



New Dutch draft law to reduce the gap between permanent and flexible contracts

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A recent draft law aims to reduce the gap between the position of employees with permanent contracts and the flexible workforce. However, according to the Council of State (the most important advisory organisation to the state) this gap will continue to exist under the new law, which does not offer enough protection to people with a weak position on the labour market.

Description

Between 2003 and 2018, the share of the Dutch workforce with a permanent contract has fallen - from 73% to 61% (CBS, 2018). Employees with a permanent contract enjoy better social protection than the flexible workforce, for instance regarding sickness or dismissal. Employers are reluctant to offer more permanent contracts because of the extra costs and risks that are associated with these (such as more costly dismissal and continued pay in case of sickness).

On 7 November 2018, the Minister of Social Affairs and Employment sent a legal proposal to parliament: the Act on a Balanced Labour Market (Wet Arbeidsmarkt in balans, WAB). The legal proposal aims to address the division on the labour market between employees with a permanent labour contract and people who are part of the flexible workforce. This was previously attempted in 2015 with the Act on Work and Security (Wet Werk en Zekerheid, Wwz), which changed various aspects of flexible labour: dismissal, unemployment insurance and on-the-job training. A thorough evaluation study of the Wwz has not yet been conducted, but the Act has been criticised by both social partners and academics. The current government (in place since 2017) sees the current proposal as an opportunity to implement their own vision of the proper functioning of the labour market.

The proposed law contains measures that aim to reduce the differences in costs and social protection between those on permanent labour contracts and those in flexible work. Employers should base their decision on whether to use permanent or flexible contracts on the nature of the job rather than solely on cost considerations. Negative effects of using flexible contracts are limited or taxed and, as a result, it will become more attractive for employers to offer permanent contracts. First, permanent contracts will be made less permanent and costly, by increasing the possibilities for probation periods, making dismissal easier and less costly and reducing employers' unemployment insurance contributions for employees on permanent contracts.

Secondly, the proposal will make flexible contracts less flexible by improving the legal position of on-call workers and by making it more expensive to hire people via a so-called "payroll company", by improving their terms of employment. However, at the same time, the proposed law will extend the maximum period during which someone can be employed on one or several temporary contracts from two to three years. The minister deems this necessary to enable employers to respond to changing market circumstances. This in fact reverses a measure from the Wwz in 2015, which reduced the maximum period for subsequent temporary contracts from three to two years.

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Various stakeholders have responded critically to the proposed law. The Council of State (the most important advisory organisation to the state) has stated that the proposal will not end the large differences between permanent and flexible labour, and will not really lead to a balanced labour market. The Council warns that the divide between “insiders” and “outsiders” on the labour market will remain, and advises a more fundamental change. In the Council’s view, the type of contract should no longer determine the level of social protection. In particular, people in a weak position on the labour market should receive better social protection.

Employers’ organisations are satisfied that the proposed law will make it less difficult to dismiss employees and that the 2015 reduction of the maximum period for temporary contracts will be reversed. However, they are also critical of the measures that make the use of flexible labour less flexible and more expensive. Conversely, trade unions criticise the fact that the proposal makes it easier to dismiss employees. Furthermore, they are unhappy about increasing the maximum period of temporary contracts and about the longer probation period.

Outlook & commentary

The important question is whether the proposal will really lead to a more balanced labour market, and to greater use of permanent contracts. It is uncertain whether the current proposal will be more successful than the former Wwz. We would recommend that a new legal proposal be based on a thorough evaluation study of the Wwz, which has not yet been conducted. This would enable the government to utilise the lessons learned. Furthermore, it seems unlikely that the current proposal will reach its intended objectives, as was stated by the Council of State. The current measures aimed at making flexible employment less flexible target only on-call workers and people employed via “payroll companies”. Employees on a temporary contract do not seem to gain much in terms of social security. The Minister of Social Affairs and Employment has stated that the current proposal is just the first step. Indeed, he is also working on new laws on self-employment and on rules concerning continued pay in case of sickness and incapacity to work. Moreover, he has appointed a commission to examine more fundamental changes in the long run.

Further reading

Wetsvoorstel Wet Arbeidsmarkt in balans inclusief Memorie van Toelichting (Kamerstuk: Voorstel van wet, 7-11-2018): <https://bit.ly/2SWpvmj> [Act on a Balanced Labour Market]

Grondige opknapbeurt voor de arbeidsmarkt (Nieuwsbericht 7-11-2018): <https://bit.ly/2S2F9LZ> [Article about the act by the Ministry of Social Affairs]

Advies Raad van State wetsvoorstel Wet arbeidsmarkt in balans (Kamerstuk: Advies Raad van State, 7-11-2018): <https://bit.ly/2TCyOZk> [Advisory Opinion by the Council of State on the Act on a Balanced Labour Market]

NRC news article “Nieuwe wet beoogt meer vaste contracten. Lukt dat?": <https://bit.ly/2S0nggA> [New law aims at more permanent contracts. Will it work?]

News item on Trade Union website (7-11-2018): “Wij zien niet hoe dat meer vaste banen op gaat leveren”: <https://bit.ly/2PKqRTw>

SRK Legal Aid website article (10-3-2016): “Kritiek op Wet werk en zekerheid”: <https://bit.ly/2KH9jf>

News item on website of the largest employers’ organisation (7-11-2018): “Arbeidsmarkt wet is stap vooruit, maar nog niet in balans”: <https://bit.ly/2Fzvefi>

CBS (2018), “Weer meer vast werk maar flexwerk groeit harder”: <https://bit.ly/2AuTU2R>

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