a major increase in labour productivity. In excess of half the organisations with more than one hundred employees pay them on the basis of that performance. This was demonstrated by a study of more than 2700 organisations. Employees who receive bonuses (including team bonuses) or work on a piece-work basis are responsible for an average of 9% higher added value than employees at companies that do not have performance-related pay. Performance-related pay also brings with it what the Dutch call “selection at the gate”, in the sense that companies that apply this system are able to attract more productive workers. The popularity of performance-related pay increased greatly in the second half of the 1990s. According to the PhD student Anne Gielen, who carried out the Tilburg study together with Marcel Kerkhofs and Jan van Ours, this is probably the result of the tight situation on the labour market, with organisations using performance-related pay to recruit employees. Many companies have now included provisions for performance-related pay in their collective agreement. The system is especially popular in manufacturing and the building trade. It is least popular – only some 10% of organisations – in healthcare and education. Ms Gielen assumes that this is because labour

2 Labour Foundation (2005) *Op weg naar een meer productieve economie*, publication number 1/05, p. 14.

productivity is difficult to quantify in those sectors, although they are precisely the sectors where organisations would want to encourage better performance.

A study by the CNV union among employees at three major companies showed that the majority were in favour of results-related pay, at least if that system applied only to a limited portion of their salary and the targets set were feasible ones. According to the CNV study, young people have a more positive view of performance-related pay than older employees. What is striking in comparison to the Tilburg study is that respondents have grave doubts as to whether variable pay does in fact produce better performance or increased growth. The overwhelming majority believe that it has no influence on these factors as far as they themselves are concerned. They do not know whether it influences their colleagues.

- Sources: study at Tilburg University: A. C. Gielen, M. J.M. Kerkhofs, J.C. van Ours (2006) *Prestatieloon en Productiviteit*, ESB 2006 - 11 August, pp. 373-375; interview Anne Gielen: *De Volkskrant*, 25 January 2006; CNV study: CNV website (employees have positive attitude to performance-related pay).

### 6.1.3 Greater wage differentiation?

#### *No higher continued wage differentials between sectors*

Is a greater level of wage differentiation desirable with a view to the effective operation of the labour market? One first needs to decide, however, what direction that wage differentiation should take. As pointed out in the text box below, economists including Don, Teulings and Hartog believe that an increase in structural sectoral wage differentials does not have a functional effect as regards effective operation of the labour market; rather, it is evidence of insider effects and rents, i.e. extra wage differentials for established personnel that result from their dominant position. In a properly operating labour market, sectoral wage differentials are at most temporary and ultimately the same price is paid for the same kind of work. Differences in the growth of productivity between sectors should therefore express themselves primarily in price differentials. This assumes that product markets operate effectively, with the rents based on incomplete competition becoming smaller (see Section 3 for the umbrella document).

#### Wage differentiation and the operation of the labour market

A certain level of wage differentiation is necessary with a view to the effective allocation of work and thus effective operation of the labour market. What type of wage differentiation is necessary is, however, open to question. Should it be according to sectors and companies or according to type of work? According to the economists Teulings, Hartog and Don, wage differentiation according to type of work is only relevant as regards the effective allocation of work. Differences in the growth of productivity between sectors should therefore

express themselves primarily in price differentials and not in wage differentials. In this view, sustainable wage differentials between companies and sectors are evidence *not* of an effectively operating labour market but of the power of *insiders*. Temporary wage differentials are said to be functional in that they encourage workers to move from one company to another. It should, however, be noted that it is questionable how important wage differentials are when someone decides to change his job (see main text).

All this makes it difficult to use data on the extent of wage differentiation between companies and sectors to make judgments about the operation of the Dutch labour market. Measured by means of indicators such as the extent of external job mobility (i.e. the number of people changing their job as a percentage of the number of employed persons in a given year) or average length of employment, the Dutch labour market would seem to be highly flexible compared to other countries. One should also not overestimate the importance of wage differentials as a reason for employees to change their job. A study by the Social and Cultural Planning Office of the Netherlands (SCP) revealed that the main factors leading to job mobility are in fact dissatisfaction with working hours, the absence of a proper link between the employee's skills and the actual work he/she does, and a lack of appreciation.

- Sources: For the views of Teulings, Hartog and Don, see J. Hartog, R. van Opstal, C.N. Teulings (1994) *Loonvorming in Nederland en de Verenigde Staten*, ESB 1994 - 8 June, pp. 528-533; C.N. Teulings, J. Hartog (1997) *Corporatism or Competition: An international comparison of labour market structures and their impact on wage formation*, Cambridge, CUP; F.H.J. Don (2001) *De polder-instituten en de toekomst* (Commentary on Wellink and Cavelaars), in R.H.J.M. Gradus, J.J.M. Kremers, J. van Sinderen, *Nederland kennisland?*, Groningen, Stenferd Kroese, pp. 33-34. For job mobility, see M. Gesthuizen, J. Dagevos (2005) *Arbeidsmobiliteit in goede banen: Oorzaken van baan- en functiewisselingen en gevolgen voor de kenmerken van het werk*, The Hague, SCP.

#### *Wage differentiation according to educational level*

Effective operation of the labour market benefits more from differentiation based on the relative scarcity of different types of work. This type of wage differentiation according to qualifications and educational level has been increasing in recent years and will probably continue to do so, although to what extent is not really clear. This trend is also encouraged by the downward adjustment of the lowest basic pay scales in collective agreements towards the statutory minimum wage. From the point of view of social cohesion, a major increase in income differentials between those with a high level of education and those with only elementary education is undesirable. The best way to mitigate these disparities is to take steps to prevent pupils dropping out of school, to improve the effect of education in general, and to increase participation in higher education in particular.

## 6.2 Central harmonisation continues to be important

### 6.2.1 *Decentralised and centralised consultations important as regards adaptability*

In addition to consultations at local level, centralised consultations and harmonisation can also help strengthen the ability of the Dutch economy to adapt. Developments in 2003 and 2004 show what the effects can be of hiccups in the consensus economy<sup>3</sup>. Harmonisation and cooperation remained necessary in order to achieve shared objectives. The Council considers it relevant in this connection that the autumn talks held in 2003, 2004 and 2005 provided openings for more detailed discussion and consultation on socio-economic issues. Where the very recent past is concerned, the Council is glad to see that – following on from the autumn talks in 2005 – the Government and social partners have succeeded in reaching agreement on one another's efforts as regards training and work with a view to promoting employment and economic growth<sup>4</sup>.

The consensus economy can contribute in various ways to reinforcing the collective ability of the Dutch economy to react and adapt, for example by exchanging information, harmonising policy, and organising public support for strategic choices and institutional changes. That contribution is dependent, however, on the actual ability of government and social partners to reach a sufficient level of agreement regarding major components of socio-economic policy and to implement them efficiently and effectively.

### 6.2.2 *Support as core product of the consensus economy*

In the light of the above considerations, the Council considers it worth taking a closer look at the effectiveness of the consensus economy as regards finding support for the socio-economic policy agenda.

The consensus economy can be defined as a tripartite institutional arrangement in which employers' associations and unions join with government in directing socio-economic policy<sup>5</sup>. This arrangement can take the following forms:

- the provision of advice on policy by and via the Council, the Labour Foundation, and the Council for Work and Income (RWI);

3 See, for example, J. Bruggeman, P. van der Houwen (2005) *Voorbij Wassenaar: De Stichting van de Arbeid 1982-2005*, The Hague, Labour Foundation, p. 101 ff.

4 Agreements reached at the top-level talks held on 30 November 2005.

5 See SER advisory report (1992) *Convergentie en overlegeconomie*, publication number 92/25, p. 100. In its 1998 advisory report on socio-economic policy between 1998 and 2002 [*Sociaal- economisch beleid 1998-2002*], publication number 98/08, pp. 54-55, the Council clarified why it prefers the term "consensus economy" rather than "polder model". This is because the term "model" is too suggestive of a static, preconceived, simple and unambiguous set of policy instruments.

- agreements reached within the Labour Foundation between the organisations themselves and with government, both as regards the policy to be pursued and policy implementation by government or self-regulation.

The consensus economy can be seen as a coordination mechanism in addition to the two other coordination mechanisms of market and government.

#### *Importance of support for the socio-economic policy agenda*

Working out the details of the socio-economic policy agenda requires support, something that is particularly important with a view to developments in the medium and long-term. These developments demand a shared outlook as regards bringing about the institutional changes necessary for further development of the knowledge-driven economy, for coping with the socio-economic effects of an ageing population, and for achieving sustainable long-term development. Support is also necessary in order to implement specific components of the policy agenda, particularly in the area of labour market policy. Effective labour market policy requires the social partners and municipalities to associate themselves, via the Council for Work and Income, with the approach and with drawing up the specific measures to be implemented. It goes without saying that this policy must link up seamlessly with the broader socio-economic agenda for the longer term. A third reason why support is specifically necessary for the socio-economic policy agenda has to do with the contractual freedom of the social partners. The Government cannot simply interfere in pension schemes, for example.

#### *Support and the consensus economy*

One important objective of the consensus economy is to establish and entrench support on the basis of a shared outlook. Creating support within the consensus economy involves a trade-off between, on the one hand, the influence exerted by the social partners on government policy and the associated distribution of responsibility, and, on the other, ensuring a close bond between the social partners and the public cause. The Council expressed this as follows when evaluating its advisory task<sup>6</sup>:

*The core task of the Council when providing advice is to construct, maintain and renew support for the socio-economic policy that is to be pursued. This includes the distribution of responsibilities between government, business and industry, and the citizen. The Council functions in this regard as a consultative body where the wishes of business and industry with respect to government policy can be expressed and harmonised. On the other hand, the Council encourages the social partners to adopt a socially oriented outlook as regards the longer term that goes beyond merely the specific short-term interests of those they represent.*

6 SER-rapport (2001) *Werken aan draagvlak: Evaluatie van de adviestaak van de Sociaal-Economische Raad*, SER, The Hague.

*The consensus economy at European level*

With the increasing significance of the European Union, the importance of cross-border policy coordination has also increased. A number of different channels for advice and consultation are available at EU level (see table 6.1). For one thing, the European social partners have their own domain within the administration of the EU through the possibility of self-regulation. As part of the European social dialogue, the inter-profession European organisations representing employers and employees can play a role in creating legislation. Since 1999, moreover, a macro-economic dialogue has formed part of the EU's employment strategy. Since 2003, finally, there has also been a Tripartite Social Summit for Growth and Employment<sup>7</sup>. The central European employers' and employees' organisations held preliminary consultations with the heads of government of the "Troika" on the eve of meeting of the European Council.

table 6.1 Present socio-economic advice and consultation structure within the EU

Institution	Consultation/Negotiation	Advice/Consultation
European social dialogue (Arts. 138/139 TEC)	Consultation between social partners. After consulting the Commission, social partners can negotiate an agreement, which can perhaps be converted into legislation.	Commission consults social partners on specific matters. Administration by Commission.
Macro-economic Dialogue	Consultation between Council, Commission, social partners and ECB on policy mix in context of overall guidelines.	
Tripartite Social Summit for Growth and Employment	Consultation between social partners, Council and Commission on Lisbon strategy for growth and employment on eve of spring meeting of European Council.	
European Economic and Social Committee (EESC)		Provision of advice (under the EC Treaty, the Commission is obliged to consult the EESC on a number of matters).

### 6.3 Where does the balance lie between decentralised and centralised negotiations?

*Mix of decentralised and centralised elements has not been determined*

Decentralisation of negotiations or self-regulation of employment conditions is not desirable or possible in all cases. If the Dutch economy is to be able to adapt, a mix of centralised and decentralised elements is necessary, but the nature of the optimum mix is difficult to establish from an abstract perspective. The mix can differ according to each dossier and views on what actually constitutes the right mix may change in the course of

<sup>7</sup> Council Decision 2003/174/CE of 6 March 2003 establishing a Tripartite Social Summit for Growth and Employment, Official Journal L 70/31 of 14 March 2003.

time. A number of points are given below that may be relevant in determining the nature of the mix. These points are associated with the specific character of the relationships on the labour market (see text box). A transaction on the labour market is different, for a number of reasons, from a transaction between buyer and seller on a typical “spot market” such as the large-scale flea market held in Dutch cities on the Queen’s Official Birthday, at which the relationship between buyer and seller is usually once only and very brief<sup>8</sup>.

### The specific nature of relationships on the labour market

The first specific feature of labour market relationships is that they are often of a long-term nature. This is because both employer and employee can increase the yield generated by their reciprocal relationship by investing in company-specific knowledge and skills. Whether the parties are able to actually increase that yield is uncertain and depends on such things as the manner in which employees are encouraged and the certainty that each of the parties has regarding distribution of the extra yield – i.e. the return on its investment. If that uncertainty is considerable, the parties will not in fact make the necessary investment. This loss of efficiency can be seen as a type of transaction cost and is referred to in the economic literature as the “hold-up problem”. That problem becomes more significant the more important human resources are to a company.

Drawing up a contract makes it possible to reduce the level of uncertainty regarding the distribution of future yields from each party’s investment in the employment relationship. The contract cannot, however, remove all uncertainty. There are two reasons for this, in the first place the fact that not all the possible information is available that is necessary to precisely specify the best-effort obligations of the parties. In particular, it is often difficult to quantify the quality of the performance provided. Secondly, one needs to take account of exogenous events that can affect the expected yields. This problem can basically be dealt with by renegotiating matters. The difficulty, however, is that the possibility of renegotiating increases the level of uncertainty regarding distribution of the extra yield and thus reduces the incentive to invest in the employment relationship. That risk means that renegotiating will be avoided as far as possible, thus leading to a certain level of rigidity where wages are concerned.

Another specific feature of the labour market relationship between the employer and an *individual* employee is that that relationship is generally not an equal one from a socio-economic perspective. The individual employee is generally dealing with an institution – a business or public body – as his

8 See also J.L. van Zanden (2002) Driewerf hoera voor het poldermodel, *ESB 2002* - 3 May, p. 346.

employer. In order to compensate for that inequality, employees have banded together. The development of trade unions in turn encouraged employers to band together in their own organisations. Compensation for inequality and protection for individual employees are also important basic principles of employment law.

- For the hold-up problem, see J. M. Malcolmson (1997) *Contracts, Hold-up, and Labor Markets*, *Journal of Economic Literature*, 1997 - vol. 35, pp. 1916–1957. Teulings and Hartog have applied the hold-up problem to Dutch industrial relations. See C.N. Teulings, J. Hartog (1997) *Corporatism or Competition: An international comparison of labour market structures and their impact on wage formation*, op. cit. For compensation for inequality in employment law, see P. F. van der Heijden (1999) *Een nieuwe rechtsorde van de arbeid: Op zoek naar een nieuwe architectuur van het arbeidsrecht*, in P. F. van der Heijden, R.H. van het Kaar, A.C.J.M. Wilthagen (ed.) *Naar een nieuwe rechtsorde van de arbeid?*, The Hague, SDU, pp. 3-5.

#### *Important points when determining the mix of centralised and decentralised negotiations*

Decentralisation and consequently also self-regulation are in fact basic premises rather than doctrinaire principles. They have been selected because they are the best way of expressing the heterogeneous nature of preferences in decision-making and also of accounting for that decision-making. In addition to these advantages of decentralisation, the following points are also important when determining the correct mix:

- The possibility of responding to macro-economic events by means of central recommendations and wage coordination (see text box).
- The size of the transaction costs. For small companies in particular, a sectoral collective agreement can reduce transaction costs when compared to their own company collective agreement. If negotiations are decentralised, more negotiators may also be needed.
- The existence of public goods. A sectoral collective agreement makes it possible to create “collective goods” such as sector-related professional training or employment projects.

#### **Actual wage flexibility in the Netherlands and the United States**

The above consideration of the specific nature of labour market relationships shows that decentralising negotiations can produce a certain rigidity in wages because the parties will engage in renegotiation as little as possible so as to avoid the hold-up problem. This difficulty can be avoided by delegating the task of negotiating to organisations at a higher aggregation level at the start of the employment relationship. This separates wage bargaining from the day-to-day work situation; it means that the distribution of the yield is imposed on the individual employers and employees from outside. Such delegation makes it possible to adjust wages between times so as to take account of changes in the prevailing macro-economic circumstances. In the case of decentralised wage

bargaining, such adjustment is far less likely to take place because every effort is made to avoid the need to renegotiate. This is confirmed by empirical research.

Actual wage flexibility gives an indication of the macro-economic sensitivity of wages as regards unemployment. A number of studies have compared actual wage flexibility in the Netherlands with that in the United States. The wage bargaining system in the United States is the prototype of a decentralised system in which there is no question of coordination between and within umbrella organisations of social partners. In the Netherlands, by contrast, the dominant method of wage bargaining is on a sectoral basis and there is coordination both between and within the umbrella organisations. Wages in the Netherlands would appear to be twice as sensitive as regards unemployment as wages in United States. This also applies if the growth in GDP is taken as an indicator of the economic trend.

- Sources: for research on actual wage flexibility, see R. Pauli (2002) *Loont flexibiliteit?*, ESB 2002 - 27 September, pp. 692-694; M. Peeters, A. den Reijer (2003) *On wage formation, wage development and flexibility: A comparison between European countries and the United States*, DNB staff reports, no. 108/2003, Amsterdam, De Nederlandsche Bank. For a comparison of indicators for the extent of centralisation and coordination in negotiating systems, see OECD (2004) *Employment Outlook 2004*, Paris, pp. 149-156.

#### *Considerations applying to regulation/self-regulation of terms of employment*

The Dutch consensus model is based on self-regulation. The task of government is seen as providing a basic level of protection and structure<sup>9</sup>. Providing this minimum level of protection includes enforcing the fundamental rights of individuals and civil-society organisations. The guarantee of a basic level of protection finds expression in employment law and social security law and in the financing of social security. Government can create legal frameworks in which self-regulation by social partners can flourish.

What constantly needs to be considered is the reason for a basis/minimum that is guaranteed by government and what can be left to self-regulation by social partners or individual employers and employees<sup>10</sup>. Being so general, this question is very difficult to answer. There are two reasons for this: In the first place, determining what the public interest actually is involves weighing up, on the one side, the benefits of the basic level of structure and protection and, on the other, the potential transaction costs that may be entailed. Opinions may differ regarding this assessment. Moreover, views on what belongs in the public domain and what in the private domain can shift in the course of time.

9 See for example SER advisory report (1992) *Convergentie en Overlegeconomie*, op. cit., p. 119; *Sociale Nota 2001*, Lower House, Session Year 2001-2002, 28 001, nos. 1-2, p. 44.

10 Cf. *Sociale Nota 2001*, op.cit., p. 53.

There are, however, a number of fixed points. Guaranteeing the fundamental rights of persons and social organisations is, in all circumstances, an authentic task of government<sup>11</sup>. It is also in the public interest when the Constitution or international conventions and EU directives are concerned<sup>12</sup>.

One of the fundamental rights laid down in the key ILO conventions concerns the freedom to unionise and the freedom of negotiation<sup>13</sup>. The responsibility of the social partners for wage formation and employment-based pensions must be maintained without any curtailment. The primary responsibility of the social partners for setting up employment-based pensions and for the content of those pensions derives from the nature of such pensions: it derives from a commitment by the employer vis-à-vis the employee in the context of the employment contract and is intended to supplement the statutory old-age pension<sup>14</sup>.

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11 SER advisory report (1992) *Convergentie en overlegeconomie*, op. cit., p. 119.

12 *Notitie (zelf)regulering: relatie wetgever, sociale partners/medezeggenschapsorgaan in de arbeidsverhoudingen*, Memorandum of Reply, Upper House, Session Year 2001-2002, 9, p. 9.

13 One is dealing here with ILO Convention 87 on Freedom of Association and Protection of the Right to Organise (specifically the explanation by ILO's committee of experts of Article 3 of this convention) and ILO Convention 98 on the Right to Organise and Collective Bargaining. As explained in the Council's advisory report (2000) on *Socio-economic basis rights in the EU [Sociaal-economische grondrechten in de EU]*, these ILO conventions are part of the shared domain of basic rights in the EU. See also: L. van Westerlaak, A. Schellart (2005) *De Geus en de loonpolitiek: is de geest weer in de fles?*, *SMA* 60 (2005) - 7/8 (July), p. 360. These authors argue that a selective policy on the universal applicability of collective agreements that is intended to influence collective bargaining is at odds with Article 4 of ILO Convention 98.

14 SER advisory report (2001) *Nieuwe Pensioenwet*, publication number 01/06, The Hague, pp. 38-39.



# 7 Universal applicability of collective agreements

## 7.1 Introduction

### *Theme addressed*

The aim of the legislation that allows the provisions of collective agreements to be declared universally applicable is to reinforce and protect the collective arrangements made by social partners in the form of those collective agreements. Collective agreements are viewed positively because they promote stable industrial relations and industrial peace, thus forming an important precondition for favourable socio-economic development. Potential disadvantages of declaring collective agreements to be universally applicable are said to be the effect this has of driving up wages, the way in which it reinforces the position of insiders compared to new employees, and the fact that it leads to rigidity. Just how serious are these disadvantages and do they mean that the policy on universal applicability should be amended?

### *General picture*

There are no indications that this policy has the effect of driving up wages. Where the possible rigidity-inducing effect is concerned, it should be noted that social partners are aware of that risk. In the view of the Labour Foundation a realistic exemption policy is therefore the cornerstone of a responsible policy for declaring collective agreements universally applicable. Companies must have sufficient options open to them for being granted an exemption and the procedure involved must be a simple one. The exemption should apply automatically to companies that agree on their own collective package of employment terms with an independent representative body acting on behalf of the employees. Every collective agreement also needs to be the object of critical consideration to determine whether certain provisions should be made universally applicable and, if so, which provisions.

In assessing the potential rigidity-inducing effect of universal applicability, one also needs to consider the fact that many applications for exemption have in the past concerned minimum pay scales in collective agreements. As we have already seen, these scales are now almost at the level of the statutory minimum wage, meaning that this reason for granting an exemption has become less relevant. Studies have also shown that start-up companies and employees who are subject to universal applicability are less rather than more likely to consider applying for an exemption. This may also be, however, because the company concerned thinks that it has little chance of actually being granted an exemption. Further investigation is therefore needed to determine whether and in what way universal applicability is a burden on start-up companies and, if so, whether that burden can be reduced by granting exemptions promptly.

## 7.2 Legal framework for universal applicability of collective agreements

The Collective Agreements (Declaration of Universally Applicable and Non-Applicable Status) Act [*Wet op het algemeen verbindend en het onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten*] (the “AVV Act”) allows government to extend the scope of the collective agreement arrangements within a sector to cover companies that are not affiliated to an employers’ association that is a party to the collective agreement concerned. The collective agreement can then apply, in principle, to the whole of the sector.

The AVV Act came into force in 1937 after years of discussion. The core issue was basically a difference of opinion regarding the potential economic disadvantages of universal applicability in relation to the expected favourable effects on industrial relations. According to its explanatory memorandum, the main aim of the act is to protect the collective agreement and promote collective negotiations. The underlying idea is that universal applicability promotes industrial peace within the sector concerned. It also allows government regulation to be minimised and responsibilities to be allocated in such a way as to make them most effective. Universal applicability is also important as regards the “hard core” of terms of employment for employees posted by their company to work in other EU Member States (see text box).

### Universal applicability and posted workers

A service provider based in one EU Member State that posts workers to work in another Member State (the host country) is subject to the provisions of the Posted Workers Directive. That directive provides that the host country must ensure that such companies guarantee a certain “hard core” of terms of employment and working conditions for employees who are posted there. The “hard core” consists of statutory provisions imposed by the host country relating to:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay;
- conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures with regard to particular groups of workers (pregnant women, young people);
- equality of treatment between men and women and other provisions on non-discrimination.

Where the building trade is concerned, this involves not just statutory provisions regarding the “hard core” of terms of employment and working

conditions but also collective agreements that have been declared universally applicable. Under Article 3.10 of the Posted Workers Directive, Member States can also extend the scope of the relevant provisions of binding collective agreements to other sectors. The Netherlands recently decided to make use of this option with regard to all sectors other than the building trade (Act of 1 December 2005, Bulletin of Acts Orders and Decrees [Staatsblad] 2005, 626).

- Source: SER (2005) *Advies dienstenrichtlijn*, publication number 05/07, The Hague, pp. 117-119.

In 1998, the Minister of Social Affairs and Employment issued policy rules for universal applicability in the form of an Assessment Framework for Declaring Collective Agreements to be Universally Applicable [*Toetsingskader algemeen verbindend verklaring*]<sup>1</sup>. The general policy principle here is that drawing up agreements on terms of employment, and the actual substance of those terms, are basically the responsibility of employers and employees and their organisations.

### 7.3 Universal applicability in other Member States

All the “old” EU Member States have an instrument whereby the scope of a collective agreement can be extended to non-unionised employees and/or employers that are not affiliated to an employers’ association<sup>2</sup>. The universal applicability instrument as such is therefore not unique to the Netherlands. To compare the various systems for negotiating terms of employment, it is necessary to distinguish between two methods for extending the application of a collective agreement, namely extension to non-unionised employees and extension to employers that are not affiliated to an employers’ association (and thus to employees working for such employers).

The first type of extension (i.e. to non-unionised employees) involves extending the scope of the collective agreement to cover all employees working for the employer that is bound by that agreement. In six of the “old” EU Member States (Austria, Belgium, France, Luxembourg, Portugal and Spain), employees who are not members of a union that is a party to the collective agreement are covered by the agreement by operation of law. Spain is a special case because, if certain legal conditions are met, a sectoral collective agreement applies to all employers and employees in the sector concerned. Concluding

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- 1 Order of 2 December 1998, Government Gazette [*Staatscourant*] 1998, 240; this order came into force on 1 January 1999.
  - 2 This description makes use of M. Rojer (2002) *De betekenis van de cao en het algemeen verbindend verklaren van cao's*, The Hague, Ministry of Social Affairs and Employment, p. 10-12. The information in that publication is in turn based on the paper *Collective agreement extension mechanisms in EU member countries* (2001) by the Catholic University of Louvain, Institut des Sciences du Travail. It should also be noted that the Council’s 1992 advisory report *Algemeen-verbindendverklaring*, publication number 92/14, The Hague, p. 30 ff., includes a brief international comparison based on information available at the time.

the relevant agreements means that the parties to the collective agreement have legislative status. In some countries, application of the sectoral collective agreement to non-unionised employees is solely on a voluntary basis.

As far as the Dutch situation is concerned, it is relevant that Section 14 of the Collective Agreements Act [*Wet op de collectieve arbeidsovereenkomst*] obliges an employer that is bound by a collective agreement also to comply – unless the collective agreement provides otherwise – with its provisions on terms of employment with respect to employees who are not a member of one of the unions that are a party to the collective agreement. Section 14 of the Collective Agreements Act does not, however, mean that such provisions apply by operation of law to those employees' contracts<sup>3</sup>.

Besides the Netherlands, there are nine other EU Member States (Austria, Belgium, Germany, Finland, France, Greece, Luxembourg, Portugal and Spain) that have statutory provisions for extending the scope of sectoral collective agreements to non-unionised employees. The system in these countries is similar to that in the Netherlands. This *second* method of extending the scope of a collective agreement is not equally important in every country. In the Netherlands, for example, Section 14 of the Collective Agreements Act is more important than universal applicability<sup>4</sup>. In Austria, universal applicability is only applied to a limited extent but virtually all employers are bound by a collective agreement because employers are obliged to belong to an employers' association. In Germany too, universal applicability is only used to extend the scope of collective agreements to a relatively limited extent. In Belgium and Finland, on the other hand, the scope of the universal applicability instrument is greater. In Finland, for example, extension of universal applicability brings a further 25% of employees (working for employers that are not affiliated to an employers' association) within the remit of a sectoral collective agreement.

It should also be noted that in two Member States the scope of collective agreements or collective minimum terms of employment is extended due to pressure from trade unions. In Sweden, for example, the high degree of unionisation (more than 90%) enables the unions to force employers that are not affiliated to an employers' association to sign

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3 Section 14 does not make them subject to the collective agreement, nor does it allow them to claim application of the terms of conditions of employment that it includes. In order to do so, they must explicitly accept that those terms apply to them.

4 A total of 65% of employees work for an employer that is directly bound by a sectoral or company collective agreement. Moreover, 27% of Dutch workers are members of a trade union and may therefore be directly subject to a collective agreement. Of these, some work for public bodies that have terms in conditions of employment that are not subject to the provisions of the Collective Agreements Act (and therefore not Section 14). Some union members work for companies that have no collective agreement (or no direct collective agreement). Whatever the case, a collective agreement is more likely to apply to an employee because of Section 14 of the Collective Agreements Act than because of his membership of a union and/or because of universal applicability. Information from M. Rojer (2002) *De betekenis van de cao en het algemeen verbindend verklaren van cao's*, op. cit. p. 11.

existing collective agreements. In Italy, the unions can enforce application of minimum terms of employment through the courts.

## 7.4 Advantages and disadvantages of universal applicability

The assessment framework for universal applicability that was mentioned above refers to the following potential advantages of collective agreements in general and of universal applicability in particular:

*Collective agreements promote stable industrial relations and industrial peace, thus forming an important precondition for favourable socio-economic development. The intention behind making the provisions of collective agreements universally applicable is to support and protect the social partners in the exercise of that responsibility (by means of collectively agreed arrangements in the form of collective agreements). The intended effect of universal applicability is to prevent there being competition regarding terms of employment due to undercutting by employees that are not bound by the relevant collective agreement. Universal applicability makes it possible to restrict the volume of other rules imposed by central government.*

As the main drawbacks of universal applicability, the assessment framework mentions the potential effect it may have of driving up wages and the higher barriers it creates for new participants<sup>5</sup>. Wages may be driven up because competitors are cut out. This is said to allow unions to demand higher wages, while companies are more likely to pass on the resulting higher wage costs. Declaring minimum collective agreement pay scales to be universally applicable that are higher than the statutory minimum wage is said to potentially lead to an increase in wage costs, specifically at the lower end of the pay structure. Higher barriers for new participants are associated with the effect of driving up wages and the lack of opportunities for differentiation.

The following section considers whether these disadvantages do in fact occur in actual practice and whether this calls universal applicability policy into question.

## 7.5 Does universal applicability drive up wages?

### *Wage levels*

In the light of a study of wage differential between employees covered by different wage formation regimes, the Ministry of Social Affairs and Employment ascertained in 1993 that in 1992 employees covered by collective agreement were 3% better paid than those who were not<sup>6</sup>.

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5 See G. Zalm (1992) Betekenis en toekomst van de algemeen-verbindend verklaring, *ESB* 1992 - 15 January, pp. 60-64.  
6 Ministry of Social Affairs and Employment, *Algemeen verbindend verklaren van cao-bepalingen*, Lower House, Session Year 1993-1994, 23 532, no. 2.

In their study of differences in wage formation, Hartog, Leuven and Teulings conclude that the difference is in fact only minimal, with employees covered by a sectoral collective agreement due to its being declared universally applicable and those not covered by a collective agreement receiving 4% less pay than employees directly covered by a sectoral or company collective agreement<sup>7</sup>. They note, however, that their analysis was impeded by the fact that one variable could not be effectively quantified, namely the employee's level of work experience. They also point out that another crucial variable is lacking, namely that enabling one to distinguish between sectors.

In 2002, the Ministry of Social Affairs and Employment compared the actual wages received by employees covered by a sectoral collective agreement that had been declared universally applicable with those received in situations where there was no question of a bilateral monopoly – as in negotiations on company collective agreements – or wage formation in companies with no collective agreement. The results of this analysis differ somewhat from those of the two studies already referred to. This is explained by the fact that the Ministry's study also took account of such important factors as the sector and employees' length of service and educational level.

This study focused on the years 1998 to 2000<sup>8</sup>. According to the Ministry's publication, it would seem justifiable to conclude that in those years the wage levels of employees in companies bound by a sectoral collective agreement, either directly or due to its having been declared universally applicable, are hardly any different to the wage levels of employees in companies that are more subject to market forces (i.e. employees not covered by a collective agreement or working for a company where no collective agreement applies). According to the Ministry's publication, the study also shows that there is no reason to believe that sectoral wage bargaining in the Netherlands has the hidden effect of driving up wages<sup>9</sup>.

These findings are confirmed by the Labour Inspectorate's most recent study (2004) of trends in terms of employment. That study showed that – when corrected for background features such as the type of company and job, training, age, and length of service– there are hardly any wage differences between employees who are subject to a collective agreement because it has been declared universally applicable and those not covered by a collective agreement in companies without a collective agreement or between those who are subject to a collective agreement because it has been declared universally applicable and those directly covered by the agreement in sectors with a sectoral collective agreement (see table 7.1).

7 J. Hartog, E. Leuven, C.N. Teulings (1996) *Wages and the bargaining regime in a corporatist setting: The Netherlands*, University of Amsterdam research report. See also R.B. Freeman, J. Hartog, C.N. Teulings (1997) *Avv, spil in 't spel, ESB*, 1997 - 30 July.

8 For 1999 and the years prior to 1998, the necessary data was unavailable.

9 M.P.F. Rojer (2002) *De betekenis van de cao en het algemeen verbindend verklaren van cao's*, op. cit., p. 33.

table 7.1 Corrected wage differences between employees subject/not subject to a collective agreement (1996–2004) (as opposed to employees subject to a sectoral collective agreement)

	1995	1996	1997	1998	1999	2000	2001	2002	2004
Employees subject to a sectoral collective agreement									
Employees subject to a company collective agreement	3.3	4.3	3.6	8.4	6.2	2.4	5.4	6.5	11.0
Employees subject to a collective agreement because it has been declared universally applicable	-0.9*	-0.7*	-4.3	-1.0*	-3.2	0.7*	0.5*	0.7*	-1.1*
Employees not subject to a collective agreement working for companies with a collective agreement	4.0	7.4	4.2	11.4	9.3	7.1	4.0	12.3	11.5
Employees not subject to a collective agreement working for companies without a collective agreement	-0.6	-0.6*	-2.4	-2.0	0.9	0.28	1.0	2.6	-0.4*
Managerial staff	**	17.6	14.2	18.0	17.5	21.1	18.9	20.1	15.7

Source: Labour Inspectorate (Venema [et al.] (2005) *Arbeidsvoorwaardenontwikkeling in 2004*, op. cit., pp. 27).

### Lowest pay scales

In the 1980s and early 1990s, there was an increase in the average disparity between the lowest pay scales provided for by collective agreements and the statutory minimum wage. There was also a fall in the number of jobs for low-qualified workers. Against that background, the Labour Inspectorate pointed out in 1993 that in certain situations greater wage flexibility can be achieved by creating “preliminary” pay scales between the statutory minimum wage and the lowest pay scales provided for in the collective agreement<sup>10</sup>. This possibility was also dealt with in the plea made by the Council in 1994 for more incentives for labour participation at the lower end of the labour market<sup>11</sup>.

When discussing unemployment at the lower end of the labour market in relation to the lowest collective agreement pay scales, Paping and Stegeman (1997)<sup>12</sup> called attention to disparities between sectors. They pointed out, for example, that in some sectors the lowest negotiated wages were (virtually) at the same level as the statutory minimum wage. In such cases, the collective agreement and universal applicability have no effect on minimum pay. According to the report on collective agreement arrangements in spring 1997, the disparity between the lowest collective agreement pay scales and the statutory minimum wage was particularly slight in the services sector, while in agriculture, industry, and the building trade the lowest collective agreement pay scales were significantly higher than the statutory minimum.

10 Labour Foundation (1993) *Een nieuwe koers: Agenda voor het cao-overleg 1994 in het perspectief van de middellange termijn*, publication number 93/03, The Hague.

11 SER advisory report (1994) *Sociaal-economisch beleid 1994-1998*, op. cit. p. 44.

12 R. Paping, H. Stegeman (1997) Niet het corporatisme zorgt voor de problemen, *ESB* 1997 - 24 September.

An analysis of the lowest collective agreement pay scales carried out in 2000 showed that the average pay in those scales in 1999/2000 was approximately 6% higher than the minimum wage. In 1994, that difference had been 12%<sup>13</sup>. The difference has now virtually disappeared (see Section 4.3.2).

The nature and structure of a sector and/or a company would also appear to be an important factor in the employment potential for low-qualified work. It is specifically in those sectors in which low-qualified work is important – trade, hospitality, cleaning, employment agencies – that the lowest pay scales are actually applied<sup>14</sup>.

## 7.6 Rigidity and exclusion of newcomers?

In a number of memoranda, the Labour Foundation has called on the parties to collective agreements to include exception provisions in those agreements<sup>15</sup>. In order to counteract the potential rigidity-inducing effect of declaring collective agreements universally applicable, it is desirable for there to be realistic options for exemption. In the view of the Labour Foundation a realistic exemption policy is therefore the cornerstone of a responsible policy for declaring collective agreements universally applicable. Section 7.6.1 examines what exemption options exist, while Section 7.6.2 discusses the use that is actually made of them.

### 7.6.1 What exemption options exist?

Employers have a number of options open to them to be exempted, wholly or partially, from the collective agreement for their sector and thus to be exempted from being subject to that collective agreement if it is declared universally applicable. The employer can, for example<sup>16</sup>:

- request the parties to exempt it from the scope of the sectoral collective agreement;
- during the course of the collective agreement, request exemption from the collective agreement parties or from a sectoral body (made up of those parties) for components

13 See M. Rojer (2002) *De betekenis van de cao en het algemeen verbindend verklaren van cao's*, op. cit., p. 34. In the light of the analysis of the lowest collective agreement pay scales, the then Minister of Social Affairs and Employment informed the Lower House of Parliament as follows (letter dated 8 March 2000): "Compared to five years ago, the instrument of the sectoral collective agreement (declared universally applicable) involves hardly any obstacles to remunerating low-qualified work at or close to the level of the statutory minimum wage. The great majority (86%) of the larger sectoral collective agreements include a lower pay scale close to the statutory minimum wage or the option of exemption from the wage provisions or from the whole collective agreement...." (Lower House, Session Year 1999-2000, 26 800 XV, no. 68).

14 See M. Rojer (2002) *De betekenis van de cao en het algemeen verbindend verklaren van cao's*, op. cit., pp. 34-35.

15 Labour Foundation (1994) *Enkele aanbevelingen in relatie tot het avv-beleid van cao-partijen*, publication number 2/94, The Hague; Labour Foundation (1996) *Dispensatieverlening van bepalingen in cao's*, publication number 6/96, The Hague.

16 See M.H.D.A.G. Heijnen, C. van Rij (2003) *De ervaringen van werkgevers met de CAO en AVV*, Amsterdam, Regioplan policy study commissioned by Ministry of Social Affairs and Employment.

of the collective agreement, if the collective agreement provides for this option and – if the collective agreement has been declared universally applicable – the relevant exemption provision has been declared universally applicable. The Labour Inspectorate found in 1999 that this is in fact the case in three-quarters of collective agreements<sup>17</sup>.

Other exemption options depend on whether the employer is bound by the sectoral collective agreement directly or because it has been declared universally applicable. If a sectoral collective agreement is directly applicable – i.e. not because it has been declared universally applicable – the employer can be exempted from its provisions only if it resigns from the employers' association. This will mean that the employer will not fall within the scope of the next sectoral collective agreement, if that agreement is not declared universally applicable.

If the employer is bound by the sectoral collective agreement because it has been declared universally applicable, then various other options are available<sup>18</sup>:

- The employer can be exempted if the parties submitting the request for a declaration of universal applicability themselves indicate explicitly which companies should be exempted.
- The employer can request the Minister of Social Affairs and Employment to exempt it from the declaration of universal applicability (“exemption”: Section 2 of the Act) because the company is bound by a legally valid collective agreement of its own. The employer will, however, need to find an organisation on the employee side with which it can conclude the collective agreement. That party will need to be sufficiently independent for the company collective agreement to be exempted from the declaration of universal applicability<sup>19</sup>.

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17 In 1996, the Labour Inspectorate made an urgent appeal to parties to collective agreements that did not include such a provision to after all include the option of exemption from the provisions of such agreements. The Foundation also considers it desirable that the relevant universal applicability provision should be proposed so that employers that are bound by it due to its being declared universally applicable can invoke it. The Foundation argues in favour of basically offering exemption options for all collective agreement provisions or at least from the main material provisions. It also considers it desirable that third-party experts should be brought in to participate in the decision-making procedure regarding requests for exemption. See Labour Foundation (1996) *Dispensatieverlening van bepalingen in cao's*, publication number 6/96, The Hague.

18 Approximately 30% of sectoral collective agreements are not declared universally applicable. In these sectors, employers that are not affiliated to one of the collective agreement parties are at liberty to make their own arrangements regarding terms of employment without needing to request exemption (M. Heijnen, C. van Rij (2003) *De ervaringen van werkgevers met de CAO en AVV*, op. cit., p. 1).

19 In the context of the declaration of universal applicability of the 2003 collective agreement for employment agencies, the Minister of Social Affairs and Employment refused the requests for exemption submitted by a number of employers based on their being bound by their own company collective agreement; this was because of doubts regarding the independence of the organisations acting as a party to the agreements concerned on behalf of employees. See W.J.P.M. Fase (2004) *De schone cao-schijn, SMA, 2004 - no. 4* (February), pp. 55-61. Fase argues in this connection in favour of strengthening the assessment framework for universal applicability so as to prevent sham collective agreements.

The Minister of Social Affairs and Employment, Aart Jan de Geus, has announced the intention to abolish automatic exemption for companies with their own legally valid collective agreement with effect from 1 July 2006<sup>20</sup>. A company or sub-sector that submits a request for exemption on the basis of the fact that it has its own collective agreement should be required to indicate the specific company or sub-sector features that make a tailor-made approach necessary in its exemption collective agreement. Companies applying for exemption because they have their own collective agreement must also demonstrate that they are independent of one another. The Minister requested the Labour Foundation to give its advice on these matters.

The Foundation responded to that request on 11 September 2006<sup>21</sup>. The main points made by the Foundation are:

- The Foundation shares the view that there can no longer be any automatic follow-up exemption. However, the grounds for approving an exemption request do not need to involve only “specific company features”. Other weighty arguments may also mean that an employer cannot reasonably be required to comply with a collective agreement that has been declared universally applicable.
- It is desirable for parties submitting an exemption request to make a statement regarding their mutual independence whenever they do so. That condition is already included in the existing assessment framework but the Foundation believes it should be made clearer. Any investigation as to whether an employees’ association is in fact independent should consider its history, the basis for membership, its organisation, structure and finances, the facilities provided by the employer/employers for its administrators/members, and the prior history of the collective agreement.
- Assessment of an exemption request should take place according to a procedure that clarifies the role of the various parties concerned in decision-making on that request.

### 7.6.2 *Use made of exemption in collective agreements*

#### *Exemption because a company has its own legally valid collective agreement*

As of mid-2005, the Minister of Social Affairs and Employment had granted more than 50 exemptions from the provisions of universally applicable sectoral collective agreements on the basis of companies having their own legally valid collective agreement; these concerned 15 current decisions on universal applicability. One important component

20 Letter from Mr De Geus to the agenda committee of the Labour Foundation, 31 March 2006, ref. AV/CAM/2006/23317.

21 Labour Foundation (2006) *Reactie van de Stichting van de Arbeid op de voornemens van Minister De Geus met betrekking tot de wijziging van regels voor het verlenen van dispensatie van avv in verband met gebondenheid aan een ondernemings- of sub-sector-cao, zoals verwoord in de brief van 31 maart j.l.*, The Hague, 11 September 2006. The Labour Foundation responded on 23 June 2006 to three proposals for technical changes to the assessment framework for declaring collective agreements universally applicable; these relate to the quality of the representativeness details, compliance agreements, and provisions regarding funds.

here was the collective agreement for the haulage sector, which had been declared universally applicable.

*Exemption because of exemption provisions in the collective agreement*

In 1994, 62% of the collective agreements examined by the Labour Inspectorate included an exemption provision<sup>22</sup>. By 1999, that figure had risen to 72%<sup>23</sup>. During the most recent period, there has been no investigation of the prevalence of exemption provisions. One possible reason for the absence of exemption provisions is that the collective agreements concerned include pay scales that are at the same level as the statutory minimum wage or only slightly above that level. The minimum wage in a sector as specified in its collective agreement is (or was) a frequent reason for requesting exemption. As we have already seen, the average level of the minimum wage in collective agreements is now practically the same as the statutory minimum wage (see Section 4.3.2).

A study by the Regioplan commercial research firm showed that 18% of employers that are bound by a sectoral collective agreement have at some point considered requesting exemption from some provisions of that agreement<sup>24</sup>. This concerned mainly the provisions regarding wages/minimum wages, working hours/opening hours, and early retirement funds/pensions. Employers that are directly bound by the sectoral collective agreement were somewhat more likely to consider requesting exemption than those that are subject to that agreement because it has been declared universally applicable. Employers in the trade, communication, and hospitality sectors have more frequently considered requesting exemption than those in other sectors. There would appear to be no significant correlation between considering applying for exemption and other background features such as the size of the company or the start of the company<sup>25</sup>. More than half of the companies that consider applying for exemption actually submit an application. That percentage is lower among employers that are bound by a collective agreement because it has been declared universally applicable. Exemption requests were granted in almost three quarters of cases. Of the employers with a sectoral agreement that were surveyed by Regioplan, some 7% ( $18 \div 2 \times 0.75$ ) have been exempted from the sectoral collective agreement.

The reason why half the employers that consider requesting exemption do not ultimately do so is because they have insufficient time to investigate the options and procedures involved in applying<sup>26</sup>.

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22 Labour Foundation (1996) op. cit., p. 7.

23 Ministry of Social Affairs and Employment (1999) *Najaarsrapportage cao-afspraken 1999*, The Hague, pp. 7-8.

24 M. Heijnen, C. van Rij (2003) *De ervaringen van werkgevers met de CAO en AVV*, op. cit., p. 80.

25 The (non-significant) result regarding start-up companies was that they are less likely to consider requesting exemption than companies that have already been operating for more than five years. In 1996, the Labour Foundation saw no reason to create any special position for start-up companies in the context of exemption policy. (Labour Foundation (1996) op. cit., pp. 14-15.

26 M. Heijnen, C. van Rij (2003) *De ervaringen van werkgevers met de CAO en AVV*, op. cit., p. 81.

One striking point arising from the study referred to is that start-up companies and employers that are subject to a collective agreement due to its having been declared universally applicable are less rather than more likely to consider applying for an exemption. This is in line with the level of satisfaction among employers regarding their own collective agreement situation (see table 7.2).

table 7.2 Employer satisfaction regarding current (collective) procedure for negotiating on terms of employment

N = 726	Directly bound by sectoral collective agreement	Bound by sectoral collective agreement because it has been declared universally applicable	Company has own collective agreement	No collective agreement:
Unsatisfactory (0-5)	4%	6%	2%	6%
Satisfactory (6-7)	70%	78%	45%	40%
Good (8-10)	26%	16%	53%	54%
Average score	7.0%	6.8	7.4	7.4

Source: M. Heijnen, C. van Rij (2003) *De ervaringen van werkgevers met de CAO en de AVV*, op. cit., p. 33-34.

Employers that are bound by a collective agreement due to its having been declared universally applicable have the lowest opinion of their collective agreement situation but the great majority of them still consider that situation to be satisfactory. Differences between employers that are bound by a sectoral collective agreement due to its having been declared universally applicable and employers that are bound directly by the agreement are also not very significant. No significant correlation was found between employers' assessment of their own collective agreement situation and the start of the company.

The only slight inclination of start-up companies to request exemption revealed by Regioplan's study may, however, be because they think there is little likelihood that their request will be granted. Further investigation is needed to determine whether and in what way universal applicability is a burden on start-up companies and, if so, whether that burden can be reduced by granting exemptions promptly.

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## General comments

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