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National report Netherlands: Legal analysis part 1

**Existing facilitators and obstacles in national regulation of
social dialogue**



Grant Agreement No	101177913
Project Acronym	Integrate Dialogue
Project Title	Integrating diversity in social dialogue: Strengthening the EU labour Market in the digital and green age
Deliverable title	National report Netherlands – Legal analysis part 1
Deliverable number	
Deliverable version	
Contractual date of delivery	
Actual date of delivery	
Nature of delivery	
Dissemination level	
Work package	2
Task(s)	
Partner responsible	Tilburg University
Author	Mijke Houwerzijl
Version	

National report Netherlands: Legal analysis part 1. Existing facilitators and obstacles in national regulation of social dialogue



Funded by the Horizon Europe Social Dialogue In The New World of Work. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or European Research Executive Agency (REA). Neither the European Union nor the granting authority can be held responsible for them.

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Preface by the project managers

The INDI project (Integrating Diversity in Social Dialogue: Strengthening the EU Labour Market in the Digital and Green Age), funded by Horizon Europe (101177913), examines how social dialogue can better include non-standard workers in a transforming labour market shaped by digital and green transitions. Focusing on the EU, the UK and Norway, the project explores existing and emerging models of worker voice and representation, with the aim of preventing rising inequality, in-work poverty, and social exclusion.

While social dialogue is a cornerstone of the EU's social market economy, non-standard workers often find themselves on the margins of such processes. This contributes to an increasing dualization of the labour market, with a clear divide between the better-off 'insiders' and the non-standard 'outsiders', who often find themselves in vulnerable positions. Both the scale and the consequences of such dualization vary significantly across countries, sectors, and business models.

The project adopts a comprehensive, multidisciplinary, and comparative approach encompassing eight countries, different business models, various forms of non-standard work, and social dialogue processes at various levels. We place the needs, interests, and motivations of non-standard workers for representation and voice at the centre (bottom-up perspective). These insights will be matched with strategies, willingness, and distributional costs among social partners when including workers in non-standard positions in social dialogue processes, as well as how these dynamics play out within different industrial relations and employment regimes (top-down approach). Our main research questions are:

- i. How can non-standard workers strengthen their power resources?
- ii. How are these processes influenced by prevailing industrial relations regimes, employment regimes, and business models?
- iii. How are these processes shaped by the interests of (different groups of) workers in non-standard positions?
- iv. How are these processes shaped by the interests of employers, investors, and contractors?
- v. How can power resources be translated into social dialogue with favourable outcomes for workers in non-standard positions?

Researchers from Belgium, Denmark, Ireland, Italy, the Netherlands, Norway, Slovakia, and the United Kingdom are participating. The project is coordinated by The Fafo Foundation in Oslo, Norway. The project was launched in February 2025 and will be completed at the end of January 2029.

We wish to thank the European Commission and the Horizon Europe programme for providing the opportunity to carry out this important and exciting research project.

Oslo, August 2026

Sissel C. Trygstad, Project Coordinator

Preface by the leader of Work Package 2

The legal work package (WP 2) of the INDI-project will present a legal analysis that aims to evaluate the impact of EU and national legal frameworks as barriers or facilitators for inclusion of non-standard workers in social dialogue, with a focus on reform recommendations. With a four-step analysis, this will contribute to the realization of the aim of the INDI-project of creating a more cohesive, effective, and legally robust environment for social dialogue, by addressing and proposing enhancements to the existing legal framework.

Part 1 is the first step and focuses on the existing legal framework at a national level, with an aim to identify and compare legal obstacles and facilitators for access to social dialogue for non-standard workers in selected national systems. The analytical framework for the analysis is presented in a separate working paper (deliverable 2.1). This has guided analysis of facilitators and obstacles in national law in Denmark, Italy, the Netherlands, Norway and the United Kingdom.

Part 1 will be concluded with a comparative analysis of existing facilitators and obstacles in national law (deliverable 2.3). Here, we will discuss commonalities and variations regarding access to social dialogue for non-standard workers with a focus on how this relates to differences in the national systems of social dialogue.

The next steps will be to examine the interplay between EU measures with potential to strengthen access to social dialogue for non-standard workers (Part 2, deliverable 2.4) and national law (Part 3, deliverable 2.5 and 2.6). Based on this, the aim is to develop recommendations for new strategies for including non-standard workers in social dialogue (Part 4, deliverable 2.7).

Oslo, August 2026

Marianne Jenum Hotvedt, WP Leader

1 Non-standard workers in Dutch law

1.1 Legal norms on employment status

1.1.1 Introduction

In the Netherlands, labour law, as set out in formal legislation, is not codified into a single comprehensive Labour Law Code, nor is there a specialized labour court.

The rules governing **individual employment relationships** are laid down in the Dutch Civil Code (DCC), including a definition of the employment contract (see section 1.2 below). The DCC sets out many important civil law rights and obligations for employees and their employers. For example, there is a minimum right to holidays, a minimum right to wage payments during sickness, and (*ex ante*)¹ protection against dismissal. The predominantly mandatory² provisions in Book 7 (on employment contracts) of the DCC are applicable to all employees working in the Netherlands for a Dutch employer, irrespective their standard or non-standard employment contract. In addition, a 'hard core' of labour rights consisting of rights laid down in the DCC and in labour law legislation with a public/administrative law character is applicable to every employee who is temporarily posted³ in the Netherlands by a service provider based in another EU Member State. The most important pieces of such legislation are the Minimum Wages Act (*Wet minimumloon en minimumvakantiebijslag*; WML), the Working Hours Act (*Arbeidstijdenwet*), the Occupational Health and Safety Act (*Arbowet*), the Allocation of Workers through Intermediaries Act (*Wet allocatie arbeid door intermediairs*; WAADI), and the Equal Treatment Act (*Algemene wet gelijke behandeling*; AWGB).

In addition to giving access to the protection granted by statutory labour law, the employment contract gives access to collective labour rights as well. Collective agreements are part of the broader system of **collective labour relations**, regulated by the Act on Collective Agreements (ACA: *Wet op de collectieve arbeidsovereenkomst*), which establishes the mandatory enforceability of the collective agreement over individual employment contracts, as well as the Act on the Extension of Collective Agreements (AECA: *Wet op het algemeen verbindend en onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten*) (see section 2 below).

Access to information and consultation at company level is regulated by the Works Councils Act (WCA: *Wet op de ondernemingsraden*), which provides works councils with several rights, such as the right to give advice in connection with major decisions and measures and the right of consent in connection with certain changes regarding the terms of employment (see section 3 below).

¹ Pursuant to Dutch dismissal law, in most cases, the employer needs permission from the labour office (*UWV WERKbedrijf*) or the Civil Court before dismissing an employee.

² This includes semi-mandatory and three-quarter mandatory provisions that can be deviated from by individual or collective contracting parties, respectively (sometimes not only in favour of the employee but also *in peius*, that is, to their detriment).

³ See: <https://www.postedworkers.nl>.

1.1.2 Inside or outside of labour law protection

While the worker with an employment contract has an entrance ticket to the 'solid fortress of labour law', with compensation for the unequal bargaining power as one of its main foundations, the solo self-employed worker remains outside and generally lacks a protective shelter. The employment contract is also the entrance ticket to another fortress, that of social security. In the light of the huge differences in terms of protection and of labour costs between those inside and outside the Dutch fortress of labour law, it is deemed very important that all those working as employees are classified correctly.⁴

1.1.3 Definition of an employment contract

Article 7:610 of the DCC stipulates: 'An employment agreement is an agreement under which one of the parties ('the employee') engages himself or herself towards the other party ('the employer') to perform work for a certain period in service of this other party in exchange for payment'. The application of this definition is mandatory: if all the elements of the definition are met, then there is an employment contract regardless of whether the parties intended to conclude an employment contract. Thus, the classification of the contract is not at the free disposal of the parties.

To classify a contract as an employment contract, three constituent elements must be present:⁵

- There is a relationship of authority (subordination);
- The employee is obliged to work;
- The employer is obliged to pay wages.

'Authority' and 'subordination' are considered the key elements in determining the existence of an employment relationship:⁶ if there is no subordination, there is a contract for services. In this respect, it is regarded as sufficient if the employer has the mere right to give binding instructions to the employee, irrespective of whether this right is actually exercised.⁷ A distinction is often made between 'organisational' and 'substantive' (or 'personal') subordination. 'Organisational' subordination refers to the integration of the employee into the organisational structure of the employer. In this regard, subordination' means that the employer can give binding instructions regarding organisational matters, such as working hours, the place where the work is to be performed, and the way in which employees can take sick leave and take their annual leave, within the framework set by statutory law and collective agreements. The provision of tools and materials by the employer is also one of the indicators of organisational subordination. On the other hand, substantive' subordination involves the ability of the employer to give binding instructions regarding the content of the obligations at work and how the work itself is to

⁴ If the employment relationship qualifies as an employment contract, the consequence is that the employer has to withhold and pay payroll taxes and social premiums and that there is labour law protection in case of illness and dismissal. Another far-reaching and sometimes costly consequence (often not considered) is the possible retroactive payment of non-enjoyed paid holidays and occupational pension contributions.

⁵ In the judicial practice, a certain duration of and the continuity of the employment contract are not considered to be relevant indicators of an employment relationship. It is safe to assume that it is possible to fulfil these requirements even if the parties agree on only a couple of hours of work per week.

⁶ Waas/Heerma van Voss, Restatement of labour law in Europe, Volume I: The Concept of the Employee, 2017, 479.

⁷ Dutch Supreme Court (*Hoge Raad*), 17 June 1994 (*Iman*), ECLI:NL:HR:1994:ZC1397.

be performed. Furthermore, Article 7:659 of the DCC states that, in principle, the employee must perform his or her work personally. Substitution is allowed only with the permission of the employer. Hence, according to Dutch law, the possibility that the employee can be replaced by another employee does not necessarily exclude the possibility of assuming that an employment relationship exists.⁸

The most important economic element of the employment contract is the (periodic) payment of remuneration. Persons in 'paid employment jobs' are typically remunerated via wages and salaries but may be paid commission from sales, piece rates, bonuses, or payments in kind such as food, housing, or training.⁹ When deciding upon the existence of an employment relationship, it is not relevant whether the remuneration forms the sole or the main source of the income of the person at stake.

1.1.4 Legal mechanisms to resolve employment status

Public enforcement

The Netherlands Labour Authority (NLA) has the power to investigate the true nature of the legal relationship for the performance of work/services, either on their own initiative or following a complaint of an individual concerned, in relation to whether the (alleged) employer complies with laws such as the Minimum Wage Act, the Working Hours Act and the Foreign Nationals Employment Act.¹⁰ So, they do not issue legally binding rulings on the contractual status between individual workers and the (alleged) employer.

The tax authorities are competent to determine the employee status regarding employee benefit schemes and wage tax matters. Until 2006, the question of whether an employment contract existed or not was not always assessed in a similar way in social security, tax and civil law.¹¹ After the entry into force of the Social Insurance (Funding) Act (*Wet financiering sociale verzekeringen*), this changed.¹² One of the ideas behind this change was to promote unity in interpreting the concept of employee across the three relevant fields of law.

Civil enforcement

Judicial self-enforcement by individual workers is possible through the courts. Workers can claim an employment relationship before the court and also all other worker rights, either statutory or contractual, can be enforced in civil courts by seeking compliance or damages. There is jurisdiction in three instances: district courts hearing cases at first instance, the possibility of appeal to the Court of Appeal and thereafter appeal to the

⁸ Dutch Supreme Court (*Hoge Raad*), 13 December 1957, NJ 1958, 35 (*Zwarthoofd/Het Parool*); Dutch Supreme Court (*Hoge Raad*), 21 March 1969, NJ 1969, 321; Dutch Supreme Court (*Hoge Raad*), 17 November 1978 (*IVA/Queijssen*), ECLI:NL:HR:1978:AC6391.

⁹ The so-called 'contract of commercial representation' is a special contract of employment laid down in Article 7:687 of the DCC, under which contract one party – the commercial representative – concludes a contract with another party – the principal –, in exchange for remuneration that consists wholly or partly of commission, to act as an intermediary in the conclusion of contracts and possibly to conclude these contracts in the name of the principal.

¹⁰ For some of these laws a broader definition of 'employee' applies, or the coverage is explicitly extended to 'employee-like' groups, or slightly different operationalizing criteria are used, depending on the purpose of the specific (minimum wage, OSH, social security, tax and labour migration) laws involved.

¹¹ Van der Wiel-Rammeloo, *De dienstbetrekking in drievoud*, 2009.

¹² Act of 16 December 2004, Stb. 2005, 37 (*Invoeringswet Wet financiering sociale verzekeringen*).

Supreme Court. As mentioned above, the Netherlands does not have specialised labour courts.¹³

In most first-instance proceedings brought by an employee, legal representation by an attorney is not required.¹⁴ Nevertheless, most employees will seek legal assistance, either through their union, if they are union members, or via their legal expense insurance. Workers with low income can get state-financed legal aid. Regarding the litigation costs, in civil proceedings, such as labour disputes, the court often rules that the losing party must pay the winning party's litigation costs and out-of-court expenses. It is possible, however, also in labour disputes, that the judge rules that each party must bear its own costs. When the losing party must pay the other party's legal costs, not all costs (mostly attorney fees) have to be paid. The court assesses these costs according to the 'liquidation rate'. The amount depends on the work performed, the financial stakes of the case, and the type of court hearing the case.¹⁵

In practice, lack of legal awareness, fear of retaliation by the employer, complexity, costs or the length of judicial proceedings often make judicial self-enforcement by the individual worker unrealistic. This is particularly the case for non-standard workers.¹⁶ Therefore, collective redress mechanisms are important in classification disputes as well, with trade unions as the most important actors for that purpose. The ACA and ACEA allow trade unions to enforce collective agreements for multiple employees and to claim damages not only for themselves but also for their members (see section 2.4 below). Next to that, claims can be based on Article 3:305a DCC. The added value of this general framework for class-action lawsuits for trade unions is that it also allows for the filing of a lawsuit outside the scope of a collective agreement, and even in cases where the union filing the lawsuit is not a party to a collective agreement that has not been declared universally applicable.¹⁷

1.1.5 Qualification based on the overall (factual) picture

The determination of whether there is an employment contract should be based on the evaluation of all circumstances of the case, which is called the 'holistic assessment' in the Netherlands.¹⁸ As a consequence of this approach, the determination of whether a person is an employee or not may differ from case to case. This has always been the case since (what is now) Article 7:610 DCC came into force in 1909.

¹³ See: <https://www.government.nl/topics/administration-of-justice-and-dispute-settlement/the-dutch-court-system>.

¹⁴ <https://www.rechtspraak.nl/naar-de-rechter/advocaat-wel-of-niet-verplicht#1e61dee5-1548-4ebf-9b80-d8f1831b6930>.

¹⁵ The purpose of this rule is to ensure that a party is not deterred from presenting its position to the court in a proceeding out of fear of being ordered to reimburse the opposing party for substantial litigation costs. Only in exceptional cases, the court may rule that the losing party must reimburse the winning party's actual litigation costs, such as in cases of abuse of procedural rights or the unlawful initiation of proceedings.

¹⁶ See e.g. S. van der Graag (2018), *Als je er wat op te zeggen hebt... Individuele en collectieve arbeidsrelaties van precair werkenden in beeld*, Wetenschappelijk bureau voor de vakbeweging, Amsterdam, p. 18.

¹⁷ Bij de Vaate, DMA. (2021). Collective redress and workers' rights in the Netherlands. ELLJ, 12(4), 455-474; J. Cremers & M. Bulla (2012), Collective redress and workers' rights in the EU, *AIAS Working Paper 118*, 30 - 33.

¹⁸ Advocate-General Verkade used this phrase for the first time in his Opinion for the Supreme Court, 14 April 2006, NJ 2007, 447.

However, the uncertainty that goes along with the holistic case-by-case assessment increased considerably after a ruling of the Dutch Supreme Court in 1997.¹⁹ In this ruling,²⁰ the Supreme Court emphasised that ‘all circumstances that must be taken into consideration’ includes the intentions of the parties when they entered into the contractual relationship, their societal position,²¹ and the way in which the parties performed the agreement in practice. Since **Groen/Schoevers**, the Supreme Court has repeated this consideration several times.²² Since then, in the lower civil courts (cantonal judges and appeal courts), the holistic method of assessment often led to different outcomes, even though the working conditions of the persons concerned were rather similar. This happened for instance in two Dutch court cases regarding Deliveroo-riders. In the first case, the court of Amsterdam decided that the Deliveroo-rider was a self-employed worker. In the second case however, the same court decided that Deliveroo-riders should in fact be considered as employees.²³

In 2011, the Supreme Court explicitly stated that it would apply the same standards when assessing whether an employment contract existed in the social security context as it did in civil cases.²⁴ Although this aligned approach seemed appealing in theory, in practice it causes many problems for the tax authorities, since, when assessing in advance whether someone is actually working as a self-employed person without employees, they must rely on an holistic assessment method designed to evaluate this when a conflict arises (i.e., after the fact: ex post), including parties intentions and their societal positions.

By the end of 2020, the Supreme Court took the opportunity to correct the predominant interpretation of its landmark judgment of 1997. In its judgment **X/Gemeente Amsterdam**,²⁵ the Supreme Court stated that ‘it is not important whether the parties actually intended the agreement to be an employment contract. What matters is whether the agreed rights and obligations meet the legal description of the employment contract. Contrary to what was inferred from the Groen/Schoevers judgment, the intention of the parties does not play a role in the question of whether the agreement must be regarded as an employment contract’.²⁶ Since then, it is clear that the intentions of the contracting parties laid down in the contractual terms still play a role, but only to establish which

¹⁹ However, the boundary between employment and self-employment seemed easier to identify in the era of vertically integrated industrial firms. This era has definitely passed since the end of the 1990s and fundamentally upset the binary divide between employees and the self-employed. Cf. ILO, *World Employment and Social Outlook. The role of digital labour platforms in transforming the world of work*, Geneva 2021, 230.

²⁰ Dutch Supreme Court (*Hoge Raad*), 14 November 1997, ECLI:NL:HR:1997:ZC2495 (*Groen/Schoevers*).

²¹ This indicator implies a purpose-driven approach, in the sense that, when interpreting the parties’ intentions regarding the agreements they have made, it takes into account whether a person’s social position implies a lack of knowledge and calls for compensation of bargaining power. See Samiha Said (2021), *De arbeidsovereenkomst: een bewerkelijk begrip* (diss. Tilburg), section 5.5.

²² Dutch Supreme Court (*Hoge Raad*), 10 December 2004, ECLI:NL:HR:2004:AP2651 (*Diosynth/De Groot*); Dutch Supreme Court (*Hoge Raad*), 14 April 2006, ECLI:NL:HR:2006:AU9722 (*Beurspromovendi*); Dutch Supreme Court (*Hoge Raad*), 13 July 2007, ECLI:NL:HR:2007:BA6231 (*Thuiszorg Rotterdam/PGGM*); Dutch Supreme Court (*Hoge Raad*), 17 February 2012, ECLI:NL:HR:2012:BU8926 (*B-Notarissen*).

²³ Court of Amsterdam, 23 July 2018, ECLI:NL:RBAMS:2018:5183 (*Deliveroo-I*); Court of Amsterdam, 15 January 2019, ECLI:NL:RBAMS:2019:198, (*Deliveroo-II*). See: N. Zekić, ‘Contradictory Court Rulings on the Status of Deliveroo workers in the Netherlands’, (No. 17 ed.) *Comparative Labor Law & Policy Journal*: Illinois College of Law, 2019, July 1. The latter judgment was confirmed in appeal by the Court of Appeal (*Gerechtshof*) Amsterdam, 16 February 2021, ECLI:NL:GHAMS:2021:392.

²⁴ Dutch Supreme Court (*Hoge Raad*), 25 March 2011, ECLI:NL:HR:2011:BP3887 (*Gouden Kooi*); Said, 11(1) *Arbeidsrechtelijke Annotaties* 2017, 55.

²⁵ Dutch Supreme Court (*Hoge Raad*), 6 November 2020, ECLI:NL:HR:2020:1746.

²⁶ Dutch Supreme Court (*Hoge Raad*), 6 November 2020, ECLI:NL:HR:2020:1746, paragraph 3.2.3.

specific rights and obligations the parties had in mind and not to establish whether the parties intended to designate their agreement as an employment contract or not.²⁷ Moreover, as confirmed by the Supreme Court, it is how the agreement of the parties actually operates in practice which determines the true nature of the contractual relationship.

Two more recent judgments of the Dutch Supreme Court concern platform work. In its **Deliveroo** judgment of March 24, 2023,²⁸ the Dutch Supreme Court confirmed again that whether a working relationship qualifies as an employment contract depends on the overall picture ('holistic assessment') and it refers to a list of nine criteria that should be considered for determining whether a relationship is one of employment or independent work:

- (i) the nature and duration of the work,
- (ii) the way the work and working hours are determined,
- (iii) the extent to which the work and the person performing the work are integrated into the organization and business operations of the party for whom the work is performed,
- (iv) the existence of an obligation to perform the work personally,²⁹
- (v) the way the contractual arrangement of the parties' relationship was established,
- (vi) the way remuneration is determined and paid,
- (vii) the level of this remuneration,
- (viii) whether the person performing the work bears any commercial risk,
- (ix) whether the person performing the work conducts or can conduct themselves as an entrepreneur in economic transactions, for example, in acquiring a reputation, in acquisitions, regarding tax treatment, and considering the number of clients for whom they work or have worked and the duration of their commitment to a particular client.

According to the Supreme Court, freedom to appear at work or not and to accept or not accept orders does not in itself preclude the existence of an employment contract.

²⁷ The fact that the Supreme Court thought it necessary to (re)establish that the intention of the contracting parties is not relevant in the classification of the legal relationship may have been influenced by the case law of the CJEU, as it has been observed by several authors. See Laagland, in: Waas/Hiebl (eds.), *Collective Bargaining for Self-Employed Workers in Europe Approaches to Reconcile Competition Law and Labour Rights*, 2021, 177 (183-184).

²⁸ Dutch Supreme Court (*Hoge Raad*), 24 March 2023, ECLI:NL:HR:2023:443.

²⁹ The DSC considers in the ruling that the freedom to appear at work/accept assignments or not, does not in principle prevent the existence of an employment contract. By doing so, the DSC makes it clear, on the one hand, that employers have a certain amount of room to make agreements with employees regarding the flexibility desired by certain "self-employed workers," for example, in the healthcare industry. On the other hand, the Supreme Court thereby indicates that the mere contractual agreement that the contractor is free to be replaced does not automatically mean that there is no employment contract. According to the DSC, if this contractual provision is of minor significance to the contractor – as was the case for Deliveroo's riders, then even the occasional use of that possibility is not incompatible with the existence of an employment contract.

Whether the requirements for an employment contract are met depends on the further circumstances of the case, in particular what applies if the person concerned accepts an assignment to work, and the frequency with which and the duration for which this usually appears and occurs. The Supreme Court established that, in this case, the Court of Appeal had provided sufficient grounds to justify why, despite the freedom to appear or not appear at work and to accept or not accept orders, the contract of the Deliveroo riders should nevertheless be classified as an employment contract.³⁰ In contrast, in its **Uber** judgment, the Supreme Court ruled that Uber drivers can be either employees or self-employed.³¹ In this case, external entrepreneurship (criterion ix mentioned above) was the decisive factor. The court responded affirmatively to the first preliminary question, which asked: Is it possible that, if the (possible) entrepreneurship of a worker is disregarded, the agreement between the worker and their client/employer qualifies as an employment contract, while if that (possible) entrepreneurship is considered, the same agreement does not qualify as an employment contract?

1.1.6 Rebuttable presumptions

Pursuant to Art. 7:610a DCC, a rebuttable presumption exists in favour of an employment relationship if a person performing work for the benefit of another person against remuneration by that person for at least three consecutive months, on a weekly basis, or for no less than twenty hours per month, is presumed to perform such work pursuant to a contract of employment. In such situations, it is up to the perceived employer to prove that the parties did not perform the contract in such a way that one could assume the existence of an employment relationship.

A new rebuttable presumption regarding low hourly rates will take effect on 1 January 2027.³² Under this legal presumption, self-employed individuals with a low hourly rate can argue in court that an employment contract actually exists. In that case, the alleged employer has the burden of proof that there is no employment relationship. The proposed threshold is at the level of the current mandatory minimum wage, but with costs for social premiums and pension contributions added and rounded up. When collectively bargained wage rises, the threshold for the legal presumption also rises (in 2027, the threshold is expected to be around €39 per hour).

These legal presumptions are civil law instruments and may only be invoked by the workers themselves or, for example, a trade union on their behalf. The tax authorities and the Dutch Labour Inspectorate NLA cannot use it, which is criticized as it diminishes the legal impact in practice.³³

³⁰ This ruling made clear that, under specific circumstances, on-call contractual arrangements that allow a worker to reject work assignments (and hence to sidestep the principle of mutual obligation in contract law) should be considered to constitute an employment contract. Jiaqi Zeng, Anja Eleveld (2025), Combining freedom and flexibility with security: Translating platform workers' desires into law. The case of food delivery riders in the Netherlands, *ELLJ* 16(1), 133-134.

³¹ ECLI:NL:HR:2025:319 (Hoge Raad Der Nederlanden).

³² On 16 June 2026, Dutch Parliament approved the proposed Act Legal presumption regarding low hourly rates (*Wet rechtsvermoeden laag uurtarief*).

³³ The presumption does not interact with the enforcement mechanisms described above : The NLA and the tax authorities examine the "true" legal status of workers solely within the context of the specific public acts they enforce. See Bij de Vaate, DMA. (2023). De werking van het rechtsvermoeden van een arbeidsovereenkomst nader bezien. *Tijdschrift Recht en Arbeid*, 2023(3), 9-15. Artikel 2023/29.

1.2 Categories of non-standard workers

In this report, three categories of non-standard workers (NSW) are distinguished: Workers in non-standard subordinate employment relationships (category 1), workers in an intermediary or ambiguous situation (category 2) and workers who are genuinely self-employed (category 3).

1.2.1 Non-standard worker 1: Employees with non-standard terms of employment

The first category concerns workers who have a clear status as employees but who work on the basis of an employment contract with non-standard contractual terms of employment (place of work, lack of guaranteed hours, the presence of a physical or digital intermediary).³⁴ In the Netherlands, this category consists of fixed-term workers, temporary agency workers, and *involuntary* part-time workers, such as those with marginal part-time jobs and/or non-guaranteed weekly working hours (on-call contracts). Platform workers with undisputed employee status also fall into this category.³⁵

Standard employment and the Dutch part-time model

As in other countries, the common interpretation of standard employment in the Netherlands is an open-ended, direct employment relationship between an employer and an employee, carried out on a full-time basis and predominantly on the employer's premises.³⁶ At the same time, voluntary, good-quality part-time work in terms of earnings, security and career prospects, is a culturally accepted and highly appreciated form of employment in the Dutch labour market. Among all employed, almost 50 percent is working part-time.³⁷ Many of these jobs are rather well protected jobs (based on open-ended employment contracts, subject to full dismissal protection, with stable working patterns and coverage by collective agreements) for 20 – 30 hours in the week in the (semi-)public sector. Such stable part-time jobs are (in the one-and-a-half income households' model in the Netherlands) often seen as neither atypical nor flexible.³⁸ Many young workers combine part-time work with education. Scholars have suggested that in the Dutch context, part-time work might be considered involuntary when an employee has made a request for increasing the working hours, and this request has been rejected.³⁹ An indication of the number of involuntary part-timers can be found in data describing the untapped labour potential.⁴⁰ They indicate that in 2020, around 4 percent of the working population were 'underutilized part-time workers',⁴¹ being persons

³⁴ As described in deliverable 2.1.

³⁵ After the ruling of the Supreme Court in Deliveroo, all food delivery services (including Uber Eats) have phased out self-employed delivery riders and started hiring them either directly or through labour intermediaries. See: <https://nos.nl/artikel/2546094-laatste-maaltijdbezorger-stopt-met-zzp-ers>.

³⁶ Although since the Covid 19 pandemic hybrid working has become generally accepted.**

³⁷ In 2021, 70 percent of women were working parttime, against 28 percent of men. Part-time work means paid work up to 35 hours a week. <https://longreads.cbs.nl/the-netherlands-in-numbers-2022/who-are-most-likely-to-work-part-time/>.

³⁸ For the historical evolution see Jelle Visser, 'The first part-time economy in the world: A model to be followed?' February 2002, Journal of European Social Policy 12(1):23-42 DOI:10.1177/0952872002012001561. See also Labour participation: Key figures 2003 – 2022: <https://opendata.cbs.nl/#/CBS/en/dataset/82309ENG/table?dl=691DC>.

³⁹ Bekker, S. and Leschke, J. (2021), Fragmented labour markets in affluent societies: examples from Germany and the Netherlands, OSE Paper Series, Research Paper No.48, Brussels: European Social Observatory, p. 24.

⁴⁰ CBS, 2020: https://www.cbs.nl/-/media/_excel/2021/21/onbenut-arbeidspotentieel-naar-regio-2020.xlsx.

⁴¹ This represents 372,000 workers out of a total of 9,048 million workers (size of the labour force in 2020).

who work part-time and who want to work more and are available for this at short notice.

There is no definition of a **part-time employment** contract in Dutch law. Normally, part-time work is understood to mean work performed based on an employment contract during a working time that is shorter than usual within the employer's company.⁴² A **part-time employment contract can be either a fixed-term or an open-ended contract**. The Law on flexible work (*Wet flexibel werken 2016*) gives workers a right to submit a request for a reduction or an increase of the working time. Part-time work is almost fully integrated in employment law in the sense that part-timers as a default receive the same conditions and benefits as full-time workers, but on a pro rata temporis basis. Hence, there are very few legal norms that specifically address part-time work. The Dutch law forbids discrimination between part-time and full-time workers (Art. 7:648 DCC), however, unequal treatment can sometimes be objectively justified.⁴³

Eurostat gives an overview of the main reason for Dutch individuals to be part-time employed.⁴⁴ It appears that 'care of children or adults with disabilities' and 'education and training' are the most common reasons for part-time employment, together with 'other reasons', which is not further defined by Eurostat. It might include people wanting to work part-time because of another job or volunteer work on the side, or because they want some time for themselves, for example, to do sports, to travel, to meet up with friends, et cetera. However, it could also be people who work irregular hours and who cannot increase their number of working hours due to the irregularity of their week schedule. Moreover, questions related to the wish to work more hours (e.g., moving from a small to a large part-time job) may be answered differently than questions on wanting to have a full-time job.⁴⁵ An interesting difference between men and women is that the care of adults with disabilities or children is the main reason for one-third of the woman working part-time, whereas for men this is only 10%. On the contrary, education or training is the main reason to work part-time for more than one-third (37.5%) of men, and for only 17% of women.

On-call employment

Employees are deemed **on-call workers** when their employment contract does not contain a fixed number of working hours either (a) per time unit of up to a month, or (b) per time unit of up to a year, and the wage is not spread evenly over that time unit (Article 7:628a lid 9 DCC). This means that the employee has an on-call employment contract

⁴² N. Gundt, 'Deeltijd-arbeidsovereenkomst', in J.P. Kroon & P. de Casparis (eds.), *Flexibele arbeidsrelaties*, Deventer: Wolters Kluwer.

⁴³ The CJEU's Lufthansa (C-660/20) and Kuratorium (C-184/22 and C-185/22) rulings have led to application of the pro-rata temporis principle regarding overtime allowances. Until recently, from the assumption that this was objectively justified, most collective agreements allowed employers to wait until part-time employees exceeded a full-time threshold to grant them an overtime allowance. This may lead to an additional billion euros in wage costs in the healthcare sector alone, in particular if the overtime premium also must be included in the pensionable salary. See: <https://www.abnamro.nl/nl/zakelijk/insights/sectoren-en-trends/healthcare/toeslag-meerwerk-kan-zorgsector-bijna-miljard-euro-kosten.html>.

⁴⁴ Eurostat, 2020: https://ec.europa.eu/eurostat/databrowser/view/lfsa_epgar/default/table?lang=en.

⁴⁵ Portegijs, W. et al. (2018), *Emancipatiemonitor 2018*, Sociaal en Cultureel Planbureau, <https://digi-tal.scp.nl/emancipatiemonitor2018/wie-zorgt-er-voor-de-kinderen/>.

when his or her contract does not stipulate a fixed number of working hours and his or her wage can vary every month.

Additional rules may be issued by Royal Decree (Article 7:628a sub 9 DCC). An **on-call employment contract can be either a fixed-term or an open-ended contract**. In practice, there exist different on-call contracts. The zero-hour contracts and the so-called min-max contracts are the most common. The latter stipulate both a minimum and a maximum number of hours a week that the worker is prepared to/may be requested to work.⁴⁶ During the first 26 weeks of the employment contract, a zero-hour contract may be offered without restrictions. After 26 weeks: The contract may only be used if this is explicitly permitted in a collective agreement and the work is of an occasional nature, such as peak-period work or substitution due to illness. The employer must call the employee in at least four days in advance.⁴⁷

As of 1 January 2020, whenever the on-call contract has lasted 12 months, the employer is obliged to offer the employee an employment agreement with fixed hours at least equal to the average amount of working hours in the preceding 12-month period (Article 7:628a sub 5 DCC). Already since 1999, on-call workers can invoke a *legal presumption* of the number of working hours (Article 7: 610b DCC). If an employment contract has lasted at least three months, the agreed working hours in any month are presumed to have a scope equal to the average number of working hours per month in the three preceding months. The on-call employee also has a right to wages of three hours per call, even if the employee worked less than three hours (Article 7:628a lid 1 BW).

Based on national statistical data, it appears that on-call and zero-hour workers make up 6.1% of the working population. This often concerns young people with a job next to their studies/education; less than 20% of these on-call and zero-hours workers can support themselves financially.⁴⁸

Noteworthy in the context of plenty of part-time job opportunities in the Netherlands, **multi-jobbing** is on the rise. In 2018, 7.4% of all employees had more than one paid job.⁴⁹ Two-thirds of them have a second job as an employee, one-third has a second job as a self-employed. Combining multiple jobs can have different reasons. First, workers can have multiple jobs because they cannot work more hours in their first job. Approximately 21% of the multi-jobbers have multiple jobs to get by financially, while 29% have multiple jobs for earning something extra. A second reason for multi-jobbing is that the

⁴⁶ See Anja Eleveld, 'Flexi-insecurity and the Regulation of Zero-hours Work in the Netherlands' (2022) 13(3) *ELLJ* 375, 399.

⁴⁷ Under the proposed Act on Greater Security for Flexible Workers (*Wet Meer zekerheid flexwerkers*; adopted by the second chamber of Dutch parliament on 12 May 2026 and now pending in the first chamber), which is expected to take effect on 1 January 2028, zero-hour contracts will be abolished and replaced by bandwidth contracts. These bandwidth contracts must specify a minimum and maximum number of hours, with the difference not exceeding 130%. For example: if the minimum is 10 hours, the maximum is 13 hours. However, pupils in secondary school, higher education students, and minors may still be offered a zero-hour contract.

⁴⁸ CBS, 2019: <https://opendata.cbs.nl/#/CBS/nl/dataset/83686NED/table?dl=4CA62>.

⁴⁹ CBS (Stef Bouwhuis, Goede Geuskens): <https://longreads.cbs.nl/dynamiek-op-de-nederlandse-arbeids-markt-2019/combineren-van-banen/>.

variety in tasks and social contacts increases job satisfaction (25%) or contributes to the acquisition of different types of knowledge and skills (16%).⁵⁰

Temporary employment

In 2020, 18.1% of all employees were temporary workers. This includes fixed-term employees and temporary agency workers. Interestingly, for 28.8% of fixed term workers the main reason for having a fixed term contract is 'probation', indicating that temporary employment contracts are used as a sort of prolonged probation period. Another 25.3% indicates that they have a fixed-term contract because they cannot find a permanent job yet, 14.5% indicates that they do not want to have a permanent job, and a small minority of 3.4% indicates that they had a fixed-term job because they are mainly involved in education or training.⁵¹

Direct temporary employment: Fixed-term employment contracts

The Dutch Civil Code (Article 7:667 DCC) stipulates that **fixed-term employment** contracts end by operation of law (*ipso jure*). Fixed-term contracts can be renewed only three times in a row (chain provision: '*ketenregeling*'); the fourth fixed-term contract will automatically convert into an open-ended contract (Article 7:668a DCC). The same occurs when successive fixed-term contracts exceed the period of three years.⁵² Employment contracts are considered successive when the intervals between the contracts do not last longer than six months. The maximum overall duration for successive fixed-term contracts is thus three years, intervals up to six months included.⁵³ This rule is also applicable to employment contracts between an employee and various employers that must reasonably be deemed to be each other's successors regarding the work performed.⁵⁴

There is no objective reason required for concluding or renewing fixed-term contracts. They are also used for structural demand of work. Contrary to employees with an open-ended contract, fixed-term workers used to lack any rights to a compensation in terms of severance payment when their employment come to an end. This changed in 2015, when a new law (*Wet werk en zekerheid*) introduced a right to a severance payment – called: transition allowance – for all employment contracts that end 'at the initiative of the employer'. From 2020 onwards, severance payment is due also in case the employer does not continue a (series of) fixed-term contract(s) irrespective of the duration

⁵⁰ Statistics Netherlands (CBS) shows that the COVID-19 crisis sparked the wish of workers with a small part-time job to work more hours per week (it increased by 71 thousand, 50 thousand of whom currently have a job of less than 12 working hours per week). See CBS (2021), *Meer werkenden met kleine deeltijdbaan*, Press release, 17-6-2021.

⁵¹ See Bekkers, Evers, Houwerzijl, Zekic (2022), *In-work poverty in the Netherlands, In-work poverty in Europe: Vulnerable and under-represented persons in a comparative perspective*. Ratti, L. (ed.) (Bulletin of Comparative Labour Relations; vol. 111). section §6.05.

⁵² It is possible to conclude a one-off fixed-term contract of more than three years.

⁵³ It is also possible to shorten the interval period of six months to three months in a Collective Labour Agreement if the nature of the activity so requires. This applies specifically to activities that can be performed for a maximum of nine months per year and cannot be consecutively carried out by the same employee for a period exceeding nine months per year. For instance, seasonal labour.

⁵⁴ Under the proposed Act on Greater Security for Flexible Workers (*Wet Meer zekerheid flexwerkers*; adopted by the second chamber of Dutch parliament on 12 May 2026 and now pending in the first chamber), which is expected to take effect on 1 January 2028, the chain provision will be amended. Currently, an employer may offer an employee three temporary contracts over a maximum period of three years, with a six-month break before the chain can start "anew." This break will become significantly longer: the chain will only restart after more than 60 months (5 years).

of the contract. The employment history does matter for this transition allowance, which is calculated as one-third of the monthly wage for every working year.

Indirect temporary employment: Temporary agency work

In the Netherlands, the regulation on **temporary agency work** was relaxed at the end of the 1990s as part of a broader 'flexicurity trade-off'⁵⁵ between more external labour market flexibility for companies and more employability (*stepping stone*) and security for the workers involved.⁵⁶ The permit system and the maximum tenure of the agency worker with the user firm were abolished, as well as most sector restrictions for agency work, but some special regulations remained in force, such as on equal treatment regarding wages and other (core) working conditions, the prohibition to demand something in return (such as a fee) from agency workers for the placement at the user firm and the prohibition to post agency employees in user firms where a strike is going on. The system now in place requires registration of the temporary work agency under the Allocation of Workers through Intermediaries Act (*Waadi*) and allows for voluntary SNA certification.⁵⁷

Also, since 1 January 1999, the legal position of agency employees is enhanced by classifying the relationship between an agency employee and the agency as an employment contract, as stipulated in Article 7:690 DCC. At the same time, many exceptions to labour law protection were introduced for temporary agency work. For example, Article 7:649 DCC where discrimination based on the temporary nature of the employment contract is prohibited, does not apply to temporary agency workers. The main feature that distinguishes a temporary agency contract from other contracts is the possibility to include a so-called agency clause in the contract in the first 26 working weeks (which can be prolonged by collective agreement). This means that the employment contract may end when the user company declares that they do not need the worker any longer, for instance because the agency worker becomes ill.⁵⁸

The current system has not prevented rogue practices. Since the beginning of the 21st century, the Dutch temporary agency sector has been plagued by a considerable increase in dubious temporary agencies, using illegal employees and/or evading the payment of taxes and social premiums. This may partly be due to the abolishment of the permit system, but that is not the only reason. Part of the problem also stems from the increased influx of temporary agency (migrant or posted) workers from other EU-member states, since 2005. Especially since the financial crisis of the 2010s, temporary agency work has become to be used for structural demand of work. In addition,

⁵⁵ See Wilthagen, Houwerzijl, et al. (2008), Flexicurity in the Dutch temporary work sector: a positive sum game? *Paper for ETUI*. The flexicurity debate in the EU drew partly on this Dutch Flexibility and Security construct. See Green paper on labour law 'Modernising labour law to meet the challenges of the 21st century, 2006.

⁵⁶ See e.g. Kristina Håkansson, Tommy Isidorsson, Hannes Kantelius, Temporary Agency Work as a Means of Achieving Flexicurity? *Nordic journal of working life studies* (2012) 2 . No 4: 153-169; Marloes de Graaf-Zijl, Gerard J. van den Berg, Arjan Heyma, Stepping stones for the unemployed: the effect of temporary jobs on the duration until (regular) work, *J Popul Econ* (2011) 24:107-139.

⁵⁷ Waadi, Government Gazette 1998, 306.

⁵⁸ The Supreme Court explicitly states that, in the event of incapacity for work, a temporary employment contract ends only if the user company explicitly requests that the assignment of the temporary worker be terminated. The employment of a temporary worker who becomes ill during the temporary employment contract therefore does not terminate automatically. The client must always terminate the assignment in writing. Dutch Supreme Court 17 March 2023, ECLI:NL:HR:2023:426.

different types of agency work have emerged over the years. Besides 'traditional' agency work, there is now also 'payrolling' and 'contracting'. These are all triangular employment relationships where the worker is seconded to user companies.⁵⁹

The number of temporary agency workers per year in the Netherlands has grown between 2006 and 2018 from 800 thousand to almost 1.2 million (including payrolling and migrant temporary agency workers).⁶⁰ Also, the amount of work the agency workers perform has increased considerably from 200 thousand to 400 thousand full-time working years. Since 2006, the length of stay of temporary agency workers in temporary agency work has continuously increased. In 2014, 21% of all agency workers was working in temporary agency work longer than 3 years.⁶¹ Compared to other temporary workers, such as fixed-term workers and on-call workers, temporary agency workers have the least stable careers, with many job changes as well as periods without work.⁶² Post-covid, an increasing number of agency workers consists of migrant and posted (third-country) workers. According to a recent report, they are at much greater risk of an accident at work than their local colleagues doing the same job.⁶³ In 9 out of 10 cases these vulnerable foreign workers have a temporary (agency) contract or work as (bogus) self-employed.⁶⁴

A huge issue is labour market fraud; the use of a labour market intermediaries appears to be the most important predictor for detecting a violation among the population of employers inspected.⁶⁵ Reports from the Dutch Labour Inspectorate NLA indicated that several temporary work agencies investigated had misused dismissal law, evidenced by a summary dismissal rate of between 40 and 80 percent, mainly migrant workers from Eastern Europe.⁶⁶ Following the publication of an exploratory study into the possibility of banning the hiring of temporary agency workers at the sectoral level, the Dutch government announced in June 2025 that it would work on a measure whereby a sectoral ban on hiring and leasing workers could be introduced in high risk sectors, in particular the meat sector, if the abuses did not demonstrably decrease. In addition to a possible ban, requiring companies to hire a minimum percentage of workers on open-ended employment contracts directly by the user company is also considered.⁶⁷

⁵⁹ As of 2020 new provisions specifically for payrolling were added to the DCC in order to improve the working position of payroll-workers.

⁶⁰ A. Heyma a.o., *De positie van uitzendwerknemers. Ontwikkelingen 1998-2019* (The position of agency workers. Developments 1998-2019), SEO Economisch Onderzoek, Amsterdam Feb. 2020, p. 29.

⁶¹ *Idem.*, p. 49.

⁶² W. Smits & J. de Vries, 'Employability van flexibele en vaste werknemers in Nederland', *Tijdschrift voor Arbeidsvraagstukken*, 2019 (35) 2, pp. 159-175.

⁶³ Onderzoeksraad voor Veiligheid (2025), *Veiligheid arbeidsmigranten. Onderzoek naar de werkgerelateerde veiligheid van arbeidsmigranten in Nederland*, Den Haag, p. 7: The risk of an accident at work is partly increased by the fact that migrant and posted workers mainly work in sectors where the work is risky. In addition to the dangers of the work itself, migrant workers face additional risk factors such as language barriers, cultural differences, long working hours and travel times, poor housing, sometimes substance abuse, and poorer access to occupational health and safety care. These factors accumulate and reinforce each other more often among migrant workers than among Dutch workers, further increasing the risk of occupational accidents.

⁶⁴ Onderzoeksraad voor Veiligheid (2025), see pp. 54-56, 107.

⁶⁵ See *Fair Work in the Netherlands | Report 2025*; Dutch Labour Inspectorate NLA, Information about reports and supervision by sectoral classification, February 26, 2025, p. 35.

⁶⁶ Parliamentary papers, Second Chamber 2023/24, 25 883, nr. 492, nr. 500.

⁶⁷ Ministry SZW, *Technische verkenning sectoraal uitzendverbod en verplicht percentage indienstreding* (2025). Rijksoverheid, Kabinet maakt werk van sectoraal in- en uitleenverbod, via <https://www.rijksoverheid.nl/actueel/nieuws/2025/06/20/kabinet-maakt-werk-van-sectoraal-in-en-uitleenverbod>.

Moreover, on 11 November 2025, the Dutch Parliament passed the Labour Provision Admission Act (*Wtta*), which stipulates that, without official authorisation from the Dutch Labour Supply Authority (*NAU*), a temporary work agency and other labour market intermediaries can no longer supply workers and user companies cannot engage with labour market intermediaries⁶⁸ who have not been authorised. The *Wtta* will take effect on 1 January 2027 and from 1 January 2028, the Dutch Labour Inspectorate will enforce the licensing obligation.⁶⁹

Employed platform workers

Noteworthy, in the aftermath of the Supreme Court's ruling in the Deliveroo case in 2023, workers in the Dutch platform-based food delivery sector who previously often fell under Category 2 of the NSW (see section 1.2.3 below) have now been switched to Category 1 of NSW.⁷⁰ *UberEats* was the last labour platform that decided to employ their riders, starting Spring 2025.⁷¹ All platform workers in food delivery are now either employed directly through the digital labour platform or indirectly as temporary agency workers, most often on some sort of on-call contract.⁷²

In the Netherlands, riders for *Thuisbezorgd* (part of the *Just Eat Takeaway* group) are employed⁷³ as temporary agency workers and thereby part of the so-called 'phase system' in the Dutch collective agreement for temporary agency workers. Their rights protection increases over time through defined phases. Riders receive temporary contracts with temporary work agency *Randstad*, and they can select from contract options that allow them to work 16, 24, 32, or 40 hours per week, with mandatory shifts, such as at least two evening shifts weekly and one weekend. *Thuisbezorgd* pays slightly above the

⁶⁸ Not only temporary work agencies but also companies involved in payrolling and secondment fall under the admission system. This also applies to foreign companies supplying (posting) workers in the Netherlands.

⁶⁹ See: <https://www.toelatingquiteenmarkt.nl/>.

⁷⁰ In the Netherlands, *Thuisbezorgd*, part of the *Just Eat Takeaway* group, commands around 70% of the market, while *Uber Eats* holds approximately 15% of the Dutch food delivery market. In November 2022, *Deliveroo* left the Dutch market because of the 'disproportionate investment required to maintain its market position in the Netherlands and uncertain returns', just a few months before the Dutch Supreme Court ruled that riders working for *Deliveroo* were employed rather than self-employed.

⁷¹ <https://www.nu.nl/economie/6336956/uber-eats-stopt-als-laatste-maaltijdbezorger-met-inhuur-van-zzpers.html> (newsitem 27 November 2024).

⁷² If the employment contract is classified as an on-call contract, employers will have to pay the worker for at least three hours for each call (i.e., each assignment). Therefore, even if workers deliver the food within 30 minutes, they will still be entitled to three hours' wages. Only one form of on-demand work is exempt from this obligation: workers with variable working hours who are working 15 hours or more per week and do not fall under the legal definition of on-call workers, such as workers with guaranteed annual working hours whose pay is spread evenly over the year. This means that the platform (as an employment agency or employer) and the food delivery rider should either enter into an on-call contract and agree on shifts of at least three hours or enter into a contract with guaranteed but variable working hours (for a maximum of one year and for an average of more than 15 hours per week), with pay spread evenly over this period. See Jiaqi Zeng, Anja Eleveld (2025), Combining freedom and flexibility with security: Translating platform workers' desires into law. The case of food delivery riders in the Netherlands, *ELLJ* 2025, Vol. 16(1) 135-36.

⁷³ Unlike many other food delivery platforms active in Europe, *Just Eat Takeaway's* general employment strategy, which it has rolled out gradually since 2020 across all its European markets, is based on employing its food delivery workers. *Just Eat Takeaway* was therefore also the only major food delivery platform that publicly supported the proposal for an EU Platform Directive, including a rebuttable presumption of employment. Janine Leschke, Laura Scheele (2024), Predictability and transparency of working conditions for food delivery platform workers across selected EU countries, *SocPolicyAdm.*2024;58:638-657.

statutory minimum wage in the Netherlands, supplemented with additional holiday bonuses and a kilometre allowance.⁷⁴

1.2.2 Non-standard worker 3: Genuine solo self-employment

The 3rd category of NSW consists of working individuals who are not recognized as employees and do not work in subordinate relationships or under contracts of employment.⁷⁵ In the Netherlands, this group is known as solo self-employed (*zelfstandige zonder personeel*; *zzp*).⁷⁶ Generally, this term refers to individuals who have registered as sole proprietors in the trade register and undertake work, other than under a contract of employment, without hiring employees or auxiliary persons themselves.⁷⁷ Solo self-employed persons often opt for the corporate form of a one-man business (*eenmanszaak*) or that of a private limited company (*besloten vennootschap*; *BV*).⁷⁸ If the solo self-employed creates a work of tangible nature, s/he will be working based on a contractor agreement. If it concerns a service, it will be a contract for services. The issue of qualification usually revolves around the contract for services. As with employees, this type of self-employed person performs the service through their own labour based on a best-efforts obligation. Therefore, the (solo) self-employed do not work based on an employment contract but on a commercial contract, which is regulated by the DCC.

Contracts for solo self-employed

For solo self-employed (independent contractors), the DCC regulates several types of commercial contracts. The most important ones are the contract to 'produce a piece of work' (*overeenkomst tot aanneming van werk*),⁷⁹ which is traditionally mostly used in the construction sector, and the contract for services (*overeenkomst van opdracht*), as regulated in Article 7:400 of the DCC. The contract for services is the contract between the client or principal (the party who requests the services) and the contractor (the

⁷⁴ Jiaqi Zeng, Anja Eleveld (2025), Combining freedom and flexibility with security: Translating platform workers' desires into law. The case of food delivery riders in the Netherlands, *ELLJ*, Vol. 16(1) 125-26; Seonok Lee (2024), The "AI Mode": How Food Delivery Riders in the Netherlands and South Korea Experience Algorithmic Management, *Italian Labour Law e-Journal* Issue 2, Vol. 17(2024)ISSN 1561-8048, <https://illej.unibo.it/article/view/20869/18993>, p. 73; FNV (2019), Riders Deserve Better: The Meal-Delivery Sector in The Netherlands, 2019, <https://www.ridersunion.nl/getmedia/f825808f-2f88-4af6-a33e-8dcc1ddcfbc3/Riders-deserve-better.pdf>.

⁷⁵ According to deliverable 2.1, this category includes those who work in their own business, own assets, have direct access to the markets they work in, negotiate freely with their customers, perform services for multiple clients without any functional integration and operational dependence on any other business entity or fulfil other criteria that define a genuinely independent contractor under national law.

⁷⁶ See e.g. the Guidelines on Price arrangements of self-employed workers by the Dutch Autoriteit Consument & Markt where reference is made to the solo self-employed: "Solo self-employed workers that offer services independently on a market are, in principle, undertakings within the meaning of competition law. However, **a self-employed worker whose only commercial activity is the provision of services through their own labour is not necessarily always truly independent.**"

⁷⁷ Article 5 of the Commercial Registers Act (*Handelsregisterwet*). Even if there is no 'entrepreneur' in the sense of the turnover tax, there may be a company. There is usually a company if the entrepreneur works 15 hours a week or more in the enterprise. 'Residual cases' can be tested against a number of 'best practice' criteria such as the absence of a relationship of authority; a certain investment; an intention to achieve a financial benefit; and acting under a certain name. Occasional professional or business activities may also be regarded as running an enterprise: *Beleidsregel inzake het ondernemingsbegrip in het handelsregister*, Government Gazette (*Stcrt*). 2011, 8401.

⁷⁸ Under Dutch law, it is technically possible for an employee to establish a private limited company and then enter into an employment contract between themselves as an employee and the company (of which the employee is the sole owner). This arrangement is used in a segment of the "freelance market," particularly when clients are wary of bogus self-employment.

⁷⁹ Article 7:750 of the DCC.

party who performs the services). This type of contract was traditionally associated with 'the liberal professions', notably with those of medical doctors, notaries, and lawyers. However, since the 1990s, the use of the contract for services has been broadened. Nowadays, the contractual arrangements of most solo self-employed workers are based on contracts for services. Therefore, only the distinction between the contract of employment (Article 7:610 of the DCC) and the contract for services (Article 7:400 of the DCC) is elaborated upon below.

As opposed to Article 7:610 of the DCC, Article 7:400 of the DCC is based on the premise that the contractor is not subordinated to the principal. The provision explicitly states that the contractor commits himself or herself to perform the assigned work in a different manner than under an employment contract.⁸⁰ Nevertheless, the distinction is sometimes difficult to make, since the client is allowed to give some instructions when work is performed based on a contract for services. Article 7:402 of the DCC states that the client can give instructions as long as these instructions are provided in a timely and responsible manner and relate to the services as such. The key difference in comparison with the instructions in an employment relationship is that the client may give instructions to the contractor only with respect to the result of the assignment and not with respect to the way the contractor achieves that result. Notwithstanding, the instructions of a client to a contractor may sometimes appear quite similar to the instructions of an employer to a subordinate employee. Therefore, determining whether there is subordination can be difficult. Furthermore, it is not necessary that the self-employed contractor performs his or her work personally. This is only necessary when the parties specifically agree on it or when it is clear that the contract was concluded because of the specific qualities of a specific contractor (Article 7:404 of the DCC).

Protective rights of solo self-employed

The rights of the self-employed are much more limited compared to those of employees working under an employment contract. The applicable provisions covering self-employed individuals under Title 7 of Book 7 of the DCC afford the parties considerable freedom in creating and structuring the contract. However, solo self-employed workers may benefit from a few protective provisions (related to certain issues) in civil and/or labour law (see also under category 2, discussed below).

Regarding genuine solo self-employed workers,⁸¹ the general contract law provision of Article 7:405 paragraph 1 of the DCC provides that wages are owed if the agreement is entered into by the contractor during his or her profession or business. The burden of proof with respect to the obligation to pay wages to the professional contractor lies with the client. Pursuant to Article 7:405 paragraph 2 of the DCC, if the amount of the wage is not determined, the client owes the solo self-employed contractor the 'wage calculated in the usual way' or, in the absence of this, a 'reasonable wage' (to be determined

⁸⁰ The provision does not prescribe a remuneration from the client in return. Nevertheless, most contracts for services are commercial contracts, where the remuneration is directly dependent upon the profits (or the potential for profits) of the services performed (e.g. where the own consumption is considered to be part of the profits).

⁸¹ NMQ van der Neut, 'De Verbintenisrechtelijke Bescherming van de Kleine Opdrachtnemer' (University of Amsterdam 2023) 256 <<https://pure.uva.nl/ws/files/145960230/Thesis.pdf>>.

by the court).⁸² The practice of online platforms for work which determine the applicable commission or brokerage in a non-negotiable manner does not seem to be contrary to the relevant legislation now that such terms are communicated prior to entering into the agreement.⁸³

The Minimum Wage Act also applies to solo self-employed workers “unless they provide their services in the pursuit of a business or in the independent pursuit of a profession”.⁸⁴ This means the Act explicitly covers bogus self-employed workers (see below; NSW category 2), but does not apply to genuinely self-employed individuals (NSW category 3, i.e., those recognized as such by the tax authorities).

The concepts of ‘profession’ and ‘businesses’ correspond to the concept of entrepreneurship in tax law.⁸⁵ In order to determine whether a (platform) worker is an entrepreneur, several criteria must be considered,⁸⁶ such as whether the (platform) worker:

- has more than one client.
- runs a business risk.
- makes investments in business assets.
- demonstrably engages in the acquisition of clients.
- presents himself or herself to the outside world as an independent entrepreneur.
- runs the risk of incurring debts.
- makes a profit or has the intention of making a profit that can reasonably be expected.

In practice, self-employed who are not meeting the hour requirement for tax benefits such as the self-employed tax deduction will usually be covered under the Minimum Wage Act. To qualify for the self-employed tax deduction, it is necessary to spend at least 1,225 hours per calendar year to one's business.⁸⁷ It is unclear whether (bogus) self-employed individuals actually claim their right to the statutory minimum wage.⁸⁸

1.2.3 Non-standard workers 2: Unclear or ambiguous employment status (bogus solo self-employed)

As already mentioned, there is no formal ‘intermediate category’ of workers in Dutch labour law, nor in Dutch social security law and tax law. Nonetheless, an increasing number of workers have an unclear or ambiguous legal status not fitting into the traditional

⁸² Asser/Tjong Tjin Tai 7-IV 2018/132-136, referring to Dutch Supreme Court (*Hoge Raad*), 19 December 2008, ECLI:NL:HR:2008:BG168.

⁸³ This is based on the (often debatable) premiss that the platform worker would qualify as a genuine solo self-employed worker. In this case, the practice of platforms to unilaterally adjust the percentage of their commission or brokerage at a later stage is not automatically contrary to the rules of civil law, as the self-employed platform worker is free to terminate the legal relationship at any time and the new arrangement will only apply for the future. Only in the case of an abuse of power can any adjustment be effected under the rules of competition law.

⁸⁴ Article 2 (2)(b) of the Minimum Wage and Minimum Holiday Allowance Act (WML). This extension of the scope of the Act was enacted rather recently, as of 1 January 2018.

⁸⁵ Parliamentary Papers (*Kamerstukken*) II 2012/13, 33 623, 3, 2.

⁸⁶ Parliamentary Papers (*Kamerstukken*) I 2016/17, 33 623, M, 10.

⁸⁷ Probably, many persons who engage in only marginal self-employment activities, also have a regular job that serves as their primary source of income (multiple jobholders).

⁸⁸ From 2027 onwards a legal presumption regarding low hourly rates can be invoked (*Wet rechtsvermoeden laag uurtarief*). See section 1.2.4 above.

binary divide. This group is mostly referred to as bogus (and/or economically dependent) solo self-employed.⁸⁹ Today, a political majority in the Netherlands agrees that something must be done to solve the issue of bogus self-employment and the lack of social protection for this vulnerable group. However, it is a complex matter involving several fields of law and varying political interests.

A problem exacerbated by past political choices and current deadlocks

The issue of bogus self-employment stems from the active promotion of solo entrepreneurship. This started in the context of persistent high-unemployment levels in the 1980s, predominantly via tax incentives.⁹⁰ For certain groups, such as recent migrants, older workers,⁹¹ and other groups with difficult access to the labour market, self-employment was (and is) promoted as a means of (re)gaining work experience and as a 'stepping stone' to a better labour market position. As a result, over the past few decades, the number of people aged 15 to 75 whose primary occupation is solo self-employment has risen steadily, which amounts to 12 percent of the workforce in 2025 (1.2 million people).⁹² This percentage includes only those for whom self-employment was the primary source of income. In 2024, 1.9 million people earned an income as self-employed individuals; therefore, if those for whom self-employment is only a supplementary source of income were to be included, the percentage would be even higher.⁹³

An important factor in the rise of bogus self-employment was the legal certainty offered between 2005 and 2016 by the Employment Status Declaration Act to the clients of solo self-employed persons regarding their exemption from employee insurance.⁹⁴ This removed the reclassification risk regarding employee insurance premiums from the client and gave an extra boost to the engagement of solo self-employed workers. However, this success had a downside: a considerable part of the group of solo self-employed is considered to be unwillingly self-employed and does not or hardly differ from employees regarding the extent to which they can independently determine their market position and organize their work.⁹⁵ For instance, it was observed that a growing group of these (bogus) self-employed workers charged rates that, even with a 40-hour working week, leave them below the social minimum.⁹⁶ According to a 2024 report from the Netherlands statistical office (*Central Bureau voor de Statistiek*, CBS), this group of

⁸⁹ In deliverable 2.1 these workers are described as formally operating as independent contractors, while sharing some, but perhaps not all, of the characteristics of subordinate workers. The characteristics that create ambiguity may differ, such as control or sanctions by the principal, limited bargaining freedom with customers, economic dependency of the principal, or working as an integrated part of another company.

⁹⁰ OECD, *Fostering Entrepreneurship*, Paris 1998; OECD Employment Outlook, Paris 2000.

⁹¹ When compared to other age groups, older workers have seen the largest rise in terms of self-employment in the Netherlands, in particular since the financial-economic crisis between 2009-2014. Approximately 60 per cent of the solo self-employed consists of men aged 45 years and older (CBS Statline 2020).

⁹² <https://www.cbs.nl/nl-nl/dossier/dossier-zzp/is-elders-in-de-eu-het-aandeel-zzp-ers-zo-hoog-als-in-nederland->

[land-
https://www.cbs.nl/zp/](https://www.cbs.nl/zp/)

⁹³ At least in the case of those (economically dependent) solo self-employed with a so-called 'VAR-wuo', which can be translated as a 'Declaration on the Income Status (profit from business)'. For more information see Houwerzijl (2022).

⁹⁴ The Zelfstandigen Enquête Arbeid (Dutch Self-employed Labour Survey) of 2019 shows that 20% of solo self-employed answered that they are not self-employed by choice. They were unable to find a suitable job as an employee, have been fired or their previous contract has not been renewed, or their employer wanted them to start working as a self-employed. CBS, 2019: https://www.cbs.nl/-/media/_pdf/2019/27/zea-2019-rapport.pdf.

⁹⁵ The size of this group is estimated at approximately 17 per cent. See ACM, *Guidelines Price Arrangements between Self-Employed Workers* 2020, paragraph 5.

(bogus) self-employed people often earns low incomes, lacks disability insurance, and accumulates little or no pension, making them financially vulnerable. As numerous studies show, the precarious working conditions of many platform workers suggest that they are often part of this vulnerable group.⁹⁷

On 1 May 2016, the Employment Status Declaration Act was repealed and replaced by the Assessment of Employment Relationships (Deregulation) Act (AERD Act: *Wet deregulerende beoordeling arbeidsrelaties*).⁹⁸ According to this AERD Act, the tax authorities assess whether there is an employment relationship (based on a contract of employment) or a 'fictitious or notional employment relationship' (*fictieve dienstbetrekking*), that is, a legal relationship not based on a contract of employment but deemed equivalent to an employment relationship for the purposes of payroll taxes and social insurance contributions. This does not imply full legal certainty for the client, as opposed to the situation under the Employment Status Declaration Act in the past. Hence, there is a risk that it is eventually discovered that the parties do deviate from the arrangements in the agreement during its performance. In such situations, the contract might be (re)classified as an employment contract, which means that e.g. payroll tax and social insurance contributions will have to be deducted. Contrary to the Employment Status Declaration Act (VAR system) in the past, both parties will be liable in this respect.

However, in practice, the assessment by the tax authorities was questioned from the very start,⁹⁹ in particular because self-employment agreements were approved only in less than 25 per cent of the total number of cases. This fuelled resistance in the society, which was an impetus for an 'enforcement moratorium' that has been extended several times until the beginning of 2025.¹⁰⁰ Until 2027, there will still be a transition period during which not all possible penalties (fines) will be imposed.

In June 2021, the Social and Economic Council of the Netherlands (SER), consisting of the social partners and independent experts (Crown-appointed members),¹⁰¹ provided building blocks for constructing the way forward.¹⁰² These included the reduction of the rather generous tax deductions for solo self-employed workers and replace these with tax facilities available only to those self-employed persons who run entrepreneurial risks with their own investments; the introduction of a mandatory disability insurance for

⁹⁷ It has been suggested that the most recent rise in the number of solo self-employed can be partially explained by the rise of platform work W. Pieterse, 'Peer Country Comments Paper – The Netherlands', Directorate-General for Employment, Social Affairs and Inclusion Peer Review on 'Platform Work', EC Sep. 2020.

⁹⁸ The Act of 3 February 2016, Government Gazette 45 (*Wet deregulerende beoordeling arbeidsrelaties*) came into force on 4 April 2016.

⁹⁹ See Final report of the Committee established to examine the (model) contracts (Commissie Boot); appendix to Parliamentary Papers (*Kamerstukken*) II 2016/17, 34 036, nr. 40.

¹⁰⁰ This meant that clients and contractors did not receive penalties or additional assessments if it appeared that there was actually an employment relationship between them. Only regarding a limited group of so-called 'malicious parties', the tax authorities could nevertheless decide to enforce the AERD Act, but in such a case, they had to prove that there was a (fictitious) employment relationship and a situation of obviously false and deliberate self-employment. From 1 January 2025, the tax authorities can also enforce the Act in relation to organisations that fail to follow the instructions of the tax authorities (or fail to do so to a sufficient extent) within a reasonable period of time.

¹⁰¹ The employer organisations and employee organisations appoint their own members. Self-employed (NSW3) are represented in the council by 'het Netwerk Zelfstandig Ondernemers (NZO)' and through the affiliated employer organisations and employee organisations. See <https://www.ser.nl/nl/ser/over-ser/wie-zitten-er-in-de-ser>.

¹⁰² SER, Sociaal-economisch beleid 2021-2025, Zekerheid voor mensen, een wendbare economie en herstel van de samenleving, Advies 21/08, The Hague, June 2021, Appendix, 11-12.

the self-employed and the introduction of a rebuttable presumption of an employment relationship for those self-employed workers whose rates are below a certain threshold. Dutch government are following these recommendations, but progress is very slow, due to opposing political views and vested interests.¹⁰³

Until Spring 2026, there were two different bills pending. One of them was introduced by the previous government, and the other was introduced on the initiative of members of Parliament, from political parties that are part of the new government since 23 February 2026. The new government has decided to withdraw both bills and to develop a new proposal that builds on the latter initiative.¹⁰⁴

In the meantime, the stricter enforcement policies of the tax authorities against bogus self-employment seems to have some impact; in 2025, the number of solo self-employed declined for the first time in years. The number of self-employed individuals without employees fell by 62,000 in 2025. In the first half of the year, this was mainly due to a relatively large number of self-employed individuals transitioning to employee status. In the second half of the year, fewer people started as self-employed compared to previous years.¹⁰⁵

Examples from (lower) case law on unclear employment status

In contrast to the slow pace of political decision-making, the judiciary is highly active in judging cases on unclear employment status. One of the major players is the largest Dutch trade union FNV, which has focused on strategic litigation. While it has scored significant victories, sometimes together with trade union CNV, in particular the fluctuating decisions regarding persons performing platform work show that the issue is far from settled either in the court.

That lower courts render sometimes very differing decisions in cases with significant factual similarities can be illustrated with many published judgments in cases regarding package delivery workers of the Dutch postal company (**PostNL**) in 2015 and 2016.¹⁰⁶ These package delivery workers all worked as self-employed based on a so-called 'transport contract'. They had to deliver packages at predetermined times, they had to wear PostNL working clothes, and they were obliged to use a van that met the requirements of PostNL. The delivery workers were allowed to be substituted for only by delivery workers who had been approved by PostNL beforehand. Although the working conditions were the same for all delivery workers, the outcome of these cases differed. In eight cases, the courts ruled that the delivery worker was indeed a self-employed

¹⁰³ Politicians are seeking a compromise solution that, on the one hand, adequately protects economically dependent self-employed individuals and, on the other hand, provides (genuinely) solo self-employed and their clients with the legal certainty they seek to start a business. From a legal point of view it is questionable whether these two objectives can be reconciled.

¹⁰⁴ Tweede Kamer, 2025–2026, 31 311, nr. 305.

¹⁰⁵ <https://www.cbs.nl/nl-nl/nieuws/2026/07/aantal-zzp-ers-in-2025-gedaald-met-62-duizend>.

¹⁰⁶ See the following judgments of mostly lower courts and two Courts of Appeal: Court of Noord-Holland, 18 December 2015, ECLI:NL:RBNHO:2015:11226; Court of Noord-Holland, 18 December 2015, ECLI:NL:RBNHO:2015:11230; Court of Noord-Holland, 18 December 2015, ECLI:NL:RBNHO:2015:11232; Court of Midden-Nederland, 6 January 2016, ECLI:NL:RBMNE:2016:85; Court of Oost-Brabant, 12 January 2016, ECLI:NL:RBOBR:2016:81; Court of Oost-Brabant, 12 January 2016, ECLI:NL:RBOBR:2016:83; Court of Amsterdam, 11 July 2016, ECLI:NL:RBAMS:2016:4521; Court of Amsterdam, 14 January 2016, ECLI:NL:RBAMS:2016:153; Court of Appeal Amsterdam, 5 July 2016, ECLI:NL:GHAMS:2016:2686; Court of Appeal Arnhem-Leeuwarden, 17 August 2016, ECLI:NL:GHARL:2016:662.

person. These persons were mainly delivery workers who had been substituted on a regular basis, or delivery workers who had already been self-employed for a substantial period before concluding a contract with PostNL. In these cases, it seemed to be clear that the parties had not intended to establish an employment relationship. However, in three other cases, the courts ruled that the package delivery workers were in fact employees. These judgments were largely based on the finding that, according to these courts, these delivery workers were as economically dependent on their client as employees were on their employer. The delivery workers worked for one client only (PostNL), according to strict conditions imposed on them by this one client, and they had little or no room for bargaining regarding their working conditions. Given the facts that the delivery workers performed low-skilled work and that – in some cases – the workers had not been self-employed before, the courts thought it doubtful that these workers were fully aware of what they had agreed upon with PostNL.

In the last decade, several digital labour platforms have been accused of misclassifying their workers. This concerns mostly people doing offline work on demand via app. In the Netherlands, these workers usually have the (tax) status of being solo self-employed. Lower courts in the Netherlands have already ruled on several occasions about the legal qualification of workers on demand via app.

The Amsterdam Court of Appeal ruled in the beginning of 2021 that **Deliveroo's** meal delivery riders had employee status.¹⁰⁷ The Court of Appeal paid attention to inter alia the fact that the wages were set unilaterally by Deliveroo, which is an indication of an employment contract. Furthermore, the Court found that Deliveroo has far-reaching monitoring possibilities, mainly through continuously tracking the driver's GPS location, which the Court considers to be a form of authority. The payment model established unilaterally by Deliveroo also points to Deliveroo's interference in the delivery process and therefore to a relationship of authority. Other compelling arguments included the fact that delivery riders constitute the core of Deliveroo's business and are in a typical situation of economic dependence.¹⁰⁸ Deliveroo appealed to the Supreme Court against the ruling but lost the case and left the Dutch market (see section 1.1.5 above).¹⁰⁹

Furthermore, in September 2021, the Amsterdam Court of Appeal ruled on the employment status of **Helpling** workers (Helpling was a platform for cleaning services, which later went bankrupt).¹¹⁰ It found that Helpling workers are in fact temporary agency workers. In first instance, the lower Court had ruled that circumstances pointed to a contractual (employment) relationship between the worker and the household; however, the Appeals Court found more (important) circumstances pointing to an employment contract between Helpling and the worker. Relevant considerations leading to this decision included the organizational functions and control over pricing exercised by the platform. These factors include the platform's standardized recruitment procedures, assessment of qualifications, provision of initial training, organization and processing of payments, offering customers profiles of all available cleaners in the selected area—

¹⁰⁷ Amsterdam Court of Appeal 16 Feb. 2021, ECLI:NL: GHAMS:2021:392.

¹⁰⁸ HieBl (2022) 32–33.

¹⁰⁹ <https://www.rtl.nl/economie/bedrijven/artikel/5340926/deliveroo-bezorgers-zpp-vergoeding-fnv>

¹¹⁰ Amsterdam Court of Appeal 21 Sep. 2021, ECLI:NL: GHAMS:2021:2741.

including their experience and hourly pay rate—and significantly influencing pay rates. The platform also has a vested interest in the amount of the hourly rate, as it forms the basis for calculating its commission.¹¹¹ Because the worker was structurally deployed at the households and Helpling had no control over the work to be performed, but leaves that to the households, the Appeals Court found that the contract does not qualify as a 'normal' employment contract, but instead as a temporary agency contract.

Following the ruling in **Uber** of the Dutch Supreme Court in 2025 (see section 1.1.5 above), which clarified that entrepreneurship weighs just as heavily as other criteria when assessing whether someone is an employee or a self-employed worker,¹¹² in January 2026, the Court of Appeal has applied that principle in its end-decision in the Uber case. In this case, trade union FNV had argued that Uber drivers should in general be regarded as employees rather than self-employed contractors. Uber, however, was supported by six of its drivers, who stated that they work as independent entrepreneurs. The Court of Appeal agreed with these drivers and rejected FNV's claim.¹¹³ In its assessment, the court placed significant weight on the fact that some drivers had made substantial investments in their vehicles and bore the financial risks associated with those investments themselves. The court also considered that some Uber drivers generally earn more than employed taxi drivers and enjoy a high degree of freedom when deciding whether to accept rides. The court emphasised that it could not issue a general ruling applicable to all Uber drivers. The reason is that there are significant differences between drivers in how entrepreneurial they are. As a result, some drivers may qualify as self-employed, while others may be regarded as employees. So, unless there is a (sufficiently) homogeneous group of workers, the civil law classification of platform work thus remains heavily dependent on individual proceedings.¹¹⁴

Interestingly, in the **Temper** case (a platform that facilitates flexible, shift-based work in hospitality, logistics, delivery and retail),¹¹⁵ the "heterogeneity defense" by the platform was rejected by the Appeal Court, determining that the diversity of its workers is not such that it is impossible to assess for all of Temper's workers from 2016 to the present, whether a temporary agency employment contract under Article 7:690 DCC exists, taking the Deliveroo-criteria into account. In this case, running since 2020, the trade unions argued that the arrangements between Temper and the workers were temporary agency contracts. In 2024, the District Court found that the essential elements of a temporary agency (employment) contract were absent in this case and control lay with the clients rather than with the platform.¹¹⁶ No wages were paid by the platform, since workers invoiced the clients themselves and there was no obligation for personal performance, as workers were free to decline assignments or send substitutes. Consequently,

¹¹¹ Hießl (2022) 34.

¹¹² The Supreme Court made clear that two people performing the same work may still be classified differently. A group can only be assessed collectively if its circumstances sufficiently overlap.

¹¹³ Amsterdam Court of Appeal 27 januari 2026, ECLI:NL:GHAMS:2026:163 (Uber). This overturns the earlier District Court ruling, which still found these drivers to be employed.

¹¹⁴ Bij de Vaate, DMA., & Özkul, S. (2024). Collectieve handhaving door de vakbonden: mogelijkheden en uitdagingen. *Tijdschrift Recht en Arbeid*, 2024(5), p 22.

¹¹⁵ Temper lets people sign up through an app for short shifts in hospitality, retail and logistics. According to the company the work is done by self-employed "FreeFlexers".

¹¹⁶ The court did not determine whether the platform workers were employees of the clients of Temper, because these third parties were not involved in the proceedings.

the court rejected the claims from the trade unions.¹¹⁷ In June 2026, this ruling was overturned by the Appeal Court.¹¹⁸ The court found that the platform sets terms, handles payment and exercises the kind of control that makes it an employer, applying the same test the Supreme Court used in its 2023 Deliveroo ruling. As regards Temper's reliance on the "freedom to be replaced," the Court of Appeal held that this alone does not negate the possibility of a temporary agency contract between Temper and its workers, considering that, according to Temper, 43% of the workers have 'occasionally' allowed themselves to be substituted while the workers perform an average of 42 assignments. For those who have worked through Temper, the ruling opens the door to claims for holiday pay, sick pay, pension contributions and other entitlements they did not receive as freelancers. The court also said Temper must repay a 1 euro-an-hour fee it charged workers until 2019. However, if Temper goes to the Supreme Court, such claims must be postponed.

Protective rights of (bogus and/or economically dependent) solo self-employed

Although no general intermediate category exists in the Dutch legal framework, bogus solo self-employed may be entitled to specific employment conditions or social benefit schemes depending on the specific scope of the applicable regulations. This means that under some laws, these workers whose employment status falls into the grey zone are considered independent contractors, while under other laws they are deemed employees.

Below, a short overview is provided.

a) Health and safety; liability for accidents and damage to others

First of all, solo self-employed workers enjoy protection according to the Working Hours Act¹¹⁹ in exceptional situations and according to the Occupational Health and Safety Act¹²⁰ in more ordinary situations.¹²¹ Moreover, as became clear in the case *Davelaar/Allspan*,¹²² a solo self-employed worker in a position comparable to that of an employee, may rely on the protection provided by Article 7:658(4) of the DCC regarding the duty of care and liability of the principal company for occupational accidents and diseases. This is the case if: firstly, the person must be performing work on the premises (or, for instance, on the building site) of the principal company. Secondly, the person must be dependent on the principal company regarding his or her safety at work. If these conditions are not met, Article 7:406 (2) of the DCC offers a basis for a solo self-employed worker to hold his or her principal liable in certain cases. For a professional contractor (NSW 3), this basis is only worth relying on if the assignment involves special risks

¹¹⁷ ECLI:NL:RBAMS:2024:3987.

¹¹⁸ Amsterdam Court of Appeal, 16 June 2026, ECLI:NL:GHAMS:2026:1612.

¹¹⁹ Working time regulations apply to self-employed workers only if the security of others is at stake.

¹²⁰ Article 9(5) of the Occupational Health and Safety Decree (*Arbobesluit*), based on Article 16(7) of the Occupational Health and Safety Act. Moreover, Article 1(2)(a) of the Occupational Health and Safety Act stipulates that all persons working under 'authority' are covered, which concept is broadly interpreted for the purposes of this Act (and therefore it might cover the economically-dependent solo self-employed as well).

¹²¹ Pursuant to Article 9 paragraph 5 of the Occupational Health and Safety Decree (*Arbobesluit*) in conjunction with Article 16 paragraph 7 of the Occupational Health and Safety Act. In certain sectors, such as in the construction industry, 'genuine' independent contractors are also covered, including those employers who work along with their employees on, for instance, a construction site.

¹²² Dutch Supreme Court (*Hoge Raad*), 12 March 2012, ECLI:NL:HR:2012:BV0616. *Davelaar/Allspan*

which go beyond the normal business risks and cannot be attributed to him or her either.

Both employees and solo self-employed workers might cause damage to others in the course of their work. The person suffering such damage may be the client or a third party. Article 6:170 of the DCC offers protection to the 'subordinate' in a general manner, stipulating that only the employer can be held liable by third parties. Based on Article 6:170 paragraph 3 of the DCC, this implies that regarding their mutual legal relationship, only the client and not the subordinate is liable to a third party. The solo self-employed worker can claim this protection only if he or she can be classified as a subordinate. However, this concept is broadly interpreted in the case law regarding Article 6:170 of the DCC. Subordination exists if the principal has the right to give instructions and orders regarding the work assigned to the worker. Therefore, it is conceivable that a principal is not only liable to a third party for damage caused by employees (including NSW 1) and bogus self-employed (NSW 2), but also for damage caused by a genuine solo self-employed worker (NSW 3).

b) Wages/fees

The Minimum Wage Act also applies to solo self-employed workers unless they provide their services in the pursuit of a business or in the independent pursuit of a profession.¹²³ This means the Act explicitly covers bogus self-employed workers to prevent circumvention, but does not apply to genuinely self-employed individuals (i.e., those recognized as such by the tax authorities).

c) Protection against dismissal (no longer in effect)

Until its repeal in 2015, Article 6 and 9 of the Decree on Extraordinary Labour Relations, which regulated the test for the prevention of dismissal, covered economically dependent solo self-employed workers as well. To be more precise, this Decree was applicable in those cases where no employment contract was concluded, but where the individual personally performed work for someone else, unless this individual worked for two or more persons or was assisted by two or more persons who were not their spouse or registered partner or resident relative by blood or by marriage, or when this work was not secondary. Comparable definitions are still in use in Dutch social security legislation (see below).

d) Extensions to the employee concept in social security law

Notwithstanding the aligned interpretation in employment, social security and tax law of the concept of 'employee',¹²⁴ in the employee benefit schemes legislation some

¹²³ Article 2 (2)(b) of the Minimum Wage and Minimum Holiday Allowance Act (WML). This extension of the scope of the Act was enacted rather recently, as of 1 January 2018.

¹²⁴ The concept of employee is defined in the employee benefit schemes as 'a person performing work under a contract of employment', with an explicit reference made to the definition in Article 7:610 of the DCC. In 2011, the Supreme Court explicitly stated that it would apply the same standards when assessing whether an employment contract existed in the social security context as it did in civil cases. Dutch Supreme Court (Hoge Raad), 25 March 2011, ECLI:NL:HR:2011:BP3887 (Gouden Kooi).

extensions were introduced to the employee-concept.¹²⁵ These are laid down in Articles 4 and 5 of the Sickness Benefits Act (*Ziektewet*) and in the Decree on Employment Relationships (*Rariteitenbesluit*),¹²⁶ based on Article 5 of the Sickness Benefits Act.¹²⁷ These sources of law designate cases where there is no contract of employment but the situation is deemed to be equivalent to employment for the purposes of the employee benefit schemes. On condition that they fulfil certain requirements, the Decree brings, for instance, home workers,¹²⁸ musicians, artists, professional athletes, and 'other persons who perform work personally and for remuneration' under the employee insurance schemes. The reason behind this is that the legislator deemed it necessary to bring not only persons with an employment contract under employee insurance, but also those who, from a socio-economic point of view, should be equated with employees, because they are equally economically dependent on work for one principal.

However, since 1 July 2016, the AERD Act (already discussed above) created a possibility of de facto opting-out of insurance for certain categories of economically-dependent self-employed workers.¹²⁹ This means that part of the aforementioned groups are not insured if, before the payment of the remuneration begins, the parties enter into a written agreement that shows their intention to enter into a legal relationship that is not subject to insurance.¹³⁰ The (tacit) establishment of this possibility of de facto opting out of insurance contradicts with the notion of compulsory insurance by operation of law on which the social security insurance schemes are based.

¹²⁵ Dutch social security system is composed of a set of compulsory universal schemes (at minimum flat rate level) covering all (economically active and non-active) persons legally residing in the Netherlands, as well as a set of compulsory schemes only available to employees. So, in the social security perspective, the binary divide between employees and self-employed only concerns employee benefit schemes. As a default, solo self-employed workers are not covered by these schemes.

¹²⁶ Decree of 24 December 1986, Government Gazette (*Stb.*)1986, 665, as amended since.

¹²⁷ In the Netherlands, these legal relationships for the performance of work which are deemed equivalent to an employment relationship are called *fictieve dienstbetrekking* (fictitious or 'notional' employment relationship).

¹²⁸ The Dutch legislation does not provide a statutory definition of 'homeworker'. Hence, whether a homeworker may be covered by labour law must be determined on a case-by-case basis. See Dutch Supreme Court (*Hoge Raad*), 17 November 1978 (*IVA/Queijssen*), ECLI:NL:HR:1978:AC6391.

¹²⁹ Van den Berg, 11 *Tijdschrift Recht en Arbeid* 2019, 15.

¹³⁰ Such an option of 'opting out' also exists for musicians and other artists not working under an employment contract, to whom, incidentally, no special provisions apply (Article 4 of the Decree). On the other hand, the possibility to be exempted from the employee insurance obligation is lacking for three other groups mentioned in the Decree, namely: persons who perform work personally for a third party through the intermediation of a (legal) person with whom an employment relationship exists (Article 3 of the Decree), persons who are eligible for a stipend from the foundation for the top athletes (*Fonds voor de Topsporter*) (Article 4a of the Decree), and the so-called 'sex workers' (Art. 5a of the Decree; in the Netherlands, this is a lawful occupation (under certain conditions). See for more information: Tadesse, Legalization and Regulation of Sex Work in the Netherlands: A Working Yet Flawed Model, *Johns Hopkins Undergraduate Law Review*, 30 August 2018).

2 Access to effective collective bargaining

2.1 Concept of a collective agreement

2.1.1 Main legal framework

Since 1927, collective agreements are regulated by the Act on Collective Agreements (ACA; *Wet op de Collectieve Arbeidsovereenkomst*).¹³¹ A collective agreement is defined as an agreement concluded between one or more employers, or associations of employers on the one hand, and one or more trade unions on the other hand, which primarily or exclusively govern the terms and conditions of employment that must be observed in individual employment contracts. This means that collective bargaining agreements can be concluded at both the company level and the sectoral level. Two legal requirements have to be met by trade unions and employers' organizations:

(a) that their association has full legal capacity;¹³²

(b) that the organization's articles of association expressly authorize it to bargain collectively and to conclude collective agreements.¹³³

The collective agreement must be in writing.¹³⁴

There are no other conditions applicable to the parties to a collective agreement (such as conditions regarding their size, who may or may not become a member, their independence, or their representativeness).

In the Netherlands, specific laws regulating trade unions and employer associations do not exist.¹³⁵ Instead, the general freedom of association enshrined in the Constitution¹³⁶ also extends to employers' and employees' organizations, and is operationalized by the provisions governing associations in Book 2 of the Dutch Civil Code (DCC).¹³⁷ The DCC gives the founders considerable freedom to define the association's purpose and the means by which they intend to achieve that purpose in the articles of association and bylaws. The same applies to the internal organization and financial control, as well as to the question of who may be admitted as a member.¹³⁸ Hence, the legal threshold for

¹³¹ 1927 *Wet op de collectieve arbeidsovereenkomst*; 1937 *Wet op het algemeen verbinden en onverbindend verklaren van bepalingen van collectieve arbeidsovereenkomsten*.

¹³² Article 1(1) ACA.

¹³³ Article 2 ACA. The latter requirement is part of the rationale for the agreement's binding legal effect on the members of the contracting parties; the requirement makes it clear to prospective members of trade unions and employer organisations joining may result in them being bound by any collective agreement that is concluded.

¹³⁴ Article 3 ACA

¹³⁵ In the course of time, the Netherlands has signed a number of international documents recognizing trade union rights, such as: ILO Conventions 87 and 98, the European Convention of Human Rights (see notably Article 11), the ESC (see notably Articles 5 and 6). Some of these provisions are directly binding before the Dutch courts and so may be considered as constitutional guarantees for trade union rights in the Netherlands. Moreover the Netherlands is, as an EU Member State, also bound to the Charter of the Fundamental Rights of the EU with its Articles 12 and 28 about trade union rights.

¹³⁶ Article 8 of the Dutch Constitution (*Grondwet*).

¹³⁷ Articles 2:26 – 2:52 DCC.

¹³⁸ N. Jansen (2019), *Een juridisch onderzoek naar de representativiteit van vakbonden in het arbeidsvoorwaardenoverleg* (A Legal Study of the Representativeness of Trade Unions in Collective Bargaining) (Ph.D.

establishing a trade union or employers' organization is very low; it is sufficient to draft articles of association that comply with the minimum requirements imposed by the DCC on all associations seeking to obtain full legal capacity,¹³⁹ have these articles authenticated by a notary, and then register the association in the register of associations.

All members of the parties to the collective agreement must be provided with the verbatim text of the agreement as soon as possible, just as is required in the event of an amendment or an explicit extension of the collective agreement.¹⁴⁰ In addition, the text of the collective agreement must be filed with the Ministry of Social Affairs and Employment. The collective agreement may, possibly with retroactive effect, take effect only on the day the Ministry sends the notice of receipt to the parties to the agreement.¹⁴¹ If the collective agreement has not been filed, in principle the agreement lacks the legal status of a collective agreement.¹⁴² Collective agreements are typically entered into for one or two years, the statutory maximum is five years.¹⁴³

A collective agreement primarily contains normative provisions intended to govern individual employment contracts.¹⁴⁴ Usually, these provisions cover a broad range of employment conditions, such as above-minimum wages, overtime pay, adult wage scales, youth wage scales, job classification systems, yearly and incidental wage increases,¹⁴⁵ holiday allowances, end-of-year bonuses, home-to-work travel allowances, profit-sharing, the combination of work and care responsibilities, working time reductions, possibilities to work after pension age and part-time pensions, measures to reduce and deal with sickness, inability to work and unemployment, supplementary social security benefits, including the right to occupational pension schemes.¹⁴⁶

In addition, a collective agreement (usually) also contains provisions aimed at regulating collective relations, such as procedures to end the collective agreement and to increase compliance. Such provisions govern the mutual legal relationship between the parties to the collective agreement; they create rights and obligations between the parties entering into the agreement. Moreover, there are provisions creating rights and obligations

thesis, University of Amsterdam), section 3.2.2, pp. 48–50 and p. 76: discussion of the “Recron case” (District Court of Midden-Nederland, April 1, 2015, ECLI:NL:RBMNE:2015:2422).

¹³⁹ Such as that an association has at least two members.

¹⁴⁰ Article 4 ACA. Furthermore, Article 7:655(1) DCC requires the employer to inform the employee which collective agreement applies to him.

¹⁴¹ Article 4 of the Act on the Formation of Wages (*Wet op de Loonvorming*). In principle, this applies to all collective agreements, both at company level and at sectoral level.

¹⁴² Dutch Supreme Court, April 13, 2001, JAR 2001/82; Dutch Supreme Court, November 30, 2001, JAR 2002/16. Both judgments were rendered in the context of the application of social plans. Dissenting: District Court of Midden-Nederland, 28 May 2014, ECLI:NL:RBMNE:2014:2175 (invoking Art. 4 of the Act on the Formation of Wages is unacceptable, based on standards of reasonableness and fairness).

¹⁴³ Article 18 ACA.

¹⁴⁴ Article 1(1) ACA.

¹⁴⁵ About 75 per cent of the employees covered by a collective agreement fall under a system of automatic annual pay raises until they reach the end of their salary scale, whereas for six per cent of employees the pay rise depends on the approval of their boss; W Been and M Keune (2018), *The Netherlands: decentralisation and growing power imbalances within a stable institutional context*, in: *Collective bargaining in Europe*, p 458

¹⁴⁶ Many collective agreements include regulations that allow individual employees to make certain choices as regards their employment conditions. Most widespread are à la carte regulations, which generally offer employees four options: swapping money for free time, using for example holiday allowances or bonuses; swapping free time for money, for example by ‘selling’ surplus holiday days for cash or for example for a bicycle; swapping one form of monetary benefit for another, for example, by exchanging holiday allowances or profit bonuses for pension contributions, or for a tax-free bicycle or computer; or swapping one form of free time for another, for example, by saving holiday days for long-term (sabbatical) leave; Been and Keune (2018), p. 459.

for members of a party to the collective agreement vis-à-vis other parties to the agreement or a third party (diagonal effect); they typically impose obligations on members of an employers' organization for the benefit of trade unions that are parties to the collective agreement, or for the benefit of third parties (such as a social fund or the works council).¹⁴⁷

Regarding the scope of collective agreements at the sectoral (industrial) level, a definition of the specific branch or sector is laid down in the agreement, defining which employers¹⁴⁸ will be covered. This includes, among other things, a description of the economic activities to which the agreement applies which may also include a primary activity criterion ("*hoofdzakelijkheids criterium*"). This indicates what the main activity (primary activity) is of employers covered by the collective agreement.¹⁴⁹ Given the importance of this criterion for the application and interpretation of the scope of the collective bargaining agreement, a recent report from the Ministry of Social Affairs aims to provide more clarity regarding the wording of the scope of sectoral collective agreements.¹⁵⁰

Collective agreements may also cover the contracts with solo self-employed to 'produce a piece of work' (*overeenkomst tot aanneming van werk*),¹⁵¹ and the contract for services (*overeenkomst van opdracht*)¹⁵² (see section 1.2.2 above on NSW3). In that case, the law stipulates that provisions of the ACA concerning employment contracts, employers, and employees shall apply *mutatis mutandis*.¹⁵³ However, the compatibility of this provision (existing since 1927) with EU competition law was contested by the Dutch Competition Authority, raising the question whether minimum fees provided for solo self-employed orchestra musicians by a Dutch collective agreement were exempt from EU competition law. In its well-known FNV Kunsten judgment, the CJEU ruled that collective agreements can cover persons who, for the purpose of EU competition law, 'are in fact "false self-employed", in a situation comparable to employed', (so for our project: category 2 NSWs).¹⁵⁴

Following the **FNV Kunsten** judgment, the Dutch Competition Authority (currently *Autoriteit Consument en Markt*; ACM) initially maintained its position that a collective agreement may not cover (bogus) solo self-employed workers (NSW2 and NSW3). However, in 2019, against a background of increasing societal worries about the vulnerability of some groups of solo self-employed persons, the ACM decided to relax its strict policy.

¹⁴⁷ Bouwens, Houwerzijl, Roozendaal, *Schets van het Nederlandse arbeidsrecht* (2023), section 5.2.2.

¹⁴⁸ This is also important in case of legal extension of the collective agreement (see section 2.3 below).

¹⁴⁹ The principal activity criterion may be specified as a percentage of the total payroll, revenue, number of working hours, or number of employees/FTEs based on the activities. Typically, this refers to the largest portion (50% or more) but other percentages or numbers may also apply. See for a recent overview of the use of this criterion in collective agreements: MinSZW, *Hoofdzakelijkheids criteria in bedrijfstakcao's 2026*, Den Haag april 2026. The information and sample provisions of collective agreements in the report provide insight into the possibilities for delineating the scope using primary activity criteria. The findings may support the call by the Labour Foundation (Stichting van de Arbeid) to collective bargaining parties to clearly delineate the scope of the collective bargaining agreement and to update it regularly.

¹⁵⁰ MinSZW, *Hoofdzakelijkheids criteria in bedrijfstakcao's 2026*, The Hague: April 2026.

¹⁵¹ Article 7:750 of the DCC.

¹⁵² Article 7:400 of the DCC.

¹⁵³ Article 1(2) ACA.

¹⁵⁴ CJEU, judgment of 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, Case C-413/13 ECLI:EU:C:2014:2411, para 31.

In February 2023, the ACM revised its guidelines (the 'ACM Guidelines 2023')¹⁵⁵ once again in order to incorporate the European Commission's 'Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons'.¹⁵⁶ Accordingly, arrangements that are collectively negotiated with clients and regulate the remuneration (e.g. prices) and other working conditions of solo self-employed persons who are in situations similar to those of employees are deemed to fall outside the scope of the ban on cartels. This is the case in one or more of the following three categories of 'self-employed workers whose only commercial activity is the provision of services through their own labour'¹⁵⁷:

(1) The self-employed person is economically dependent on their client;¹⁵⁸

(2) the self-employed person works *de facto* 'side-by-side' with employees;¹⁵⁹

(3) the self-employed person works through a digital labour platform.¹⁶⁰

The ACM Guidelines imply that the concept of a collective agreement in principle follows the limits of competition law regarding its personal scope. This means that any collective agreement that does not conflict with competition law and fulfills the other requirements set, is a collective agreement in the meaning of Article 1 ACA.

In practice, collective agreements that focus solely on NSW 2 or NSW3, have not (yet) been concluded. Also the possibilities provided by the ACM Guidelines to extend the scope of a collective agreement to NSW 2 and/or NSW3 are not often used, but have gained significance due to the rise of (bogus) self-employed workers without employees (see section 1.2.3 above).¹⁶¹ These include provisions on the hiring (or subcontracting) of solo self-employed individuals, agreements on the nature and scope of the flexible workforce,¹⁶² and/or agreements aimed at clarifying the distinction between employees and self-employed individuals in the sector,¹⁶³ the application of a responsible rate

¹⁵⁵ The Netherlands: Authority for Consumers and Markets, Guidelines price arrangements of self-employed workers, 2023, available at <https://www.acm.nl/system/files/documents/acm-guidelines-soloselfemployed-2023.pdf>. These guidelines replace the previous Guidelines of July 2020, available at <https://www.acm.nl/sites/default/files/documents/2020-07/guidelines-on-price-arrangements-between-self-employed-workers.pdf>.

¹⁵⁶ Communication from the European Commission, 29.9.2022, Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons (2022/C374/02).

¹⁵⁷ ACM Guidelines 2023, para 10. Hence, although this is not clear from the English translation, the scope of the ACM Guidelines is limited to solo self-employed persons. This can be deduced from the Dutch (original) version: 'Leidraad tariefafspraken zzp'ers' ('zzp' means 'zelfstandige zonder personeel', i.e. a self-employed person without staff).

¹⁵⁸ Corresponding to points 23 – 24 of the Guidelines.

¹⁵⁹ Corresponding to points 26 – 27 of the Guidelines.

¹⁶⁰ Corresponding to points 28 – 30 of the Guidelines.

¹⁶¹ Mijke Houwerzijl (2023), Collective agreements regarding the working conditions of solo self-employed persons in the Netherlands, *Zeitschrift für Vergleichende Rechtswissenschaft*, 122, 4, 2023, p. 446-453; Penning/Bekker (2023), The Increasing Room for Collective Bargaining on Behalf of Self-Employed Persons, 19 *Utrecht Law Review* 1; Been/Keune (2022), Bringing labour market flexibilization under control? Marginal work and collective regulation in the creative industries in the Netherlands, *European Journal of Industrial Relations*, E-pub ahead of print, 7 October 2022.

¹⁶² In 2025, there were 22 collective agreements (12 sector-wide and 10 company-specific agreements), covering 15% of employees covered by a collective agreement, that included provisions regarding the use of self-employed workers or the ratio between permanent employees and flexible workers (including self-employed workers). See MinSZW, *Cao-onderzoek 2025*, Den Haag 2025, p. 90.

¹⁶³ In 2025, in 4 sector-wide collective agreements (covering more than 35,000 employees) provisions regarding bogus self-employment are included. See MinSZW, *Cao-onderzoek 2025*, Den Haag 2025, p. 90.

for self-employed individuals,¹⁶⁴ conducting a study on the possibilities of bringing self-employed individuals under the collective agreement, or introducing model agreements.¹⁶⁵

2.1.2 Access to representation and membership in (specific) trade unions

In principle, all categories of NSWs can be members of Dutch trade unions.¹⁶⁶ However, membership can be limited to individuals in a specific profession or role, or to those working in a particular sector or industry. The largest trade union, the FNV, is open not only to admitting NSW1 but also to NSW2 and 3, students, unemployed and pensioners.

¹⁶⁷ Whether this applies to other trade unions as well has not been investigated.

The membership fees for union members vary. This may depend on income level, age, or economic (in)activity; for example, there are sometimes special rates for students and retirees. Membership is supported by tax deduction possibilities.¹⁶⁸ Furthermore, in many sectors, the funding of union activities is supplemented by employer contributions. These contributions have historically been justified on the grounds that unions negotiate on behalf of all employees covered by the collective agreement, regardless of their membership status. Employers thereby acknowledge that unions fulfill a broader representative role and expect them to take the interests of non-members into account during negotiations on terms and conditions of employment.¹⁶⁹

Most Dutch unions (or departments of unions) are organised per sector under the “umbrella” of one of the three main confederations: Federation of Dutch Trade Unions (*Federatie Nederlandse Vakbeweging*, FNV), the Christian Dutch Trade Union Confederation (*Christelijk Nationaal Vakverbond*, CNV) and the Confederation for Professionals (*Vakcentrale voor Professionals*, VCP).¹⁷⁰ There are also several independent, often occupational, unions, not affiliated to any confederation. The FNV, with around 900.000 members, is by far the largest of the confederations, followed by the CNV with around 250,000 members and the VCP with close to 100,000 members. Together, the trade unions organize some 1.4 million workers, or 16 per cent of Dutch employees. Union density has declined with more than 50 per cent since the 1970s. This decline is the result

¹⁶⁴ In 2025 there were 12 collective agreements (covering around 36,000 employees) that include provisions, guidelines, or studies regarding rates for self-employed workers. See MinSZW, *Cao-onderzoek 2025*, Den Haag 2025, p. 88-89.

¹⁶⁵ In 2025, there were 11 collective agreements (10 sector-wide and 1 company-specific), covering 3% of employees covered by a collective agreement, which contain provisions regarding the use of a standard or contract-for-services agreement. See MinSZW, *Cao-onderzoek 2025*, Den Haag 2025, p. 91.

¹⁶⁶ Pursuant to Article 1(3) ACA, any (internal) rule that obliges an employer to hire workers of a particular race or with a particular religion, philosophy, or political belief, or members of a particular association, or that obligates the employer to refuse to hire them, is void.

¹⁶⁷ When joining the FNV however, one becomes a member of the confederation, which then assigns each member to a sector or industry.

¹⁶⁸ Currently, the maximum monthly dues for the largest unions, the FNV and the CNV, are approximately 21,50 euro per month. See: <https://www.cnv.nl/lid-woorden/contributie/#tarieven> and <https://www.fnv.nl/service-contact/contributie/meer-informatie/contributiebedragen>.

¹⁶⁹ S. Özkul (2026), *De collectieve handhavingsrol van vakbonden: legitimiteit tussen ledenbelang en algemeen belang*, *Arbeidsrechtelijke Annotaties* 2026 (25) 2, p. 36; R.F. Hoekstra, *Bevoordeling vakbondsleden als redding voor het systeem van collectieve arbeidsvoorwaarden*, *TRA* 2016/103.

¹⁷⁰ In recent years, some major reforms have taken place in the Dutch unions and especially in the largest confederation, the FNV. See W Been, M Keune (2019), *The Netherlands: decentralisation and growing power imbalances within a stable institutional context*, in: Collective bargaining in Europe, in: Torsten Müller; Kurt Vandaele; Jeremy Waddington (eds.): *Collective Bargaining in Europe: Towards an Endgame*. Volume II. Brussels: ETUI, (445-463), p. 448.

of both an absolute decline in membership and growth in the total number of employees, with new employees much less inclined to become union members. Although in most recent years the number of union members under the age of 45 increases,¹⁷¹ so far this is not sufficient to compensate for the overall reduction in membership.

Despite low union density, a persistent finding in periodic research is that among the Dutch population, support for trade unions is generally high. Most employees value the collective agreement, whether they are a member of a union or not. The low membership therefore cannot be interpreted as a sign that employees do not see the benefits of collective agreements and of trade unions.¹⁷² Due to specific mechanisms discussed below (section 2.3), collective agreement coverage for all employees is currently about 72,5 per cent in 2024; around 80 per cent in the private sector and 100 per cent in the public sector. This means that a considerable and growing number of workers is not covered.¹⁷³

The coverage gaps are often situated in sectors without a sectoral collective agreement or without such a collective agreement that is declared universally binding,¹⁷⁴ including the hotel, restaurants and catering industry, parts of the logistic and creative sectors, which employ many NSWs. For instance, it is a challenge to find a way effectively to regulate decent terms and conditions of work in a growing sector such as logistics run by advanced technology and which faces extended processes of automation, with a workforce including many low-waged NSW1, that knows high turnover rates and where very few workers are trade union members. The presence of 'yellow' unions in the sector further complicates the bargaining process.¹⁷⁵ Another complicating factor in logistics is the outright refusal of some companies, such as Amazon, even to start collective bargaining. Amazon entered the Dutch labour market in 2021 and its logistics operation is a relatively small player, employing a couple of hundred people collecting and (un)packing orders in warehouses or transport hubs, while parcel delivery is outsourced to delivery companies such as DHL catalogue.¹⁷⁶

In attempts to mitigate representation gaps among NSWs, some initiatives have been taken, such as establishing specific unions for non-standard workers. An example regarding platform work is the Riders Union which was founded on the initiative of

¹⁷¹ <https://www.cbs.nl/nl-nl/visualisaties/dashboard-arbeidsmarkt/werkenden/vakbondslidmaatschap>

¹⁷² SER (2013) *Verbreiding draagvlak cao-afspraken*, Advies 13/03, Den Haag, and most recently confirmed by Stichting van de Arbeid, 16 okt 2025, *Aanbevelingen met betrekking tot afsluiten cao's aan decentrale cao-partijen*.

¹⁷³ For a long time, approximately 80% of Dutch employees were covered by a collective agreement, but this has now dropped to 72%. See Paul de Beer and Rein de SauvageNolting (2024), *Balanceren op de cao helling*, Amsterdam: Wetenschappelijk Bureau Vakbeweging De Burcht. This reports investigated the underlying causes and made suggestions on how collective bargaining coverage can increase again. As the collective bargaining coverage rate depends primarily on the degree of organisation among employers, an important finding is that this is declining in a number of sectors. In addition, new employers are less likely to join an employers' organization than they used to be.

¹⁷⁴ The difference between the relatively low union density rate and this relatively high coverage rate is related to the mechanism to declare collective agreements universally applicable (see on this extension mechanism, section 2.3 below). In addition to the 27,5 per cent of employees not covered by collective agreements, also genuine and bogus solo self-employed are mostly not covered; Been and Keune (2019), p. 451.

¹⁷⁵ A 'yellow' union is a term used for unions dominated or unduly influenced by an employer and therefore not (deemed to) operating fully independently.

¹⁷⁶ See Berntsen, L., Houwerzijl, M., & Londoño Polo, J. (2026; *in press*). The Netherlands. In Rainone, S. & W. Zwysen (red.) *Collective bargaining and algorithmic management and AI at work*. ETUI.

Deliveroo riders in 2018.¹⁷⁷ This spontaneous movement was absorbed by the traditional trade union movement as the Riders' Union Netherlands became part of the Dutch Federation of Trade Unions, FNV.¹⁷⁸ Also, since respectively 1997 and 2007, the two largest Dutch trade union confederations established dedicated units for solo self-employed members, namely 'FNV Zelfstandigen' and 'CNV Zelfstandigen'.¹⁷⁹

As a general strategy, in particularly since the 2010s, trade unions focus on achieving 'decent work' by limiting flexible contracts to 'sick and peak', promoting equal pay for equal work, combatting bogus self-employment and striving for employment that enables workers to establish economic independence ('quality jobs'). This 'decent work' agenda is embraced by both the FNV and CNV to address the problems of precarious work, using instruments in the domain of collective bargaining (e.g., negotiating agreements on behalf of temporary agency workers), lobbying governments (e.g., for more restrictive solo self-employment regulation) and organizing precarious workers (e.g., in the cleaning sector).¹⁸⁰

2.1.3 Access to internal voice and representation in collective bargaining

To increase engagement with and support collective bargaining, unions provide their members with information about the negotiation process. In addition, these members are actively asked to share their opinions, for example, on what they would like to see as a result of the negotiations, what they think of the negotiated outcomes, or how these should be implemented. This is done through focus groups, panels, and (digital) surveys, or via co-creation methods (in this process, employers and employees from different parts of organizations or sectors sit down together to formulate input for a new collective bargaining agreement, which can then be incorporated into the negotiation process).¹⁸¹ Unions also actively seek to involve non-members: Information is often sent to both members and non-members. Also, meetings to discuss the wish list for a collective agreement are often open to both members and non-members, and both groups are included in the questionnaires designed to gather opinions. In some sectors, trade unions allow non-members to vote on the collective bargaining result.¹⁸²

¹⁷⁷ The reason was that in February 2018, Deliveroo in the Netherlands replaced all its employed food delivery workers with independent contractors. Deliveroo's food delivery workers protested this move and felt that Deliveroo was not taking them seriously. See: <https://www.ridersunion.nl/over-de-riders-union>.

¹⁷⁸ M Lammannis, Collective bargaining in the platform economy: a mapping exercise of existing initiatives, Etui report 2023.02., p. 33.

¹⁷⁹ Jansen G (2017) Solo self-employment and membership of interest organizations in the Netherlands: Economic, social, and political determinants. *Economic and Industrial Democracy*. Epub ahead of print 20 September 2017. DOI: 0143831X17723712. Besides union-affiliated organizations, several new specific 'solo self-employment' organizations such as 'Platform Zelfstandige Ondernemers' (PZO-ZZP) and 'ZZP Nederland' have appeared. In the Dutch social dialogue system, interest representation by 'FNV Zelfstandigen' and 'PZOZZP' is the most institutionalized, as both organizations also hold seats in the SER.

¹⁸⁰ G Jansen and A Lehr (2019), On the outside looking in? A micro-level analysis of insiders' and outsiders' trade union membership, *Economic and Industrial Democracy*, 1–31.

¹⁸¹ Been, Keune (2019), 456, citing the SER (2013) SER (2013) *Verbreiding draagvlak cao-afspraken*, Advies 13/03. In general, the SER report notes that it is easier to include employees in case of a company-level collective agreement than in the case of sectoral collective agreements, simply because having the target group located in one company makes it easier to reach them.

¹⁸² Ibidem. Notably, this practice does not impact the legal requirements for declaring a collective bargaining agreement generally binding, including the requirement that the collective agreement applies to a significant majority of workers in the industry (see section 2.3 below).

In the publicly available FNV by-laws,¹⁸³ these processes are codified: When entering or amending collective agreements, the board must consult with (a delegation of) the members concerned. The guiding principle in drafting, negotiating, and concluding collective agreements is that the members concerned (those covered by the collective agreement) have a say in the process and are closely involved in every stage of the decision-making process. This means that in principle, NSWs of different categories have the same membership rights to consultation as standard workers, provided that they are covered by the specific collective agreement at stake. Further details regarding practical procedures are set forth in a regulation.¹⁸⁴

Against the backdrop of worries about a declining collective agreement coverage rate, in Autumn 2025, the Dutch Labour Foundation (*Stichting van de Arbeid*)¹⁸⁵ gave the following recommendations regarding the conclusion of collective agreements to collective bargaining parties at the sectoral and company level:

1. The parties to the collective agreement are requested to ensure that all employees in a company or sector (including non-members) are included in the collective bargaining process. Digital tools can be helpful in this regard. This can also provide greater insight into the development of the collective bargaining agreement itself, thereby encouraging recognition of its importance.
2. (Partly) in light of the above under point 1, collective bargaining parties are called upon to make arrangements to grant trade unions access to the workplace.¹⁸⁶

Indeed, to increase support for collective bargaining, 24 recently concluded collective agreements contain explicit arrangements to increase union membership and/or to boost member engagement with the collective agreement. Arrangements have been made regarding access to the workplace, union dues, encouraging participation in union activities, union leave, and organizing union week/month events.¹⁸⁷

¹⁸³ See FNV statuten (bylaws) 2026. <https://www.fnv.nl/over-de-fnv/wie-we-zijn/statuten-reglement-en-grondslag>.

¹⁸⁴ [Huishoudelijk reglement FNV versie juli 2018](https://www.fnv.nl/getmedia/ea715433-52f9-44d0-be8b-8cccf95b45bc/huishoudelijk-reglement-fnv-versie-juli-2018.pdf) operationalizing in particular articles 8.3, 23.8, and 28.6.E of the bylaws; <https://www.fnv.nl/getmedia/ea715433-52f9-44d0-be8b-8cccf95b45bc/huishoudelijk-reglement-fnv-versie-juli-2018.pdf>. See in particular Article 4 (duties and powers of a direct sectoral department), Article 6 (establishing members covered by the relevant collective agreement), Article 7 (establishing a collective bargaining committee), Article 8 (influence members on draft proposals), Article 9 (consultation of members of other unions and non-members), Articles 11 and 12 (members' input on proposals and decision on draft proposals), Article 13 (opening of negotiations), Article 14 (consultation on the negotiation result), Article 15 (conclusion of collective agreement).

¹⁸⁵ The Labour Foundation is a national consultative body organized under private law. Its members are the three peak trade union federations and three peak employers' associations in the Netherlands. The Foundation provides a forum in which its members discuss relevant issues in the field of labour and industrial relations. Some of these discussions result in memorandums, statements or other documents in which the Foundation recommends courses of action for the employers and trade unions that negotiate collective bargaining agreements in industry or within individual companies. See: <https://www.stvda.nl/en/labour-foundation>.

¹⁸⁶ Stichting van de Arbeid, 16 okt 2025, Aanbevelingen met betrekking tot afsluiten cao's aan decentrale cao-partijen, see: <https://www.stvda.nl/-/media/stvda/downloads/publicaties/2025/aanbevelingen-afsluiten-cao-overleg.pdf>.

¹⁸⁷ MinSZW (2026), *Trends in cao-akkoorden voorjaar 2026*, The Hague, p. 13.

2.2 Process of bargaining to conclude a collective agreement

2.2.1 Legal framework

Collective bargaining in the Netherlands is a voluntary process. Collective agreements can be negotiated and signed at company level between one or more trade unions and an employer, or at sectoral level, negotiated and signed by one or multiple unions and employers' organizations.

There is no duty to bargain and there is no specific legal framework regarding the process between the bargaining parties towards a collective agreement. This also means that there are no public entities supporting the bargaining process, i.a. with mediating measures. Furthermore, there are no legal barriers in national rules or bylaws that hinder the interests of NSWs to be promoted in the bargaining process.

A traditional method used in the Netherlands for encouraging collective bargaining is to allow the negotiating parties to deviate from certain provisions: in the Dutch civil code semi- and three-quarter mandatory provisions can be deviated from through a collective agreement, allowing social partners to tailor rules to the specific conditions of a branch or industry.¹⁸⁸ Depending on the specific text of a provision deviation *in favor* and/or *in pejus* is possible.¹⁸⁹

This includes certain provisions regulating flexible employment contracts (see section 1.2.1 regarding NSW1), the use of which can lead to conflicting interests between stand-ard workers and NSW1.¹⁹⁰ In particular, concluding a collective agreement is very im-
portant from an employers' point of view for the legal position of temporary agency workers, because in the absence of a collective agreement, the stricter statutory regime would apply.

Organized employers and unions normally meet every one or two years for bargaining relating to the renewal of the collective agreement, since collective agreements are in most cases concluded for one or two years, although there are from time-to-time agreements concluded for several years. The Act on Collective Agreements (ACA) in practice places only minor restrictions on the parties as far as this issue is concerned. The starting point of the annual bargaining round is the existing agreement and the amendments which employers and unions wish to make to it. In times of economic prosperity, the unions in particular propose a whole series of improvements and em-
ployers try to limit or to delay them for as far and as long as possible. If, in contrast, the

¹⁸⁸ Note that semi-mandatory provisions can also be deviated from by individual employment agreements.

¹⁸⁹ However, if a collective agreement provision proves to be inconsistent with (mandatory) legal provisions, this bargaining provision must be considered as null and void. A problem may arise if the individual employment contract is more favourable than the collective agreement on one or more points, but less favourable on other aspects. The Dutch Supreme Court has ruled that in such cases the comparison of the favourability of the indi-
vidual contract must be made clause-by-clause. So, a package comparison is not allowed, unless the collective agreement itself allows it.

¹⁹⁰ This can be problematic for non-union members (including many NSW1) because provisions in a collective agreement that deviate from statutory standards to the detriment of employees will apply not only to them in case the collective agreement becomes universally applicable, but also when (at the employer's instigation) their individual employment contract includes an incorporation clause stipulates that the collective agreement or a part thereof applies, which is very common (see section 2.3 below). The latter was confirmed by the Dutch Supreme Court in a judgment of 20 December 2002, ECLI:NL:HR:2002:AF2166 (*Bollemeijer/TPG*).

economic situation is deteriorating, employers attempt to take a step backward and the unions attempt to maintain 'acquired rights' for as long as possible.

Sometimes, the draft for a collective agreement is rejected by members of the bargaining parties, but this remains exceptional. Once the approval has been obtained, the new collective agreement may be formally concluded. If the bargaining parties do not reach consensus as regards a collective agreement, 'war' may be declared in the form of a strike. A strike does not, however, take place as a default. It may be (especially if employees do not feel strong enough to undertake a strike and employers do not effectuate a deterioration of the conditions of employment) that the unions do not call a strike and there is simply a period with employers continue to apply the terms of the old collective agreement.¹⁹¹ The parties then resume bargaining a year later. However, it may sometimes happen that a sector lacks a collective agreement for several years because both sides of industry stubbornly fail to reach a compromise.

2.2.2 Access to collective action

In the Netherlands, strike law is entirely judge-made¹⁹² and the courts are actively involved in regulating strikes. The courts adhere to several principles to control strike behaviour, such as the peace obligation. The balancing of the effective exercise of the right to collective action, as guaranteed by Article 6(4) ESC, against the interests of the employer, third parties and society as a whole, is carried out using the abuse test, also known as the proportionality test.¹⁹³ This unquestionably put limits on the freedom to strike, while at the same time leaving ample room for legal strike action. The strong and effective judicial control of collective action has been conducive to a low strike record and an orderly system of wage formation through collective bargaining.

Most strikes are organised by unions. Nevertheless, sometimes so called '*wildcat*' or unofficial strikes spontaneously occur, strikes in which unions are not (yet) involved. Unofficial strikes also may fall within the scope of Article 6(4) ESC.¹⁹⁴ Each worker is

¹⁹¹ In fact, the expiration of a collective agreement merely means that the freedom of contract between individual employers and employees is restored, allowing them to agree to amend the employment contract. However, if there is no mutual agreement to amend the employment contract, the provisions of the old collective agreement continue to apply. Moreover, even after a new collective agreement has become applicable to the covered employees, more favourable provisions of the old collective agreement continue to apply, provided that the new collective agreement has a minimum character. It is inconsistent with this minimum character that the new collective agreement would automatically render previously applicable, more favourable terms and conditions of employment for the employee inoperative, regardless of whether those terms and conditions originate from individual agreements or from a previously applicable but now expired collective agreement, according to the Supreme Court in its judgment *AbvaKabo FNV/Unieke Kinderopvang* (8 April 2011 ECLI:NL:HR:2011:BP0580, *AbvaKabo/Unieke Kinderopvang BV*).

¹⁹² Based on Article 6(4) ESC, which is directly applicable in Dutch law since the ruling of the Dutch Supreme Court in the *NS-case*, NJ 1986, 688. Kullmann, M., & Kali, S. (2025). *Restrictions on the Right to Strike in the Netherlands*. In B. Waas (Ed.), *Restrictions on the Right to Strike* (pp. 293-303). Wolters Kluwer.

¹⁹³ Assessed in accordance with Article G ESC. For more extensive information see Kullmann, M., & Kali, S. (2025). *Restrictions on the Right to Strike in the Netherlands*. In B. Waas (Ed.), *Restrictions on the Right to Strike* (pp. 293-303). Wolters Kluwer.

¹⁹⁴ The Charter recognizes the right of workers to collective action but does not explicitly mention trade unions. This means that, with regard to collective actions protected under Article 6(4) ESC, no distinction is made between organized and wildcat strikes. Participants in wildcat strikes may also invoke Article 6(4) ESC, provided that the purpose of the action relates to the establishment of terms and conditions of employment. The legal remedies that can be used against wildcat strikers are limited. Although they forfeit their right to wages during the action, they cannot be forced to abandon their action through a penalty payment or detention. If the actions fall under the protection of the ESC, seeking damages or imposing disciplinary measures is, of course, also not possible.

free to decide for themselves whether or not to participate in a strike. Union members are therefore not required to join the strike even if their union has called for it. However, strikes must always be undertaken by a collectivity of employees in order to be legitimate; an individual who declares himself on strike may be considered in contractual default.

Individual participants of strikes who do not work at all in principle lose their right to wages and have no right to a social security benefit.¹⁹⁵ They may also lose all or a proportion of their wage in case they participate in alternative actions such as work-to-rule actions.¹⁹⁶ Participants in lawful strikes may not be dismissed or punished by their employer with other disciplinary measures. Even participants in unlawful strikes that are organised by unions are protected as long as they terminate their actions as soon as the judge has ruled its unlawfulness.¹⁹⁷

The balance of power between unions and employers would be disturbed if employers would not only have to bear the costs of the economic damages caused by the strike, but also would have to pay the wages of non-participants that could not work because their colleagues were on strike. Therefore, in case of a regular strike organised by the union(s), non-participants have no right to pay. At the other end of the spectrum is the '*wild cat strike*' in which only a few workers participate. In that case, non-participants will have a right to pay. For each type of strike action in between these two extremes, the judge has to consider whether or not the risks of the strike action belong to employees as a collectivity, or to the employer.¹⁹⁸

Access to collective action for NSW1 is guaranteed. The court has not yet ruled on what happens when temporary agency workers go on strike at the user company where they are put to work. Trade union FNV assumes that a temporary agency worker is allowed to strike (also) at the user company. FNV has agreed with the employer's association of temporary work Agencies ABU that the temporary agency workers employed by their members may join such a strike.¹⁹⁹ In that case, it is necessary that the agency worker informs the TWA about the strike at the user company.²⁰⁰

It is debatable whether the right to strike is effectively recognized for the (bogus) self-employed in the Netherlands (NSW 2 and NSW 3). In absence of a Supreme Court ruling, some courts have denied the right to strike to (genuinely and/or bogus) self-employed workers. In the summer of 2015, a group of (bogus²⁰¹) self-employed package delivery drivers working for PostNL took collective action due to dissatisfaction with the

¹⁹⁵ Pursuant to Article 7:627 DCC and Article 19(1) of the Unemployment Act.

¹⁹⁶ Dutch Supreme Court, 30 May 1986, NJ 1986,688 (NS), par. 3.6.

¹⁹⁷ Dutch Supreme Court, 22 April 1988, NJ 1988, 952.

¹⁹⁸ Dutch Supreme Court, 10 November 1972, NJ 1973, 60 (Meijer/De Schelde); Dutch Supreme Court 7 May 1973, NJ 1973, 142.

¹⁹⁹ <https://www.fnv.nl/werk-inkomen/staken/stakingsrecht>.

²⁰⁰ Furthermore, regarding temporary agency workers, Article 10 of the Act on the Allocation of Labour by Intermediaries (*Waadi*) stipulates that temporary agency workers may not be deployed to perform the work of employees who are on strike. This prohibition also applies to temporary agency workers already put to work by the affected user company at the time the strike begins, to the extent that those temporary agency workers are subsequently deployed to perform work that had previously been carried out by the striking workers (District Court Oost-Brabant 24 January 2019, ECLI:NL:RBOBR:2019:89).

²⁰¹ See section 1.2.3 (fn. 105) above on the judgments regarding package delivery workers of PostNL in 2015 and 2016.

negotiations regarding improvements to their working conditions. The judge in preliminary relief proceedings ruled that the action was unlawful. He held that self-employed individuals do not fall within the scope of Article 6(4) ESC,²⁰² unless they can be classified as bogus solo self-employed workers.²⁰³ However, this case law predates 2019, when the Dutch competition authority relaxed the prohibition on collective bargaining by or on behalf of certain groups of (bogus) self-employed individuals under competition law (see section 2.1.1 above). Hence, it is currently unclear to what extent NSW2 and NSW 3 have access to collective action or not.

2.2.3 Access to participation in the bargaining process

Apart from what was mentioned above (see section 2.1.2) regarding the internal voice and representation in collective bargaining for NSWs (predominantly NSW1) within the union to which they belong or which represents them, even if they are not members themselves, there are no specific limitations nor special roles for NSW1 as regards participation in the bargaining process (nor for NSW2 and NSW3 as far as collective bargaining for them is allowed). Here, the question will be addressed of how NSWs' indirect (representation and/or) participation in collective bargaining can be limited.

On the union side, the largest confederation FNV traditionally (co)signs most agreements. However, it is sufficient that one union signs the collective agreement. In practice, this means that if a union's demands are too high, it can be side-stepped by an employer or employers' organization by signing an agreement with another, less demanding union, even if this union is much smaller and less representative.²⁰⁴ This detrimental practice often happens in branches and businesses that operate beyond traditional sectoral scope and that do employ many NSWs.²⁰⁵

As there are no legislative criteria for representativeness, recognition of the right to participate in collective bargaining should primarily be achieved through 'power play' in practice. This means that if a particular trade union is denied access to the bargaining table, its primary option is to organize a successful strike to demand a seat at the table. Alternatively, the exclusion of a clearly representative trade union from ongoing collective bargaining can be contested in court. In this context, in 2007, the Dutch Supreme Court ruled in the *AbvaKabo* case that although the principle of freedom of contract generally guides cases in this area, the greater the organization's interest in

²⁰² In the original English version of the Charter, rights are granted to "workers" in Articles 5 and 6. In the Dutch-language version adopted along with the Act approving the revised ESC, the term "werknemers" is used instead of "werkenden," but it is unclear whether this was a deliberate choice. Parliamentary Papers II 2004/05, 29941, 3, p. 12.

²⁰³ District court Midden-Nederland, ECLI:NL:RBMNE:2015:5373. See on this case Pennings/Bekker (2023), p. 20. In the 1980s there were cases denying medical specialists the right to strike. See Cremers and Tilstra, 'Het Collectief Actierecht van de Medisch Specialisten En Het Europees Social Handvest' (1989) 15 Recht en Kritiek 49, 56.

²⁰⁴ In recent years, several important agreements have been concluded without the FNV, as employers are more able and willing to cherry-pick the unions that will agree with more of their demands. See Been/Keune (2019), p. 449, 451.

²⁰⁵ See Berntsen, L., Houwerzijl, M., & Londoño Polo, J. (2026; *in press*). The Netherlands. In Rainone, S. & W. Zwysen (red.) *Collective bargaining and algorithmic management and AI at work*. ETUI.

participating in collective bargaining, the more substantial the arguments must be to justify refusing that organization's participation.²⁰⁶

A recent trend among certain companies is to avoid or abandon negotiations with trade unions and instead turn to their works councils (see on works councils section 3 below). However, the Dutch Supreme court ruled against this practice in the TUI case and confirmed (as is established in the Works Councils Act) that trade unions have priority in collective bargaining procedures.²⁰⁷ At TUI, the main terms and conditions of employment for cabin crew were established in consultation with the works council. The FNV disagreed with this and stated that it wanted to negotiate a collective agreement with TUI. When TUI refused, the FNV sought a seat at the negotiating table through legal proceedings. In its judgment, the Supreme Court held that employers must enter into discussions with a union if the union demands a seat at the negotiating table. Employers must then make a serious effort to negotiate with the union instead of with their works council, despite the fact that there is no obligation to actually reach an agreement.

This ruling may help counter the tendency among certain employers, sometimes foreign newcomers to a sector with a more Anglo-Saxon, anti-union attitude, to avoid collective bargaining with the union. Since this trend typically occurs in sectors with many (often low-wage) NSW1 workers, fueled by competition over labour costs, it denies NSW1 the opportunity to be represented and to participate in collective bargaining processes.

2.3 Legal effects of a collective agreement

2.3.1 Legal framework

In principle, a collective agreement only applies to the members of the signatory parties.²⁰⁸ However, unless otherwise agreed, the bound employers are required to apply the collective agreement also with respect to their non-bound employees. This means that the employer who concluded the collective agreement or the employer who is a member of the employers' organisation that concluded the collective agreement, is bound vis-à-vis all his employees (irrespective of whether they are union member or not).²⁰⁹ However, the non-bound employees cannot derive any individual rights from this. Only trade unions and employers' associations, in their capacity of signatory parties, can enforce the bound employer's obligation to comply with the collective agreement. Partly in view of this obligation, many bound employers wish to make the

²⁰⁶ ECLI:NL:HR:2007:BA4118 Dutch Supreme Court, 8 June 2007, JAR 2007/162: The basic principle is that a union that represents a large number of workers in the sector and is more representative than other unions is, in principle, entitled to participate in collective bargaining negotiations. However, in the AbvaKabo case, the Supreme Court accepted this union might still have to explain why, contrary to its previous stance, it wishes to participate in the collective bargaining process and why this participation, unlike its participation to negotiations in previous years, would have a chance of success. After all, the parties that are (wishing to) negotiate on renewing an existing collective agreement have, within the limits of what is reasonable in view of the interests involved, freedom to negotiate. Therefore, they are not automatically obliged to admit a trade union that is not a party to the collective agreement, even if it is representative, to the bargaining table if they have a justified expectation that, as a result, its participation will not lead to a result due to a fundamental lack of agreement. However, to the extent that the interests involved in admitting such a union to these consultations are greater or more urgent, the more substantial the arguments must be to justify refusing its participation.

²⁰⁷ ECLI:NL:HR:2024:673 (Dutch Supreme Court) (TUI case).

²⁰⁸ Article 9 ACA.

²⁰⁹ Article 14 ACA.

collective agreement applicable to every employment contract they enter into by means of an incorporation clause.²¹⁰

The Act on Collective Agreements (ACA) of 1927 recognizes the binding force of collective agreements on individual employment contracts. It establishes that any stipulation agreed by an employer and employee contrary to a collective agreement is null and void. Any such stipulation is superseded automatically by the provisions of the collective agreement. In addition the provisions of the collective agreement supplement the contents of those individual contracts of employment on issues about which the individual employment contracts are silent.²¹¹ The Works Councils Act (WCA) guarantees the priority of collective agreements over agreements between employers and works councils.²¹²

A collective agreement can be declared universally binding by a decree of the Minister of Social Affairs & Employment (*Sociale Zaken & Werkgelegenheid: SZW*) to the workforce of all enterprises in a certain sector of the economy.²¹³ If the Minister has used this power, also the outsider employers and all their workers are legally bound to the collective agreement.

The extension procedure is stipulated in the Act on extension of collective labour agreement, 1937 (AECA; *Wet AVV*).²¹⁴ The extension should be requested by one or several of the employers' organizations and trade unions which have signed the collective agreement.²¹⁵ Most often employers and trade unions jointly request for extension. The request for extension will be accepted only if the Minister is convinced that the collective agreement is already applied to a substantial majority of persons employed in the sector.²¹⁶

To determine whether a "substantial majority" exists, the number of employees working for employers bound by the collective agreement is compared to the total number of employees who would fall within the scope of the collective agreement if it were declared universally binding. According to the current policy guidelines for reviewing collective agreement provisions submitted for a declaration of universal applicability (*Toetsingskader AVV*),²¹⁷ a significant majority exists if the percentage of employees working for employers bound by the collective agreement is at least 60 percent. If the percentage is between 55 and 60, the collective agreement is also declared universally binding, unless there are indications that support for the collective agreement is low.²¹⁸ If the majority is less than 55 percent, the collective agreement will not be declared universally binding unless, in the Minister's opinion, there are exceptional circumstances.

²¹⁰ Employers generally do not know which of their employees are union members; in principle, they are not allowed to keep track of this information (see Artikel 9(1) and Article 9(2)(b and d) GDPR). As a result, in practice, the collective agreement simply applies to all employees who fall within its scope.

²¹¹ Articles 9, 12, 13 ACA.

²¹² Article 27 (3) Works Council Act.

²¹³ This extension is – concerning most of its provisions – also applicable to the so-called posted workers, working in the Netherlands and irrespective of the chosen law (Article 2a AECA).

²¹⁴ Government Gazette 1937, 801.

²¹⁵ Article 4 AECA.

²¹⁶ Article 2 AECA: The notion "in een bedrijf[stak] werkzame personen"

²¹⁷ Government Gazette 1998, 240.

²¹⁸ An indication of this is, for example, that not all relevant trade unions have signed the collective agreement.

The Minister also has the authority to grant exemptions from the declaration of universal binding force (dispensation).

An extended collective agreement gets (for the duration of the extension) the character of a law²¹⁹ and applies mandatorily to all employment agreements concluded or to be concluded within the term of the extension decree.²²⁰ The legal extension to all companies in a certain sector is at most two years (*Toetsingskader Algemeen Verbindend Verklaring CAO-bepalingen* 1999). When a collective agreement ends without there being a new one to replace it, the agreement will still have validity for existing employees after it has expired.²²¹ The legal extension mechanism, however, always ends when the collective agreement ends.

2.3.2 Access to being covered by collective agreements

As regards access by NSWs performing work at the premises of bound employers, NSW1 is always covered in the same way as standard employees, while NSW2 and even a selective part of NSW3 can potentially be covered as well (see under section 2.1.1 above regarding the ACM guidelines on collective bargaining for solo self-employed).

Collective agreements are very important for the employers of temporary agency workers (NSW1), because in the absence of a collective agreement, the stricter statutory regime would apply. For example, according to collective agreements for the temporary work agencies sector, temporary agency worker can be employed based on more consecutive fixed-term contracts and for a longer duration, before an open-ended contract must be concluded. On the other hand, these collective agreements are important for trade unions as well, as it provides the temporary agency sector with its own occupational pension fund in which workers start to build up (supplementary) pension once they have worked through a temporary employment agency for 26 weeks, provided they are 21 years or older.

For NSW1 (and standard workers alike) who are employed (or deployed as temporary agency workers) by non-bound employers, coverage by collective agreement provisions is dependent on the extension mechanism. Provisions in a collective agreement that relate to the contracting of work or the provision of certain services may also be declared generally binding, provided they are consistent with the ACM Guidelines 2023 (see under section 2.1.1 above). This means that NSW2 and certain groups of NSW3 can be covered by extended collective agreements as well.

As explained (see section 2.1.1 above), the scope of application specifies to which economic activities the collective agreements apply. If a collective agreement is

²¹⁹ Extended provisions of a collective agreement are regarded as 'objective law', in the meaning of Article 97 of the Act on Judicial Organization, which means that judges must apply them. Decisions on declaring collective agreements universally binding, along with supporting information such as the date of the decision, the date of publication in the Government Gazette, and the Government Gazette publication number are published on this website: <https://cao.minszw.nl/mozard/!suite05.scherm1496?mNch=a622jh3z5p>. Official publications regarding the public notice of requests for a declaration of universal applicability are also published in the Government Gazette.

²²⁰ Whether a universally binding collective agreement applies to a certain company must be checked by looking to the (sectoral) scope of application. See: <http://cao.minszw.nl/>. Moreover, the Wage formation Act 1970 narrowly defines the powers of the Minister of Social Affairs to intervene in the process of wage formation.

²²¹ See explanation in footnote 191 above.

declared universally binding, non-organized companies with often many NSW1 sometimes try to cut costs by arguing that the scope of application of the extended collective bargaining agreement does not apply to them. This is the rationale behind many requests for dispensation from universally extended collective agreements. For instance, in 2021, employer associations in e-Commerce (VEN; the employer organization of e-commerce companies such as Picnic, Flink, Getir, Gorillas) and the small trade union De Unie concluded a separate e-commerce collective agreement for highly automated, app-based supermarket delivery services, deviating from the sectoral supermarkets collective agreement. The parties to the separate e-commerce collective agreement argued that this better matched the economic activities of e-commerce companies and employees. The latest court decision in 2024 ruled however that Picnic was covered by the scope of application of the legally extended supermarkets CLA, which is more protective of workers; yet in May 2025 the Ministry of Social Affairs provided VEN affiliates with a dispensation from the legal extension of that collective agreement.²²²

2.4 Enforcement of collective agreements

2.4.1 Legal framework

The parties concluding a collective agreement are legally responsible for monitoring compliance with the agreement. They may include additional provisions in the collective agreements to improve and ensure compliance. Many collective agreements in the Netherlands contain such provisions.²²³ Besides the collectively agreed measures, the individual parties involved in collective bargaining can also have their own measures to improve compliance. Information campaigns on the part of employers' organisations to inform their members are an example, as is the possibility of exclusion of members that violate the collective agreement.

As discussed above (section 1.1.4), unions can support (a group of) their members to go to court when their collective agreement is violated.²²⁴ Next to that, unions can demand compliance with collective agreements in court on their own behalf, from a bound employer²²⁵ who violates normative provisions. This is because enforcing collective bargaining agreements involves a broader collective interest than merely protecting the individual rights of union members. Enforcement is aimed at preserving the outcome of

²²² Letter to the House of Representatives (*Tweede Kamer*), 24 June 2024, explaining the VEN exemption from the supermarkets' collective agreement.

²²³ Been and Keune (2019), p. 455 make reference to a study of 2015 among 167 collective agreements showing that 47 per cent contain stipulations to inform and explain the agreement to the relevant actors and to help them with interpretation and implementation, in most cases also including a specific body charged with this activity; also, 19 per cent contain a grievance procedure, 75 per cent a dispute and arbitration procedure and 21 per cent ensure arrangements for an inspectorate body. Especially those industries in which the risk of non-compliance is highest have installed an inspectorate organisation to improve compliance. For example, construction and the retail industry have such arrangements in place (Kuiper et al. 2015), as do the temporary work agencies.

²²⁴ Claims can also be based on the general collective action regime in Article 3:305(a) DCC. This provision allows any foundation or association with full legal capacity to institute a class-action lawsuit if it fulfils certain conditions.

²²⁵ Pursuant to Article 9(2) ACA.

collective bargaining, preventing the creation of precedents, ensuring industrial peace, and promoting fair competition within sectors.²²⁶

Parties to sectoral collective agreements may also delegate their enforcement powers to an organisation created by them. These 'compliance organizations' are jointly funded by employer organizations and trade unions and therefore generally have sufficient financial resources and specialized legal expertise.²²⁷ This enables them to systematically and proactively monitor compliance with collective agreement provisions and to take enforcement action based on established and standardized procedures. The actions of these compliance organizations are thus much less dependent on factors that can limit enforcement by trade unions in practice, such as financial resources, strategic considerations, or support among members.²²⁸ These foundations can act on behalf of the parties to the collective agreement, both in and out of court, if necessary, in order to obtain measures against employers who fail to comply with the provisions of the collective agreements. The legal standing of the foundation derives directly from the collective labour agreement, and no separate power of attorney is needed.²²⁹

Notably, the provisions of the collective agreement that have been declared universally binding retain their civil law character, meaning that compliance with them can only be enforced by employers, employees, or their organizations in civil court (as there are no labour courts in the Netherlands).²³⁰ As follows from the *Tido Vesta v. SNCU* ruling,²³¹ enforcement against non-bound employers and employees remains possible even after the extension period has expired, provided that a collective agreement declared universally binding was in effect during the period under review. This interpretation broadens the scope for enforcement, but does not alter the fact that prolonged absence of an extended collective agreement may still constitute a significant obstacle to effective enforcement against non-bound employers and employees.

While there is no public enforcement mechanism, the parties to the collective agreement that requested the extension or their compliance organisations may ask the Dutch Labour Authority (NLA) to investigate the extent of (non-)compliance.²³² The NLA will then provide data to the parties to the collective agreement and other bodies that (on behalf of the parties to the collective agreement) monitor compliance with the provisions of (extended) collective agreements.

²²⁶ Parliamentary Papers II 1926/27, 166, nr. 3, p. 6-7 and nr. 4, p. 20 en 22. See S. Özkul (2026), *De collectieve handhavingsrol van vakbonden: legitimiteit tussen ledenbelang en algemeen belang*, *Arbeidsrechtelijke Annotaties* 2026 (25) 2, p. 42 and C.P. Robben & S.N. de Valk, *Handhaving van cao's en contractsvrijheid* (Deel I), TRA 2019/5.

²²⁷ Examples are the Foundation for Compliance with the Collective Labour Agreement for Temporary Agency Workers (*Stichting Naleving CAO voor Uitzendkrachten: SNCU*), the Foundation for the Observance of Professional Freight Transport (*Stichting naleving beroepsgoederenvervoer*) and the Taxi social fund (*het Sociaal Fonds Taxi*).

²²⁸ S. Özkul (2026), *De collectieve handhavingsrol van vakbonden: legitimiteit tussen ledenbelang en algemeen belang*, *Arbeidsrechtelijke Annotaties* 2026 (25) 2, p. 49-50.

²²⁹ Supreme Court 28 November 2014, ECLI:NL:HR:2014:3458 (*Tido/Vesta*); Supreme Court 18 December 2015, ECLI:NL:HR:2015:3620.

²³⁰ Pursuant to Article 3(2) AECA.

²³¹ Supreme Court 28 November 2014, ECLI:NL:HR:2014:3458 (*Tido Vesta/SNCU*).

²³² Article 10 AECA.

2.4.2 Access to enforcement of collectively bargained conditions of work

For NSW1 the access to enforcement of their rights under collective agreements is similar to that of standard workers. Genuine solo self-employed (NSW3) only have access if they belong to the small group that might fall under the ACM Guidelines discussed above (and if there are in practice any collective agreement provisions applicable to them). For bogus self-employed (NSW2) this is true as well, albeit that the group covered by the ACM Guidelines is bigger and the unions are in some sectors active to include them when they try to enforce collective agreement provisions. In particular regarding their ambiguous status, the FNV has brought several cases to court to clarify whether platform workers are self-employed or employees (as discussed in section 1.2.3 above): if they are considered employees, they are most often covered by a collective agreement and thus benefit from the labour standards established therein. The strategy was particularly successful in the food delivery sector of the platform economy; in the aftermath of the Supreme Courts Deliveroo judgment in 2023, all digital platforms involved switched to an employment-based model (see section 1.2.1 above).

2.5 Other types of agreements of a collective nature

In 2018, a sectoral department of the FNV for the restaurants sector (FNV Horeca) had signed a partnership agreement with digital labour platform Temper.²³³ Based on the initial positive feedback that FNV Horeca received during discussions with freelancers who use Temper, it was decided to continue and expand the partnership with Temper. Among the initial results mentioned was that the usage fee freelancers had to pay to Temper for, among other things, the use of software would be eliminated. By FNV Horeca this was seen as a first step toward increasing freelancers' income, creating growth opportunities, and establishing collective agreements.

However, the partnership agreement led to tensions between 'FNV Horeca', 'FNV ABU', and 'FNV Flex'. The latter two departments of the FNV perceived the collaboration agreement as undermining the union's efforts to fight bogus self-employment, as their (still pending) claim before the court is that Temper operates as a temporary work agency instead of as a freelance platform, underpaying workers falsely labeled as freelancers.²³⁴ The FNV Horeca department had to terminate its collaboration agreement with Temper because it conflicted with the FNV's litigation strategy regarding digital labour platforms.²³⁵

An institutionalized different type of agreement of a collective nature concerns the competence of employer associations and trade unions to lay down specific sectoral agreements regarding working environment standards which are subsequently contained in the 'Arbo Catalogue'. This instrument falls within the competence of the sectoral social partners but is separate from their competence to conclude collective agreements, as

²³³ FNV Horecabond en Temper verbreden samenwerking en gebruiksvergoeding freelancers verdwijnt' FNV Horeca (11 December 2018); <https://persportaal.anp.nl/artikel/acb73ba4-9b2b-44ff-87a1-7feb135b74f7/fnv-horecabond-en-temper-verbreden-samenwerking>.

²³⁴ See Juliana Londoño Polo, 'Adopting a Universal Mandate on Platform Work: Balancing Contrasting Realities' (2025) 30(2) *Tilburg Law Review* pp. 65–95. DOI: <https://doi.org/10.5334/tlr.416>, p. 80–82.

²³⁵ <https://fd.nl/economie-politiek/1278145/oorlog-binnen-fnv-over-platforms-laait-op>.

this is delegated to them through the Occupational Health and Safety Act.²³⁶ The Arbo Catalogue is submitted to Nederlandse Arbeidsinspectie (NLA; Netherlands Labour Authority) to check that the measures agreed upon satisfy the statutory requirements. While the Arbo Catalogue has been neglected for years, NLA is now calling on the social partners to use it to make sectoral agreements on (AM/AI-related) working environment standards, especially in the logistics sector. The logistics sector knows a high degree of fragmentation with many NSWs 1 and NSWs2: temporary agency employment, (bogus) self-employment and the subcontracting of work. After intensifying its inspections, the NLA concluded that the physical working environment in delivery depots, involving many migrants on temporary agency contracts, is too harsh. NLA has thus called on parcel delivery companies to reduce the physical impact of work, reach sectoral agreements on work tasks (on the maximum weight of parcels or packaging heights, for instance) and through robotisation or the automation of work, for instance using the Arbo catalogue.²³⁷

2.6 Obstacles and facilitators

The Dutch system facilitates the coverage by collective agreements of NSW1 both in theory and in practice. The frequently used extension mechanism supports broad collective agreement coverage of the employed workforce (see section 2.3.1 above) and benefits NSW1 working for unbound employers. Collective agreements are very important for the employers of temporary agency workers (part of NSW1), because in the absence of a collective agreement, the stricter statutory regime would apply.

The coverage of NSW2 and possibly a small group of NSW3 by collective agreement is facilitated since the Dutch competition authority ACM in 2019 relaxed the prohibition on collective bargaining by or on behalf of certain groups of (bogus) self-employed individuals under competition law (see section 2.1.1 above). In 2023, ACM incorporated the European Commission's 'Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons'. In practice, collective agreements that focus solely on NSW 2 or NSW3, have not (yet) been concluded. A small but growing amount of sectoral collective agreements include provisions on solo self-employed individuals, such as agreements aimed at clarifying the distinction between employees and self-employed individuals in the sector, the application of a responsible rate for self-employed individuals, or introducing model agreements.

All categories of NSWs can join trade unions (see section 2.1.2 above). From time to time, unions are formed specifically for a certain group of non-standard workers, and major trade union confederations have created dedicated units for solo self-employed members since 1997 and 2007. The largest Dutch union also actively facilitates the engagement of both members and non-members in collective bargaining processes by providing information, allowing non-member participation in meetings and voting on

²³⁶ In Dutch, this is Arbeidsomstandighedenwet. Some collective agreements contain (complementary) agreements regarding working environment standards as well.

²³⁷ Arbeidsinspectie (2024) Gezond en veilig werken in depots van pakketbezorgdiensten, Nederlandse Arbeidsinspectie, p. 7. See Berntsen, L., Houwerzijl, M., & Londoño Polo, J. (2026; *in press*). The Netherlands. In Rainone, S. & W. Zwysen (red.) *Collective bargaining and algorithmic management and AI at work*. ETUI.

agreements, and implementing measures to promote union involvement and access to workplace resources.

Even though more young workers have recently been joining, union membership in general (of both standard and non-standard workers) is declining. This decline is particularly evident in sectors employing many NSWs, complicated by the emergence of (perceived) 'yellow' unions that hinder representation for low-wage NSWs¹. To combat declining union density and following the recommendations of the foundation that represents Dutch social partners at national level, some new collective agreements arrangements have been made facilitating access to the workplace for unions, regarding union dues and encouraging participation in union activities.

In the Dutch system, there are no legislative criteria for representativeness and no public entities supporting the collective bargaining process, i.a. with mediating measures. Furthermore, as there are no legal barriers in national rules or bylaws, the system allows the interests of NSWs to be promoted in the bargaining process (see 2.2.1 above). Without a duty to bargain, recognition of the right to participate in collective bargaining is contingent on power dynamics. If a trade union is excluded, it may resort to organizing a strike or challenging the exclusion in court. Recently, some companies have shifted focus from trade unions to works councils for negotiations. This trend was resisted by the court in the TUI case, reaffirming unions' priority in bargaining. The avoidance of unions is particularly prevalent in low-wage sectors with many NSWs, undermining the representation of these workers and their involvement in collective bargaining processes.

Dutch strike law is entirely judge-made, based on direct applicability of Article 6(4) ESC (see section 2.2.2 above). As employees, NSW1 fully enjoy this right, although the court has not yet ruled on the right of temporary agency workers to go on strike at the user company. Given the lifting of the ban on collective bargaining for or regarding certain groups of NSW2 and NSW3 employees, it would make sense to also lift such a restriction on the right to strike. However, a 2015 lower court ruling, issued before the relaxation of competition policy, denied the right to strike to (genuine and/or bogus) self-employed workers. The legal uncertainty regarding the extent to which NSW2 and NSW3 have access to collective action therefore constitutes a clear obstacle that particularly affects their ability to negotiate their own collective bargaining agreements with clients, separate from collective agreements concluded (also and primarily) on behalf of employees.

The Dutch system civil enforcement system facilitates enforcement of provisions of collective agreements both through individual and collective legal actions. An obstacle to effective enforcement is that even collective agreement provisions declared generally binding retain their civil law character, which means that compliance can only be enforced by employers, employees, or their organizations through the civil courts (since there are no labour courts in the Netherlands). The labour inspectorate can play only an auxiliary role in enforcing these provisions, by investigating certain cases on request of social partners and providing them with relevant data. While for NSW1 access to individual and collective enforcement mechanisms is in line with standard workers, for NSW2

and NSW3 this is only true if they are covered by collective agreement provisions that fall under the ACM guidelines. NSW2 can, however, benefit from union litigation strategies focusing on the clarification of their ambiguous employment status.

Overall, the Dutch collective bargaining system is still robust and has shown its ability to adapt to NSWs and (try to) facilitate their access to effective collective bargaining. At the same time, the system is struggling with declining membership. Although e.g. the extension mechanism of collective agreements still assures that the vast majority of workers has rather decent labour standards, the coverage rate has recently dropped from a stable 80 per cent (or more) to 72,5 per cent. For the moment, this trend particularly affects NSWs because they often work in sectors where employers are turning away from collective bargaining or where employers prefer to negotiate with non-representative (or even 'yellow') unions. In the long term, the stability and relatively strong performance of the entire system is threatened.

3 Access to information and consultation at company level

3.1 The system of information and consultation at company level

3.1.1 Legal framework

The collective right of information, consultation and co-determination is enshrined as a fundamental right in the Dutch constitution and covers in principle all who perform work (i.e. broader than just employees).²³⁸ In the Dutch model of worker representation in companies, three main forms of representation can be distinguished: (1) the work of trade unions within companies, (2) the rights and competences of works councils in the undertaking and (3) rights and involvement through works councils in organs of the corporation.²³⁹ The third form of worker representation will not be elaborated upon as it is not relevant for this report.²⁴⁰

Trade union presence at workplace level

The first form of worker representation, namely by trade unions, is not enshrined in the legal framework and is not very well developed.²⁴¹ Most often, unions do not have direct presence at the workplace level via employee representatives within the company. Where workplace union representatives exist, they often serve as the backbone of union representation on works councils (2nd form of representation). Trade union representatives at company level serve as liaisons, provide information on union policy, act as ombudsmen, and speak on behalf of their colleagues in the union. This has become increasingly important over the years as input for decentralized collective bargaining processes which has been promoted by social partners at national level since the mid-

²³⁸ Established in Article 19(2) of the Dutch Constitution (*Grondwet*), but excluding civil servants, whose right to participation is codified in Art. 109 Dutch Constitution (as *lex specialis* of Art. 19(2)). The phrase “those who perform work” implies that the guarantee also extends to solo self-employed persons such as members of the liberal professions. During the 1983 constitutional revision, the government had proposed that the rights guaranteed in Article 19, paragraph 2, be mentioned only in relation to employees. Under pressure from the House of Representatives, it changed this to “those who perform work.” See: <https://www.nederlandrechtsstaat.nl/grondwet/inleiding-bij-hoofdstuk-1-grondrechten/artikel-19-werkgelegenheid-en-arbeidskeuze>.

²³⁹ J B M Cremers (2018), The Dutch system of workers’ participation, *Revue de droit comparé du travail et de la sécurité sociale* 2018/4, 100-107; Sociaal-economische raad (Socio-economic council), Advies inzake het vakbondswerk in de onderneming (Advice on trade union work at company level), SER, 1977, The Hague.

²⁴⁰ Employee participation at the corporate level is enshrined in the Dutch Civil Code (*Burgerlijk wetboek*, hereinafter DCC) and was most recently expanded in 2010 in the form of a right for works councils to express their views on proposals for resolutions of the general meeting of shareholders, regarding the remuneration policy and the appointment, suspension and dismissal of executive and supervisory directors. See for more information M. Houwerzijl (2025), ‘Workers’ rights to interfere with the appointment of company directors; the Dutch model’, in: Birkmose, H. & Engsig Sørensen, K. (eds.). *Stakeholder engagement in European companies*. Edward Elgar Publishing Ltd., p. 63-83.

²⁴¹ However, trade unions have the right of inquiry (*enquête-recht*) (Article 2:347 of the DCC). If they meet certain conditions (e.g. having trade union members in the company), they can request the Enterprise Chamber (*Ondernemingskamer*) of the Amsterdam Court of Appeal to appoint one or more persons to conduct an inquiry procedure to determine whether mismanagement at the level of the corporate board can be established. The scope of the inquiry procedure applies to all corporate forms under Article 2:344 of the DCC. The works council cannot request an inquiry procedure but can intervene in an inquiry procedure that has already been initiated by another stakeholder mentioned in Article 2:346 of the DCC. Since the works council is closely involved in the day-to-day affairs of the company’s affiliated business (undertaking), it often urges the unions to initiate an inquiry procedure.

1990s.²⁴² Also without direct trade union representatives in the workplace, unions often have an indirect presence in the forms of worker representation mentioned above as 2nd and 3rd forms, which run through works councils. This is because members of works councils often are members of unions and sometimes formally represent a “union list” on works councils.²⁴³

Works Councils Act

The second and in practice most important form of worker representation at company level is regulated in the Works Councils Act (*Wet op de ondernemingsraden*²⁴⁴; hereinafter WCA). Directive 2002/14 is implemented in the WCA.²⁴⁵ According to the WCA, undertakings with 50 or more employees must have a works council.²⁴⁶ The term “undertaking” in the WCA is not linked to corporate forms but to organizational units of human and physical assets within a production process that act independently in its dealings with the outside world, particularly by offering its products and services to third parties (external transactions).²⁴⁷ This also means that a company (in the meaning of a corporate structure) may consist of several organizational units (“undertakings” in the meaning of the WCA).

Flexible workers (NSW1) are (if certain requirements are fulfilled, see further below) included in the 50-employee threshold for establishing a works council. The count is based on the number of employees rather than the number of full-time equivalents. Furthermore, the count is based on the average number of employees over a calendar year. This means that a works council does not need to be established if an employer temporarily hires a number of employees for only a few months, thereby exceeding the threshold of 50 employees. Only if more than fifty people work in a particular undertaking in most months of the year is there continuity, and is the employer definitively required to establish a works council.²⁴⁸

A valid collective agreement can significantly lower the threshold. In certain sectors, specific collective agreement provisions require employers to initiate the procedure to establish a works council as soon as an organizational unit has 35 employees.

²⁴² Cremers (2018), p. 100; The Dutch social partners published in 1997 an overview of the subjects included in (sectoral) collective agreements. The paper formulated considerations and recommendations for the future, including a more prominent role for decentralised collective bargaining. *Stichting van de Arbeid* (Labour foundation), The Hague, 1997.

²⁴³ Facilitating access of trade unions to work councils was introduced by the revision of the WCA in 1971.

²⁴⁴ Government Gazette (*Staatsblad*)1971, 54. From 1995 onwards, the WCA applies also to the public sector. Directive 2002/14 is implemented in the WCA (Government Gazette 2004, 652).

²⁴⁵ Government Gazette 2004, 652. Since the WCA on most subjects provides more rights and powers than those included in the directive, only a very limited number of amendments to the WCA were made for the implementation of the directive (Parliamentary Papers 2004/05, 29364).

²⁴⁶ Article 2 WCA. In addition, undertakings with between 10 to 50 employees are required, by a request of most employees, to set up a personnel representation (*personeelsvertegenwoordiging*: PVT). The PVT has only some of the works council competences.

²⁴⁷ It is not necessary for such an organizational unit that qualifies as an undertaking for the purpose of the WCA to have legal personality. An indication that it acts independently in its dealings with the outside world may be that it operates under its own name. Furthermore, a certain degree of internal consistency is required: to be classified as an organizational unit, a group of individuals must work together under specific management and at a specific location; Dutch Supreme Court, 21 oktober 1988, *NJ* 1989/698.

²⁴⁸ If the number of employees falls below 50 on a regular basis, the works council ceases to exist by operation of law at the end of its term. The employer does not need to dissolve the works council; this happens automatically once the requirements are no longer met for when a works council is mandatory.

The works council does not formally constitute an organ of the undertaking, nor does it have legal personality. When several undertakings belong to one group,²⁴⁹ a central works council may be established, composed of representatives of the works councils under it. It is also possible to establish a works council at the intermediate level when there are several undertakings in a single holding company.²⁵⁰

Over the past 75 years, the WCA has been revised several times, and the rights and powers of works councils have been significantly expanded. The law grants the works council three main categories of rights: the right to information, the right to consultation, and the right to consent (see below). In addition, the works council has the right of initiative and the authority to make proposals to which the employer must respond. The costs incurred in the performance of the duties of the works council and its committees are to be borne by the employer.²⁵¹

The statutory powers of the works council may be expanded by collective agreement.²⁵² Moreover, the powers of the works council may be expanded by written agreement between the employer and the works council.²⁵³ These agreements, often referred to as company agreements or covenants, may cover a variety of topics. For example, there are employee participation covenants that further specify or expand the works council's rights to information and the list of decisions subject to consultation and consent. However, an expansion of the right to consultation or consent by collective agreement or by agreement with the employer lapses if this matter is substantively regulated in a collective agreement.²⁵⁴

3.1.2 Access to representation

To meet the threshold of 50 employees required for the establishment of a works council, all workers who have been employed (directly) by the undertaking for at least three months under an employment contract are counted.²⁵⁵ This also means that all these workers are entitled to vote for candidates for the works council and may also stand for election to the works council.²⁵⁶ The WCA does not impose any requirements regarding the size or character of the employment contract (such as the number of hours per

²⁴⁹ According to the Dutch Supreme Court, the notion "undertakings affiliated in a group" in Article 33(3) of the WCA, must be distinguished from the definition given in Article 2:24b of the DCC, which states: "A group is an economic unit in which legal entities and corporations are organizationally related. Group companies are legal entities and corporations affiliated with each other in a group". See HR, 14 March 2008 (TNT), JOR 2008/94.

²⁵⁰ Pursuant to Article 33(1) WCA, entrepreneurs shall establish a central works council if two or more works councils are established within the undertaking and insofar as the establishment of a central works council is beneficial to the implementation of the WCA. A group works council can be established if two or more works councils are already set up within the undertaking, provided it is beneficial for the implementation of the WCA (Article 33(2) WCA).

²⁵¹ Pursuant to Article 22 WCA.

²⁵² Pursuant to Article 32(1) WCA. This 'decentralisation of collective bargaining' (based on a 'cafeteria model' with a framework collective agreement at sectoral level and delegated power to works councils to operationalize certain provisions together with the employer at 'local' level) has become a trend since the mid-1990s. See above around and in footnote 194.

²⁵³ Pursuant to Article 32(2) WCA.

²⁵⁴ Pursuant to Article 32(3) WCA.

²⁵⁵ Proper application of the WOR may require that months during which an employee worked at another undertaking belonging to the same corporate structure group be included in the calculation.

²⁵⁶ Previously, this period was one year. This period has recently been shortened to encourage greater involvement of flexible workers in the works council (Amendment to the WCA of 15 December 2021, *Government Gazette* 2021, 627).

week or whether it is fixed term or open ended).²⁵⁷ Also temporary agency workers who have been put to work in a user undertaking for at least 15 months count towards the numerical criterion of 50 employees and have the right to vote and the right to stand for election in the user undertaking (but they also have this right in the company of their formal employer, i.e. the temporary employment agency, if they have been employed by the agency for at least three months).²⁵⁸ Hence, all categories of NSW1 have access to representation by works councils.

Moreover, the WCA enables the employer and the works council to jointly designate other groups of persons as workers of the undertaking, under the condition that they regularly perform work in the undertaking and if this extension is conducive to the proper application of the WCA. This allows for access to representation by works councils for NSW2,²⁵⁹ or even NSW3.²⁶⁰ According to a 2017 study, in 22 percent of undertakings included in the survey, self-employed contractors were allowed indeed to vote in elections for the works council, and at 18 percent, they were also allowed to run for a seat on the works council.²⁶¹ The extension under the WCA to NSW2 and/or NSW3 is deemed especially relevant in the cultural and creative sector, where the number of self-employed workers, freelancers and volunteers²⁶² has been increased to sometimes more than 50 percent of the workforce in specific branches. This means that many works councils are seeing their influence eroded: there are relatively fewer employees available to serve on the works council, and they represent an increasingly smaller share of the undertaking's workforce.²⁶³

At the same time, works councils may also want to ensure that no disproportionate number of self-employed or volunteers can serve on the works council. In such cases, there are other ways to involve these groups in information and consultation activities.

²⁵⁷ See Article 1(2) and Article 6(2) of the WCA. A multiple jobholder who works as part-time employee for two undertakings may therefore be counted toward the numerical threshold in both undertakings and exercise employee participation rights under the WCA in both undertakings. If an employee works for more than one undertaking within the same corporate structure, he is deemed to be employed solely by the undertaking from which his work is directed.

²⁵⁸ See Article 1(3) WCA. Previously, the period of work by a temporary agency worker in the user company before getting works councils voting rights, was 24 months. This was changed by the law of 15 December 2021.

²⁵⁹ Pursuant to Article 6(4) WCA. According to Article 6(6) WCA, if the employer and the works council cannot reach an agreement on this point, they may request a decision from the district court (cantonal judge). However, these «other groups of persons» (NSW2 or NSW3) cannot bring this matter before the court themselves. An example from case law concerns IHC, in which the works council, according to the court of appeal, wrongly believed that agreements had been made to classify approximately eight hundred (next to a total of 2,200 employees) «contract workers», including 79 self-employed individuals, as persons directly employed by the company. Regarding the self-employed persons, the court further held that such an agreement would not be conducive to the proper application of the WCA, as the number of 79 was deemed 'negligible'. See Court of Appeal Den Haag 24 juli 2018, ECLI:NL:GHDHA:2018:1777, JAR 2018/222, cited by J van Slooten (2022), Platformondernemingen en medezeggenschap, *Ondernemingsrecht* 2022/12, p. 77.

²⁶⁰ An example provided in the explanatory memorandum regarding the application of this provision to a genuine self-employed (NSW3) concerns independently practicing medical doctors (next to employed medical doctors) in a hospital. See Parliamentary Papers II 1987/88, 20583, nr. 3, p. 16.

²⁶¹ Conducted by Performa (Works Council Trend Survey 2017), cited in Kennisbank-blog by Rogier Wennink, 'Kunnen zzp'ers medezeggenschap hebben in een organisatie? @Platform ACCT, 8 Dec 2020; <https://www.digipacct.nl/kunnen-zzp-ers-medezeggenschap-hebben-in-een-organisatie>. See also: <https://or-academy.nl/or-is-er-niet-voor-vrijwilligers-en-zzp-ers/>.

²⁶² If it is conducive for the proper application of the WCA, (a group of) volunteers may be granted active and passive voting rights, which implies that these volunteers are also counted as part of the workforce. At 14 percent of the undertakings included in the Works Council Trend Survey 2017, this was arranged indeed.

²⁶³ See Works Council Trend Survey 2017, cited in Kennisbank-blog by Rogier Wennink, 'Kunnen zzp'ers medezeggenschap hebben in een organisatie? @Platform ACCT, 8 Dec 2020; <https://www.digipacct.nl/kunnen-zzp-ers-medezeggenschap-hebben-in-een-organisatie>.

For instance, it is possible to designate them as a fixed electoral group with a specific number of seats (which can be as few as a single seat) in the works council. The members of the electoral group must then elect their representative(s) to the works council exclusively from among themselves. Moreover, it is possible to have a self-employed or volunteer representative as an observer in the works council, or to establish a standing committee of the works council for solo self-employed or volunteers with advisory powers, or a self-employed or volunteer council that is consulted by management on specific volunteer-related issues. So, apart from granting participation rights for NSW3 by granting both active and passive voting rights, there are different ways to give them a voice.²⁶⁴

The works council is required to draw up regulations regarding the matters that the WCA mandates or delegates to the works council.²⁶⁵ The regulations must in any case contain further provisions regarding elections, as well as regarding the working methods of the works council, such as voting rights in meetings (decisions are usually made by a simple majority, but a qualified majority may be required for important decisions), the provision of secretarial services, etc. Before adopting the regulations, the works council must give the employer the opportunity to express its views on their content.²⁶⁶

The election for seats in the works council is conducted by secret written ballot based on one or more lists of candidates. A list of candidates may be submitted by a trade union that includes eligible voters employed by the company among its members, or by a group of workers who are not members of a trade union.²⁶⁷ The number of elected members may vary from 3 to 25, depending on the number of employees at the company. In principle, they are elected for a three-year term and are immediately eligible for reelection thereafter.

Although elected NSW1 employees have in principle the same rights as works council members with a standard employment contract, there are practical differences: The dismissal protection for works council members with a fixed term contract applies only for the duration of their contract. This means that NSW1 members of works councils are often unable to complete their term.²⁶⁸ Another problem may arise when a worker with a part-time position is a member of the works council. In many cases, it will not be possible to ensure that meetings, training, etc., take place during that employee's individual working hours. Based on a ruling by the CJEU, failing to compensate a works council member who performs part-time works council activities outside of their individual working hours may constitute prohibited indirect discrimination against women.²⁶⁹

²⁶⁴ OR Magazine April 2020, p. 6, see <https://www.caop.nl/app/uploads/2020/04/Vraag-en-antwoord-april-2020.pdf>.

²⁶⁵ Article 8 WCA.

²⁶⁶ Article 10, 14 WCA.

²⁶⁷ Article 9 WCA; The works council must be representative of all persons working in the company, according to the Amsterdam Court of Appeal, February 23, 2016, ECLI:NL:GHAMS 2016:649. In practice, union members hold the majority of seats on works councils. A withdrawn 2004 draft bill proposed to introduce nationwide elections, following the example of Belgium, as a measure to resolve the problem in practice that works council seats remain vacant.

²⁶⁸ <https://www.trainiac.nl/wat-is-de-positie-van-tijdelijke-medewerkers-binnen-de-or-structuur/>.

²⁶⁹ CJEU, 4 June 1992, (*Bötel*) C-360/90.

In literature, some additional challenges have been identified in including self-employed as members of a works council: Works council members must perform their work for the works council during working hours as much as possible, while in principle retaining their right to wages.²⁷⁰ The question is how this should be arranged in practice when self-employed individuals serve on the works council. It is suggested that they could send an invoice for the time spent on their works council duties, though care must be taken to ensure that this membership of the works council is not performed solely for financial gain.²⁷¹

Specifically, regarding workers via digital platforms, (additional) gaps have been identified regarding their participation and representation. In its advisory report, the SER notes that the nature and transience of their work relationship are often the cause of a lack of participation among platform workers.²⁷² Moreover, as long as these workers are labeled as self-employed (NSW 2 or NSW 3), it is highly unlikely that they will get access to representation under the WCA. Although it is possible to bring self-employed workers under the WCA, this does require overcoming a number of obstacles: first, a works council must already be established for at least fifty employees. Only then can the works council negotiate with the employer to grant self-employed individuals voting rights as well. As a result, (bogus) self-employed platform workers are unlikely to qualify for this anytime soon if the digital platform does not work with (at least 50) employees as well.²⁷³

Another issue concerns the definition of an undertaking for the purpose of the WCA. It is currently unclear whether a digital labour platform can (always) be classified as an undertaking within the meaning of the WCA, as this requires an organizational unit at a specific location where a group of individuals must work together under specific managerial supervision. Doubts may arise regarding the application of this concept if the platform workers are controlled (predominantly) via algorithmic management by a server located in a country other than the one where the workers, deployed on-demand via an app, perform their work. This is a very relevant question as there can be no works council without an undertaking in the meaning of the WCA.²⁷⁴

Since the Dutch Constitution guarantees the right to participate in decision-making for all who perform work, it can be argued that the legislator must ensure this for platform workers as well, especially since it has been established that they would certainly benefit from information, consultation and consent rights such as granted by the WCA to workers in traditional workplaces.²⁷⁵ Below, further details on the scope of these rights will be provided and on how these rights are or can be specifically applied to serve the interests of NSW.

²⁷⁰ Pursuant to Article 18 in conjunction with Article 17(3) of the WCA.

²⁷¹ D. Schwartz, *Medezeggenschap bij platformarbeid*, *TRA* 2021/66, p. 19.

²⁷² SER, "How Does the Platform Economy Work?", *Advisory Opinion 20/09*, October 2020, pp. 75, 86, 102-104.

²⁷³ Jaap van Slooten, *Platformondernemingen en medezeggenschap*, *Ondernemingsrecht* 2022/12, p. 72.

²⁷⁴ *Ibidem*.

²⁷⁵ SCP, 'Platformisering en de kwaliteit van werk. Een kennissynthese', Den Haag, januari 2021, p. 97.

3.1.3 Access to information and consultation

Basically, the right to information entails that the management shall have to provide the works council with all the information and data they may reasonably be deemed to require in order to perform their duties.²⁷⁶

The consultation rights of works councils pertain to economic matters, such as relevant restructurings, laid down in an exhaustive list. Consultation is mandatory if management intends to sell (parts of) the company, carry out mergers or acquisitions, or implement significant changes to the company's business activities or organizational structure.²⁷⁷ The employer must request the advice in writing at a time when it can have a material impact on the decision to be made. Furthermore, when requesting advice, the employer must state the reasons for the proposed decision, the consequences it may have for the employees, and the measures planned in response (such as a social plan). The consultation rights can lead to significant delays (up to at least one month) if there is a disagreement between management and the works council. An important tool in this regard is the right of appeal. The works council may appeal to the Enterprise Chamber (*Ondernemingskamer*) of the Amsterdam Court of Appeal if management has failed to fulfill its information and consultation duties or has not sufficiently taken the interests of the employees into account. The Enterprise Chamber has the authority to block the decision and the proposed measures.²⁷⁸

The consent rights of the works council pertain to matters concerning the company's social policy decisions, typically falling within the Human Resources Management (HRM) domain,²⁷⁹ such as for example consent to occupational pension plans, working time arrangements, a pay or job classification system,²⁸⁰ reintegration policies, recruitment, and other HRM policies. In line with the priority for collectively bargained labour standards, the consent of the works council is not required to the extent that the matter in question has already been substantively regulated in a collective agreement.²⁸¹ The works council's approval does not mean that individual employees are bound by the

²⁷⁶ Pursuant to Article 23, 24, 31-31c WCA.

²⁷⁷ Pursuant to Article 25 WCA. The provision is mandatory. Agreements between the employer and the works council regarding the reduction of the works council's powers are therefore inconsistent with the legal nature of the statutory provisions. However, the granting of additional powers is possible. For example, the works council and the employer may agree that advice will always be sought for a particular decision. In that case, seeking advice is mandatory, even if the subject matter does not fall under Article 25 WCA (for example, because it does not concern a significant investment).

²⁷⁸ Pursuant to Article 26 WCA.

²⁷⁹ Laid down in an exhaustive list in the first paragraph of Article 27 WCA. The legislative history shows that the legislature did not intend to grant the works council any statutory powers of consent regarding so-called primary labour standards (such as the level of wages); in principle, negotiating such matters falls within the domain of the trade unions, as the Dutch Supreme Court has also held (Dutch Supreme Court, February 11, 2000, JAR 2000/86). Nevertheless, a grey area exists in practice because the wording of certain provisions in Article 27(1) of the WCA leaves room for the interpretation that not only the manner of organizational structuring but also the level of the labour standard involved is subject to the right of consent of the works council.

²⁸⁰ The pay or job classification system referred to in Art. 27(1) WCA does not refer to the level of pay, but rather to the classification into pay grades. It concerns the manner in which pay is determined.

²⁸¹ Confirmed in Article 27(3) WCA. If a collective agreement addresses a particular matter in general terms, an employer will need the consent of the works council to implement such a provision, provided the subject matter falls within the scope of Article 27(1) of the WCA. For example, if the collective agreement sets the number of vacation days per year, but the employer wishes to require employees to take a certain number of vacation days collectively during a specific period, the employer needs the consent of the works council for this latter arrangement.

relevant provision.²⁸² To create binding force, the employer must incorporate the arrangement into the individual employment contracts using the appropriate means. If the works council disagrees with the proposed measures, the management may, following at least one consultation meeting between management and the works council, request the court to set aside the works council's position. The court is required to examine the organizational or economic necessity of the proposed measures and to assess whether the works council's position is unreasonable.²⁸³ At the initiative of the works council, the court may declare measures taken by management without consent to be null and void.²⁸⁴

The regulations that works councils must draw up (see above), should specify how the agenda and minutes of the works council meetings are to be published; the same obligation applies to the works council's annual report.²⁸⁵ These provisions are also intended to increase employee involvement in the work of the works council. Likewise, the employer shall give the works council and its committees the opportunity to consult the workers in the company and shall give these persons the opportunity to give their opinion in this regard, all to the extent reasonably necessary for the fulfillment of the duties of the works council and its committees.²⁸⁶ Again, this duty is intended to improve communication between the works council and the rest of the staff. The WCA does not contain any strict obligation for the works council to inform the rank and file.²⁸⁷ This can be problematic in the case of employer proposals that have significant consequences for employees, such as a social plan.

As explained above, NSW 1 (and possibly NSW2 and NSW3 as well) can have a seat in the works council themselves if they meet the criteria and if they are elected. In that case, they can then directly represent their own group interests within the works council. However, in practice, apart from part-time workers with a stable working pattern and an open-ended employment contract, it rarely happens that other categories of NSW will become works council members, because their non-standard terms represent a less stable connection to the undertaking.²⁸⁸

An alternative for direct participation of NSW in the works council, is that works council members with permanent contracts actively engage with company strategies regarding NSW and with the specific interests of NSW. For instance by: Organizing special meetings for the flexible workforce, or even establishing a committee for specific issues related to flexible work,²⁸⁹ regularly gauging the opinions of flex workers, and raising

²⁸² So, social policy decisions with works council approval do not have binding effect as provided for in Articles 9, 12, and 13 of the ACA and AECA regarding (extended) collective agreements.

²⁸³ Pursuant to Article 27(4) WCA.

²⁸⁴ Pursuant to Article 27(4) and 27(5) WCA.

²⁸⁵ Article 14 WCA.

²⁸⁶ Pursuant to the first paragraph of Article 17 WCA.

²⁸⁷ Unlike Article 4(8) of the Dutch EOR Act (based on Article 10 of the EOR Directive 2009/38/EC).

²⁸⁸ See <https://www.ser.nl/nl/thema/medezeggenschap/belangrijke-themas/flexwerkers> citing research that shows that temporary employees often feel less connected to the organization or they are reluctant to serve on a works council due to fear of non-renewal of their temporary employment position. Other obstacles that may prevent (also standard) employees from participating in the works council play a role as well, such as heavy workloads and lack of time Parliamentary papers II, 2023-24, 21 December 2023, 29818, nr. 47, 8.

²⁸⁹ Article 15 of the WCA has been revised in 2021 to allow to deviate from the general rule that a standing committee must consist of a majority of works council members. Works Council members are now able to refer matters to standing committees, even if the majority of the committee does not consist of works council members.

topics important for flexible workers in discussions with management.²⁹⁰ In that manner, the works council can play an important role in ensuring the representation of the NSW and not only of standard workers, for example regarding specific conditions of employment in the company²⁹¹ and for having access to career advancement opportunities.

Ideas for better safeguarding the interests of NSWs using the current tools provided by the WCA are included in a guide on participation and co-determination rights with regard to flexible workers. For each right guaranteed under the WCA, the guide provides examples of how works councils can address and represent the interests of one or more groups of NSW in this context.²⁹² By this guide, works councils are encouraged to play a more active role in shaping the company's flexible workforce strategy and to actively promote and safeguard the interests of NSWs. For example, the guide suggests works councils to:

- Use their right to information by asking data on the numbers and various groups of people employed or put to work in the undertaking and the social policy pursued for NSWs, or by actively putting on the agenda the undertaking's compliance with terms and conditions of employment and non-discrimination of NSW1;
- Use their consultation rights regarding undertaking's strategies on outsourcing and contracting out work or insourcing certain activities;
- Use their right of consent regarding the undertaking's policy on hiring, dismissal, or promotion with regard to NSW1.

3.1.4 Enforcement of access

Civil law enforcement

The application of the WCA may give rise to various disputes, for example regarding the employer's or the works council's failure to fulfill obligations, the right to be consulted, or the right of consent. Apart from voluntarily requests to an industry committee ('*bedrijfscommissie*') to mediate in disputes between the employer and the works council,²⁹³ the WCA is enforced under civil law only. This means that there is no authority that verifies, among other things, whether a works council has been established, and that there are no penalties for failing to establish one.

The WCA provides for two civil law procedures: dispute resolution before the subdistrict court²⁹⁴ and dispute resolution before the Enterprise Chamber.²⁹⁵ With regard to the costs of litigation, the employer is only liable for such costs if he has been notified of them in advance.²⁹⁶ Moreover, in legal proceedings between the employer and the

²⁹⁰ <https://www.trainiac.nl/wat-is-de-positie-van-tijdelijke-medewerkers-binnen-de-or-structuur/>.

²⁹¹ Unless already regulated in an applicable collective agreement, as this has priority above agreements between the works council and the employer, pursuant to Article 27(3) WCA.

²⁹² See: <https://www.ser.nl/-/media/ser/downloads/thema/or/wor-flexwerkers-medezeggenschap.pdf>.

²⁹³ Interested parties, usually the works council and the employer, may jointly or individually submit a request for mediation via the industry committees' website (www.bedrijfscommissie.nl). Industry committees consist of employer and employee members, totaling at least six (Article 37 (2) WCA). In 2010, the number of industry committees in the market sector was reduced to two, named Market I and Market II. The first covers the market sector, and the second covers the semi-public sector (healthcare, social services, subsidized employment, culture, education, and sports).

²⁹⁴ Pursuant to Article 36 and 27 WCA (right of consent).

²⁹⁵ Pursuant to Article 26 (concerning the consultation right of the works council).

²⁹⁶ Pursuant to Article 22(2) WCA.

works council, the works council cannot be ordered to pay the costs of the proceedings.²⁹⁷

Regarding four obligations under the WCA, including the employer's obligation to establish a works council and the works council's obligation to publish the agendas and minutes of its meetings, "any interested party" may demand compliance.²⁹⁸ This includes the employer, the works council, the employees working at the company (including NSW1), or a trade union that has member-employees working at the company.²⁹⁹ Now that the term "interested party" is explicitly linked to employer's obligations under the WCA, it does not seem to include groups (genuinely or not) labeled as solo self-employed. NSW 2 and/or NSW 3 can be included within the works council on a voluntary basis only (see section 3.1.2 above).

If the employer refuses to establish a works council, employees (including NSW1) may enforce compliance with this obligation through the dispute resolution procedure.³⁰⁰ This, however, rarely occurs.³⁰¹ Notwithstanding, an employer risks strategic deadlocks: Decisions subject to the right to consultation or consent may be prohibited or overturned by a court as long as no works council has been established. For example, if an employer wants to implement a major reorganization or change the company's pension scheme, without a works council, its decision-making process will come to a complete standstill. A court will rule that the employer acted negligently by depriving employees of their legal right to participate. Also, the employer runs the risk of failing to comply with other laws, such as the Act regarding the notification of collective redundancies (*Wet Melding Collectief Ontslag*).

Regarding other subject matters, (only) the works council or the employer may request the subdistrict court to order the employer, or the works council, respectively, to comply with the provisions of the WCA.³⁰² In urgent cases, the works council may appeal to the preliminary relief judge (*voorzieningenrechter*).

Soft law tools to monitor and encourage compliance

The SER (tripartite socio-economic council) is tasked with monitoring and promoting employee participation e.g. via works councils in companies.³⁰³ This task has been designated to an Implementing Committee for the Promotion of Employee Participation (*Uitvoeringscommissie Bevordering Medezeggenschap*).³⁰⁴ The committee's core task is to promote employee participation and its quality in companies in the broadest

²⁹⁷ Pursuant to Article 22(2) WCA.

²⁹⁸ Article 36(1) WCA.

²⁹⁹ The District Court of The Hague recognized the union as an interested party because, according to its by-laws, its purpose is to promote employee participation, and it has members within the company, some of whom welcomed the establishment of a works council. See: District Court The Hague, judgment of 12 May 2015, ECLI:NL:GHDHA:2015:1094).

³⁰⁰ Article 2 in conjunction with Article 36 WCA.

³⁰¹ Parliamentary papers II, 2023-24, 21 December 2023, 29818, nr. 47, p. 3.

³⁰² Article 36(2) WCA. This concerns, for example, the rules set forth in Article 17 WCA (facilities for the works council), Article 18 WCA (time off for consultation and training), Article 22 of WCA (expert costs and legal disputes), and Article 31 WCA (information), as well as the employer's obligation to seek advice (Article 25 WCA) or consent (Article 27 WCA) from the works council.

³⁰³ Article 46a WCA.

³⁰⁴ The committee was established pursuant to Article 43 of the SER Act.

sense.³⁰⁵ The committee has both executive and advisory responsibilities, including the authority to provide advice to the minister, either on its own initiative or upon request. One of its tasks is to monitor compliance.

Compliance surveys are conducted approximately every four to six years. In the last two decades these studies reveal a persistent compliance gap. Only approximately 70 percent of companies meet their obligation to establish a works council. This means that in almost one-third of the companies where a works council must be established, this is not happening, so there the WCA lacks practical significance. Moreover, in companies with a works council, in more than 25 percent, no elections are held because there are either exactly sufficient or too few candidates. Combined with data on the underutilization of rights and powers by works councils, this is reason for concern, as acknowledged by the Ministry of Social Affairs.³⁰⁶

Following the compliance review of 2017, the WCA was amended in order to enhance involvement of flexible workers in employee participation and to take away potential barriers that NSW1 face in serving on the works council. These took effect on 1 January 2022 (see section 3.1.2 above).

The most recent compliance survey of 2023 shows that for companies with 50–100 employees, the compliance rate is 58 percent, for companies with 100 – 200 employees, the compliance rate is 77 percent, and for companies with more than 200 employees this is 90 percent. Moreover, the compliance rate is higher in the (semi)public sectors (around 95 per cent), while the sectors with the lowest compliance rates are construction, retail, hospitality, repair services, and transportation, with compliance rates of a little under or above 50 percent. Furthermore, it appears that in companies where less than 10 percent of employees are union members, works councils are also established less frequently. Additionally, a works council is significantly less often established in companies with a predominantly younger workforce (under 30) and in organizations with predominantly low-wage employees. Conversely, a works council is significantly more often established in companies with an older workforce (predominantly 50+) and in organizations with predominantly highly skilled employees.³⁰⁷

The compliance survey of 2023 also shows that the larger the proportion of flexible workers (NSW1) in a company, the lower the likelihood that there is a works council. In companies with a flexible workforce where a works council has been established, representatives of flexible workers are involved in the works council in 31 percent of cases. In companies with a large flexible workforce, the works council is involved in 37 percent of policies regarding flexible work.³⁰⁸

An in-depth follow-up study of January 2024 of the reasons why a works council is not being established, suggests that some employers have a negative view of works

³⁰⁵ See: <https://www.ser.nl/nl/ser/over-ser/werkprogramma/medezeggenschap>.

³⁰⁶ Parliamentary papers II, 2023–24, 21 December 2023, 29818, nr. 47; Bouwens, Houwerzijl, Roozendaal (2023), section 6.2.2.1.

³⁰⁷ S Jellinghaus and M van Kempen, Het grote nalevingsonderzoek van de Wet op de ondernemingsraden: voer voor discussie, TRA 2024/101.

³⁰⁸ Parliamentary papers II, 2023–24, 21 December 2023, 29818, nr. 47, p. 5. The minister will ask the SER CBM to include model provisions in the SER model regulations regarding the involvement of flexible workers in employee participation.

councils.³⁰⁹ The costs plays a role, particularly for smaller companies. Furthermore, employers perceive risks such as regarding confidentiality and a loss of control over decision-making. The protection against dismissal afforded to works council members also gives some employers the impression that this group is harder to dismiss, and thus there are fewer incentives for them to perform well.

As specific reasons why employers do not comply with the WCA's obligation to establish a works council, employers primarily point to a lack of interest among employees and, consequently, a lack of candidates. In this regard, some of them mention the widespread use of temporary contracts, which limits the bond with the company. The same applies to the use of zero-hour contracts, particularly in sectors such as the hospitality industry and supermarket chains, which limit the duration of employment. Notably, some employers refer to the proportion of non-Dutch employees as a significant factor. In their opinion, this group does not speak Dutch well enough to play a role in employee participation, and cultural backgrounds also play a role. Finally, employers in the survey note that they have alternative channels for employee participation, such as a suggestion box, topic-specific working groups, or staff meetings.³¹⁰

On a final note, the impact of the WCA is eroding also in many companies that do comply with the WCA, as they are more often than in the past part of complex (and cross-border) corporate structures. This alters control relationships and risks undermining the right for works councils to be consulted about important economic matters. Although extensive case law regarding the consultation rights of works councils under the WCA shows that, in many cases, the works council acts as a negotiating partner that cannot be ignored without serious consequences, nevertheless, the literature raises questions about the actual impact of the right to be consulted when companies are part of complex and/or transnational groups. Various legal doctrines have been developed in case law to counteract the erosion of consultation rights in this regard. For instance, within a corporate group, the legal entity preparing the decision must ensure that the director who consults with the works council at a lower level is informed in a timely manner. This prevents the employee participation process from becoming a mere formality.³¹¹

3.2 Obstacles and facilitators

The works council features in the Dutch model as the most important stakeholder representing this fundamental worker right at company level, as trade union representatives are most often not present at the workplace level (see section 3.1.1 above). The WCA provides workers via their works council access to rather strong information, consultation and consent rights (see section 3.1.3 above). The works council has rather strong

³⁰⁹ This "in-depth study of compliance with the Works Councils Act" is a qualitative study based on interviews with 34 employers. These interviews explored in detail the reasons for not establishing a works council. The research report shows that 27 of the interviewed employers do not have a works council though they are required to do so. Seven employers have established a works council in the past four years. Furthermore, it appears that the majority of the 34 interviewed employers have 50–100 employees; Jellinghaus & Van Kempen (2024), p 8.

³¹⁰ Jellinghaus & Van Kempen (2024), p 9.

³¹¹ Bouwens, Houwerzijl, Roozendaal (2023), *Schets van het Nederlandse arbeidsrecht*, Deventer: Wolters Kluwer, Section 6.2.4.3 and literature cited there.

procedural tools at its disposal, including the right to appeal if the employer fails to comply with said rights.

As explained (see section 3.1.2 above), the WCA clearly aims to facilitate access to representation for NSW1 and recently, provisions to facilitate NSW1 in gaining access to the works council were enhanced. Since 2022, all employees (including NSW1) who have been employed by an undertaking within the meaning of the WCA for at least three months, count toward the threshold of 50 employees required for the establishment of a works council and they have the right to vote and stand for election to the works council. This also applies to temporary agency workers who have been assigned to the user undertaking for at least 15 months.

Furthermore, the WCA facilitate the employer and the works council to grant NSW2 and NSW3 access to representation in the works council, if these groups regularly perform work in the undertaking and if their access to representation is conducive to the proper application of the WCA. However, this does require that a works council must already be established for at least fifty employees (including NSW1). Only then can the works council negotiate with the employer to extend representation rights to (bogus) self-employed individuals (NSW 2 and 3).

Moreover, several practical obstacles for the access to representation of NSWs remain: For instance, regarding NSW1, the dismissal protection for works council members with a fixed term contract applies only for the duration of their contract. This means that they will often be unable to complete their term in the works council. Similar issues play regarding the even less stable connection of temporary agency workers to the undertaking. For works council members with a part-time position it may be difficult to ensure that meetings, training, etc., take place during that employee's individual working hours. Regarding NSW2 and 3, additional challenges have been identified in interpreting certain protections for works council members, as these provisions were designed for workers with employee status.

A major obstacle for guaranteeing access to representation at the level of the undertaking in practice, is that the WCA is enforced under civil law only (see section 3.1.4 above). There is no authority that verifies, among other things, whether a works council has been established, and there are no penalties for failing to establish one. So, if the employer refuses to establish a works council, it depends on the employees (including NSW1) to enforce compliance with this obligation. However, as periodic compliance surveys by the SER's Implementing Committee for the Promotion of Employee Participation have confirmed, this rarely occurs. In the last two decades these studies reveal a persistent compliance gap, namely that in almost one-third of the undertakings where a works council must be established, this is not happening. According to the studies, a works council is significantly less often established in companies with very low union density, with a predominantly younger workforce and with predominantly low-wage employees. Importantly, the compliance survey of 2023 shows that the larger the proportion of flexible workers in a company, the lower the likelihood that there is a works council.

In light of the above, alternatives for direct participation of NSW in the works council are important (see section 3.1.3 above). The SER's Implementing Committee for the Promotion of Employee Participation is encouraging works councils to play an active role in shaping the company's flexible workforce strategy and to actively promote and safeguard the interests of NSWs. The Committee is facilitating this by providing information and guidance to works councils. In a recent guide, for each information, consultation and consent right guaranteed under the WCA, examples highlight how works councils can address and represent the interests of one or more groups of NSWs.

4 Access for non-standard workers to social dialogue

The analysis made in this report of the legal classification of NSWs in the Netherlands and their access to social dialogue, shows a mixed and nuanced picture of enabling factors and barriers.

As addressed in section 1 above, the Dutch system of labour law is based on a binary divide. Given the huge differences in terms of protection and labour costs between employees (including NSWs 1) and (bogus) solo self-employed (NSW2 and 3), it is considered important to establish a correct classification of employment status. A legal presumption tool exists but has not had big impact so far. However, trade unions have been active in bringing cases before the courts, particularly regarding platform work. As a result, in the meal delivery sector, platform workers are now as a default employed as NSW1 rather than as bogus solo self-employed individuals (NSW2).

As addressed in section 2 above, trade unions in the Netherlands are generally open for membership of all categories of NSWs. Dutch competition law policy allows for collective bargaining for certain groups of (bogus) solo self-employed. In practice, the possibilities to extend the scope of a collective agreement to NSW 2 and/or NSW3 are not often used, but are gaining significance. The absence of a duty to bargain and of legislative criteria for representativeness allow for 'yellow unions' or the avoidance of bargaining with unions, which is undermining the representation and access to (decent) social dialogue for NSWs in low-wage sectors. The uncertainty regarding the right to strike for (bogus) self-employed workers (NSW2 and NSW3) is an undermining element as well. Moreover, the Dutch system allows for civil enforcement of (extended) collective agreement provisions only. In practice, trade unions, or 'compliance organisations' established by the collective bargaining parties together are rather active in certain strategic cases regarding NSWs, using both individual and collective mechanisms. Although the Dutch system is to some extent effective in facilitating access to collective bargaining (results) for NSWs, declining membership rates and coverage rate of collective agreements pose a threat to its sustainability. For the moment, this development impacts NSWs more than standard workers as they are more likely to work for employers avoiding collective bargaining or negotiating with non-representative unions.

As addressed in section 3, works councils are the key players when it comes to access to social dialogue at the company level, since unions generally do not have a direct representative at company level. All employees in companies meeting the 50-employee threshold have access to representation through a works council with strong information, consultation, and consent rights. NSWs 1 are included if employed for at least three months, including temporary agency workers who have been deployed in the user undertaking for at least 15 months. Remaining challenges to ensure representation for NSW1 are linked to the characteristics of their employment contract. While the law also facilitates extension of representation to NSW 2 and 3, if they regularly perform work in the undertaking, this is fully dependent on voluntary agreements between the works

council and the employer. An important obstacle to effectively guaranteeing NSWs representation at workplace level, is that the enforcement of the WCA is civil law-based and lacks penalties for non-compliance. Compliance surveys show that in almost one-third of the undertakings where a works council must be established, this is not happening, particularly not in undertakings with low union membership and with high proportions of NSWs. In undertakings that are compliant, works councils are encouraged to actively engage in representing the interests of NSWs and in shaping the company's flexible workforce strategy. By a designated committee at national level, guidance is provided to works councils on how to advocate for and address the needs of different groups of NSWs within the framework of the WCA.

Since the Dutch Constitution guarantees the right to participate in decision-making at company level for "all who perform work", it can be argued that the legislator must ensure this for all NSWs, beyond the binary divide. However, while efforts are being made to enhance the (direct and indirect) representation of NSWs in works councils in the Netherlands, obstacles persist and therefore their voice in decision-making processes at workplace level is not ensured.

Possible ways to combat weaknesses in the Dutch social dialogue system include strengthening the position of unions regarding access to the workplace, to promote union membership among NSWs and standard workers, in light of low union density. This would not only help to strengthen the collective bargaining system but also allow unions to play a greater role in workplace representation and to strengthen their position in enforcing the right of employees (including NSW1) to establish a works council. Moreover, it would be helpful for NSWs in particular, if public enforcement elements would be introduced in the Dutch social dialogue system, by giving the labour inspectorate powers and resources to enforce provisions of extended collective agreement provisions and to force undertakings to establish a works council if they meet the numerical threshold.

To end on a positive note: After a long period of political stagnation, the Netherlands is finally making progress in implementing important measures to combat and prevent undesirable forms of non-standard work. This includes the abolition of zero-hour contracts in favour of contracts that specify minimum and maximum hours, stricter arrangements to prevent successive temporary contracts, strengthening of temporary workers' rights and the introduction of a licensing system for staffing agencies. A legal presumption of an employment contract has also been adopted for self-employed individuals with a low hourly rate. Admittedly, these measures are not aimed at improving access to social dialogue for NSWs, but are rather intended to reduce the size of this group. However, since the standard contract remains the cornerstone of a system that can offer decent work and "upward mobility" to its workforce, this can be viewed as a particularly positive development. Restoring the principle of allowing non-standard work as a "stepping stone" rather than a dead-end job helps ensure that the remaining group of NSWs is less vulnerable, thereby enabling them to actually use their access to social dialogue.

