Sectoral Variation in Collectively Agreed Employment Protection: Evidence from Dutch Flexicurity

Trudie Schils[1] and Hester Houwing[2]

[1]Maastricht University Business School of Economics

[2]SER, ReflecT

Abstract

Al bijna 15 jaar is de combinatie van flexibiliteit en zekerheid een centraal thema in de Nederlandse arbeidsmarkt. In reactie op het toenemende gebruik van flexibele arbeidsrelaties door het bedrijfsleven in de jaren '90 om tegemoet te komen aan de druk van internationalisering werd de Wet Flexibiliteit en Zekerheid ('Flexwet') in 1999 ingevoerd. Inmiddels is de combinatie van flexibiliteit en zekerheid in arbeidsrelaties en de arbeidsmarkt, aangeduid met de term 'flexicurity' een Europees speerpunt voor beleid geworden. De Europese Commissie draagt in haar documentatie Nederland aan als voorbeeld van goed flexicurity-beleid, waarbij zij specifiek refereert aan de Flexwet.

Op basis van een analyse van drie kern elementen van deze wet, i.e. tijdelijke contracten, proeftijden, en opzegtermijnen, analyseren wij in dit paper hoe de balans tussen flexibiliteit en zekerheid in verschillende sectoren van de Nederlandse economie wordt ingevuld. De Flexwet creëert de mogelijkheid voor verschillen tussen sectoren doordat de meeste bepalingen 'driekwart dwingend' zijn, ofwel sociale partners kunnen in een CAO afwijkende regelingen onderhandelen. Terwijl het debat rondom flexibiliteit en zekerheid zich richt op nationale wetgeving, laten wij zien dat het juist van belang is om inzicht in te hebben in de daadwerkelijke uitwerking en invulling van nationale regulering op sectorniveau. Dit is ook van belang met het oog op de momenteel gewenste intersectorale mobiliteit die zou kunnen bijdragen aan het beteugelen van de huidige economische crisis. Middels een analyse door de tijd heen (2000-2006) laten wij zien hoe de balans tussen flexibiliteit en zekerheid een variatie aan vormen kan aannemen in verschillende sectoren.

Onze analyse toont aan dat de sociale partners de ruimte die de Flexwet biedt ook gebruiken om afwijkende regelingen te onderhandelen, waarbij wij aandacht besteden aan het aandeel werknemers dat onder een cao valt met afwijkende bepalingen. Bovendien vinden wij dat de balans op sectorniveau in relatie tot de balans zoals die is neergelegd in de Flexwet verschuift in de richting van meer flexibiliteit. Er is echter geen sprake van een lineair proces: waar sociale partners in eerste instantie veel afwijken van de flexwet zien we na 2005 een verschuiving in de richting van minder afwijkingen en meer convergentie tussen sectoren. Tenslotte geeft ons artikel inzicht in mogelijke toekomstige uitkomsten van flexibiliteit en zekerheid: de behoefte aan afwijkingen bij sectorniveau zijn ofwel conjunctuurgebonden of laten een lineaire trend in de richting van afname zien.

Introduction

High levels of employment protection are often mentioned as one of the main causes of Europe's inflexible labour markets, since these reduce job mobility rates and the firm's ability to quickly adapt to new economic circumstances (cf. Blanchard and Tirole, 2004). Although modest, the level of employment protection has declined in recent decades in some European countries (OECD, 2004). This is used by some scholars as an example of convergence towards a neoliberal labour market where the market mechanism prevails and the role of labour market institutions is reduced (cf. Ferner and Hyman, 1998; Mills et al., 2008). However, European countries still differ considerably with respect to the level of employment protection, and also in the way in which this is established. In some countries employment protection legislation (EPL) fully lies within the domain of central governments, while in other countries it is decentralized to collective agreements, or a combination of both. Nevertheless, most studies in the field of employment protection focus on national differences only.

In this article we analyse the sectoral variation in EPL when the social partners at the decentralized level are allowed to deviate from the default rules provided at the national level. The Netherlands is such a case of 'organized decentralization' where bargaining is deliberately delegated to lower levels while remaining under the control of higher-level associations (Traxler, 1995). Although the study takes the Netherlands as a case-study, its results contribute to the European debate on labour market reforms and to the Varieties of Capitalism (VoC) literature (Hall and Soskice, 2001). The results suggest that the institutional structures in European labour markets are highly complex and that sectoral institutions matter for the organization of labour policy. When leaving EPL to sectoral collective bargaining, sector-specific optima can be reached by the social partners, taking account of sector characteristics that could be omitted in national-level legislation due to aggregation. The default rules established at the national level as well as existing provisions in previous versions of collective agreements restrict the bargaining room of the social partners.

The article also contributes to the 'flexicurity' debate, which stresses that policymakers should achieve high levels of flexibility for firms while maintaining decent levels of security for workers (EC, 2007). Although it is often assumed that there is a trade-off between these two elements, the results in this article show that, within an entire collective agreement or at the sector level, combinations of both flexibility and security can be established. Among others, this is why the Netherlands is used as an example of a 'flexicurity' country (cf. Bovenberg and Wilthagen, 2008).

Finally, the outcomes challenge the commonly used indicators of employment protection, such as the OECD EPL indicator (OECD, 2004), since these only take account of national-level legislation and ignore the sectoral rules established through collective bargaining. We aim to show the variations in EPL across sectors within one institutional setting (i.e. the Netherlands) and show how agreements on flexibility and security vary across sectors. Our argument proceeds as follows: we first outline the theoretical framework on VoC and its links to the flexicurity debate. We then discuss our methods and explain the multi-tiered institutional framework in the Netherlands. We continue with presenting the results of our analysis and reflect these back to the theoretical debate on VoC and the policy debate on flexicurity.

Varieties of capitalism and collective bargaining on employment protection

Employment or job protection facilitates the immediate search for a new job without excessive income loss for the worker. With employment protection the burden of dismissal costs is put on the employer rather than on society, e.g. in case of income protection through a system of unemployment benefits. Two effects of employment protection are commonly criticized. First, most European employment protection systems have developed in an asymmetrical way, mainly targeted on regular jobs, excluding workers on non-standard arrangements. This can result in a segmented or dual labour market with on the one hand the insiders with permanent contracts and high employment protection, and on the other hand the outsiders employed on a flexible contract and lacking employment security (Lindbeck and Snower, 2002). For the latter group, a transition to the first segment is prevented, due to limited job mobility flows. More difficulty to fire workers might reduce hiring rates, leading to lower job mobility (Blanchard and Tirole, 2004). Second, the adaptability of firms to changing economic circumstances is held up by employment protection, and that this in turn decreases efficiency, increases labour cost and, in so doing, deters job creation (ibid., p.2).

These effects of employment protection are central in the current European debate on the achievement of a flexible labour market while retaining security. This debate seems to be centred around the fashionable concept of ‘flexicurity’. Within this concept, which is still in a stage of analytical development, it is argued that labour market policy should be targeted at establishing a high level of flexibility for firms, whilst maintaining decent levels of employment security for workers (EC, 2007). Because flexicurity cannot be regarded as a single policy strategy, the European Commission has outlined four components of flexicurity (EC, 2007, p.12): ‘flexible and reliable contractual arrangements, comprehensive lifelong learning, effective active labour

market policies, and modern social security systems'. Within the flexicurity debate it is argued there is no necessary trade off between labour market flexibility and work security and policymakers should find a balance between both. It is further argued that there is no single flexicurity strategy or pathway that fits all countries, but that the optimal strategy depends on the countries' own institutions and goals (ibid., p.22). Besides the Netherlands, Denmark is also seen as an example of flexicurity because it combines labour market flexibility with employment security by means of low job protection, high levels of income security and wide-scale opportunities for labour market training and lifelong learning (ibid., p. 36). Both countries have a system of multi-level collective bargaining with a high level of autonomy at the level of (mostly sectoral) collective bargaining, but centralized coordination by bi/tripartite institutions. The sector level provides a good starting point for an analysis of flexicurity as decentralized bargaining systems positively influence flexicurity balances (Wilthagen et al., 2003).

By stressing that multiple routes can lead to equally high-quality outcomes, the flexicurity debate fits the VoC literature that argues that there has not been nor is a single institutional structure to govern European labour markets. Both liberal market economies (LMEs) and coordinated market economies (CMEs) can generate equally high economic performance and good labour market outcomes (Hall and Soskice, 2001). Scholars have contested the convergence towards a European social model characterized by similar neoliberal social or labour policies and industrial relations in all EU countries (cf. Ferner and Hyman, 1998). European countries have always had diverse labour policies and the VoC scholars argue that these remain distinct despite pressures of globalisation mostly because of path dependency. This especially holds for CMEs, which is the model present in most European countries. In these economies, contrary to LMEs, the relevant market actors are best off by preventing fundamental institutional changes, since such changes go hand in hand with uncertainty that might be costly (Hall and Soskice, 2001).

The VoC scholars argue that in CMEs economic actors, including employers and trade unions, should seek for strategic alliances to achieve their goals. In LMEs, on the contrary, employers have more room to pursue their own goals, because trade unions are rather weak (Hall and Soskice, 2001). A variety of styles of achieving such strategic alliances can be distinguished within the CMEs. In some types such alliances are solely observed at the national level (e.g. centralized CMEs), in others solely at the regional or sectoral level (e.g. decentralized CMEs), or finally in others a combination of the two is observed (e.g. multi-level CMEs). It can be argued that the advantage of establishing labour policy at the national level is that macroeconomic effects are taken into account that would be ignored when leaving such policies to the sectoral level. An advantage of sectoral level bargaining on labour policy, however, is that sector-specific

preferences are accounted for. When combining the two approaches, a more optimal outcome might be established, controlling for both macroeconomic and sectoral factors that affect economic performance. In this article we focus on this multi-level VoC, where basic labour policy is established on the central level and where decentralized deviation from this is allowed for by means of collective bargaining.

Especially within the field of employment protection, a multi-level organization of labour policy might lead to a more optimal outcome, since the above mentioned negative effects of employment protection are not shared equally by all firms. For example, firms operating in so-called exposed sectors (e.g. agriculture, industry, construction, transport and communication) are in contrast to sheltered sectors subject to heavy international competition and the market disciplines them to keep production costs, and hence labour costs, at a low level (cf. Rubery and Grimshaw, 2003). In addition, in some sectors labour demand is more strongly affected by the business cycle than in others. For example, in construction and agriculture labour demand is more cyclical than labour demand in education or public administration.

In achieving a policy close to their preferences, employers have to seek strategic alliances with trade unions, representing the workers' interest on the sectoral level. Unions want to secure favourable wages and working conditions, including employment and income protection after involuntary dismissal (Freeman and Medoff, 1984; Faith and Reid, 1987). Employers are generally willing to share their profits (in return for provisions in collective agreements) to avoid industrial conflict, which might be more costly (Booth, 1995). The union's demand for employment protection will in turn also be related to various sector characteristics. Unions' bargaining power depends on union density and the concomitant size of the non-unionized market, and shapes the 'basket of provisions' that enter the bargaining game. Trade unions usually bargain on a set of provisions rather than on a single aspect, and different provisions are traded off against each other (Visser, 2005). Employment protection can for example be traded off against supplementary unemployment benefits, wages, or provisions on the use of fixed-term contracts.

Connecting to the flexicurity perspective, this article presents an empirical study into one of the four flexicurity components: 'flexible and reliable contractual arrangements' (EC, 2007, p. 13). The VoC perspective outlines five spheres in which firms develop relationships with other actors; our analysis relates to the sphere of industrial relations. In this sphere, firms face the problem of how to coordinate bargaining over wages and working conditions with their work force. The relevant institutions shaping actors' behaviour in the sphere of industrial relations are national-level law, sector- or company-level collective agreements, and informal norms within a

sector on how things should be done. Here, we focus on the first two of these. The VoC approach is criticized for being too static and not able to incorporate political struggles and change (Hancké et al., 2007). In this study, we integrate an analysis over time and show the outcomes of negotiations on flexibilility and security in Dutch economic sectors . The results provide insight into the extent to which these multi-level bargaining structures change the national-level balance between flexibility and security regarding contractual arrangements.

This article uses the Netherlands as a case study of a multi-level system and aims to contribute to the VoC literature by showing that sectoral deviation from the default rules does occur with respect to EPL. In addition, we add to the literature on flexicurity strategies by showing that there is not necessarily a trade-off between flexibility and security at the sector level. By doing so, it also contributes to the criticism put forward on the use of the OECD EPL indicator (OECD, 2004), since this indicator only takes account of national-level legislation and ignores the sector-level rules established through collective bargaining (e.g. Bertola et al., 2000). This might lead to biased conclusions when the OECD indicator is used to assess the effects of employment protection on labour market outcomes. Next to the claim that Michelotti and Nyland (2008) recently made for broadening the scope of items included in the OECD EPL indicator, we plead for a deepening of the index with sectoral legislation.

Data and methods

Data are retrieved from a collective agreements databank, set up by the Federal Trade Union Confederation (FNV), the largest trade union confederation in the Netherlands. This databank consists of all agreements of which the FNV is a negotiator, which is 92 percent (Schreuder and Tijdens, 2004).[1] The coverage of collective agreements is about 85 percent in the Netherlands. For the analysis, 498 collective agreements, all with a term ending after January 1, 2005, were used. In addition, to be able to compare the observed provisions to the status quo in previous collective agreements, we analysed collective agreements for the years 2000--01. We were able to do this for 397 collective agreements, for the remaining collective agreements no earlier version was found, or these were not available in the FNV Databank. The number of collective agreements per sector ranges from two (in utilities) to 242 (in industry).

The actual text of the collective agreements was scanned with respect to the notice period, the trial period, and the use of fixed-term contracts (FT-contracts). The information on these employment protection indicators was put into a coding frame. In general, three coding categories are distinguished: ‘according to national law/the default’, ‘less strict’, and ‘more

strict'. When a provision is observed to be more strict compared to national law, security for the workers is increased at the expense of flexibility for the employer. The reverse holds for less strict provisions. Hence, at the level of a specific provision in a collective agreement, a trade-off exists between flexibility and security. However, when considering a package of provisions, or at the aggregated sector level, this trade-off no longer exists and flexibility and security can be increased simultaneously. Only information for workers aged under 45 is used, because of the many different provisions for the older group of workers that falls outside the scope of this study. Moreover, we choose to focus on rules for individual dismissals only, since the rules on collective dismissals differ greatly.

The FNV also provides the user with additional information, such as the number of workers covered by a specific collective agreement. By combining this information with the number of workers in a certain sector, provided by Statistics Netherlands, the coverage rate or weight of each collective agreement can be determined. When we aggregate the different collective agreements to the sector level, we attach this weight to the individual collective agreements. We argue that this is more informative than just the number of collective agreements; e.g. in 10 percent of the collective agreements a shorter notice period is agreed upon.

As for our estimation method, we use ordered logit models to see whether observed outcomes in collective agreements are significantly different between sectors. Ideally we want to test whether certain firm characteristics (e.g. level of international competition) affect the observed outcomes in collective agreements, yet data on this are not available, preventing us from using regression methods to analyse such relations properly. With the current analysis, this article aims to show how sectoral legislation can differ from national legislation, how previous bargaining outcomes affect current outcomes, and that both flexibility and security can be enhanced through decentralized negotiations.

The Dutch multi-tiered model of EPL

Default rules at the national level

In the Netherlands, a unique but complex system of dismissal law (for individual dismissals) has developed since the 1980s. Traditionally, an employer who wants to dismiss a worker has to address the Public Employment Service (PES) to receive a permit to terminate the labour contract. After the permit has been granted, a notice period applies. According to employers the preventive check by the PES is time-consuming and in some cases authorization is difficult. Consequently, alternative ways for dismissal have developed in practice. For example, no permit

is needed when employers and workers mutually agree on the dismissal. However, this might not be beneficial to a worker as he or she has to show efforts at preventing the dismissal to be entitled to unemployment benefits. Therefore, the majority of mutually agreed dismissal cases are brought to the lower court, to formalize the dismissal (Ministry of Social Affairs, 2007). In this case, a severance pay rather than a notice period applies. Although the court route was essentially meant for exceptional cases, about half of the dismissal cases currently go through court (ibid.).

In light of this quite strict employment protection of regular workers, the demand for flexible working contracts increased, mainly in the 1990s. In 1999, the 'Wet Flexibiliteit & Zekerheid' (Flexwet) was introduced to enlarge the possibilities to use FT- contracts while decreasing dismissal protection for regular workers. Three relevant changes introduced by the Flexwet are analysed in this article. First, with the Flexwet, the number of consecutive FT-contracts was increased. Before the law, a second FT-contract with the same employer within a period of 30 days yielded entitlement to a permanent contract. With the Flexwet firms can renew a FT-contract up to two times, with a fourth consecutive contract yielding entitlement to a permanent contract. In addition, the interval period in between two consecutive contracts was increased (i.e. set at three months rather than 30 days) and the total duration of a series of FT-contracts was extended from 12 to 36 months.

Second, the changes with respect to the use of FT-contracts were made alongside changes in the trial period in employment contracts. Before the Flexwet trial periods were set at two months. A number of employers had regularly expressed the need for longer trial periods, to increase their level of flexibility. Yet, in the Flexwet, the trial period largely remained the same as before, i.e. two months, because flexibility was already increased with the larger room for the use of FT-contracts. However, the trial period was now made dependent on the contract duration. The trial period for permanent contracts and FT-contracts of more than two years is set at two months. For FT-contracts shorter than two years it is set at one month. Trial periods longer than two months are not allowed. Third, dismissal procedures were simplified. Before the Flexwet the notice period was related to a worker's age and tenure, but since the Flexwet the notice period only depends on the worker's tenure, and thus only implicitly on age. It now ranges from one month for contracts shorter than five years to four months for contracts longer than 15 years.

Finally, the Flexwet not only established a new balance between flexibility and security, but also fostered social dialogue by making the law semi-mandatory. The social partners can bargain on the elements discussed above and even agree on these issues opposite to national law, according to the needs of the sector[2], both to the benefit and the detriment of the worker.

Employment protection as a bargaining tool in collective agreements is not limited to the Dutch system, yet the fact that this can be established at the worker's expense is a rather unique feature.

Collective bargaining outcomes on EPL

Table 1 shows the observed outcomes on employment protection in Dutch collective agreements. There is quite some deviation from the default rules (i.e. the national level in the Flexwet). First, for notice periods, two trends are observed: on the one hand, for about one-fifth of short-tenured workers (those on a contract shorter than five years) a longer notice period is observed, i.e. more employment security. This is contrary to economic predictions that the newcomers in companies, i.e. the ones in whom the employers have invested less, usually bear the lowest protection levels. On the other hand, however, Harcourt and Wood (2007) already challenge this by arguing that stronger employment protection can foster skill investments that are needed in the knowledge-based and globalized economy. On the other hand, for over 23 percent of long-tenured workers (those with a contract longer than ten years) a shorter notice period applies, or less employment security in return for increased flexibility for firms.[3]

Second, no significant variation in the trial period for workers on a regular contract is found, most likely because only a shorter trial period is allowed, reducing the firm's flexibility. For about half of the workers on short-term contracts, however, a longer trial period is observed, increasing employers' flexibility. Third, the overall observed deviation from the Flexwet with respect to the use of FT-contracts is modest. For a small group of workers, about 6 to 7 percent, more strict regulation with respect to the use of FT-contracts is observed, lowering flexibility for employers.

From this it can already be concluded that Dutch social partners are willing and able to deviate from national law on employment protection. The pattern of this deviation seems to be skewed towards more flexibility for employers, however, variation is observed between the various elements of employment protection.

[Table 1 about here]

Table 2 shows the change in the observed outcomes on employment protection between 2000--01 and 2005--06. The results confirm the expectation that current bargaining outcomes largely depend on previous outcomes. For roughly 70 to 80 percent of the workers (depending on the provisions considered), employment protection provisions are similar to those in earlier years. This can indicate that such outcomes are regarded optimal by the social partners and therefore not

changed, but they might also indicate that no agreement could be reached on a change of the provisions (e.g. a dead-lock in the bargaining process). Nevertheless, whenever a change is observed, we find a tendency to less strict employment protection during the observation window. This is in line with the employers' call for more flexibility on the labour market and the goals put forward by the European Commission.

Table 2 also shows whether the observed changes in the bargaining outcomes move towards or away from the national legislation. The national legislation was established in 1999 and one can argue that deviations either grow over time, signalling that the default rules are not matching the social partners' preferences at the sectoral level, or decrease over time indicating that the social partners realize that the default rules are matching their preferences or that no agreement could be reached on how to deviate from them. We observe somewhat more convergence to the default rules as divergence away from these. This trend goes hand-in-hand with the earlier mentioned trend to less strict employment protection provisions in collective agreements.

[Table 2 about here]

Next, it is interesting to see whether there is sector variation in the observed employment protection provisions in Dutch collective agreements. Table 3 shows the sector-specific predicted probabilities to have less or more strict provisions on a certain item compared to the national provisions. The numbers printed in bold denote that the sector-specific probability is significantly different from the overall mean, i.e. the tendency to have less/more strict provisions is significantly stronger/weaker. For example, overall there is a 26 percent probability that Dutch workers with a contract shorter than five years are faced with a more strict notice period compared to the provisions laid down in the Flexwet. This probability is significantly stronger for workers in utilities, government or education, and significantly lower for those in mining, industry, trade, hotels and catering, and services (both financial and other business). In addition, we observe that the already mentioned trend of shorter notice periods for long-tenured workers (i.e. with contracts of more than 15 years) is mainly established for workers in utilities, construction, commercial services, and education. Long-tenured workers in hotels and catering, transport or financial services have the lowest probability to have less strict notice periods.

Table 3 further shows that the less strict provisions with respect to the trial period for short-term contracts are mainly observed for workers in education, trade, hotels and catering, and financial services. It is least probable for workers in agriculture, mining, utilities, and health care.

Finally, with respect to the use of FT-contracts it can be concluded that less strict provisions with respect to the total number of FT-contracts (i.e. more than three sequential FT-contracts allowed) are mainly observed for workers in industry, transport, and financial services. For workers in construction, or other commercial services, on the contrary, the number of FT-contracts is most limited. Additionally, the total duration of a series of FT-contracts is longest for workers in utilities, whereas it is most restricted for workers in construction, trade, and other commercial services. A more strict, or shorter interval period mostly applies to workers in agriculture and to a smaller extent to those in trade, and health care. In certain sectors, mainly utilities, education, and services, we observe more deviations than in other sectors. These deviations are also mostly towards less strict regulations compared to national law, leading to a higher degree of flexibility.

[Table 3 about here]

As a final exercise we translated these observed sectoral differences into the OECD EPL indicator, i.e. using the same coding frame as the OECD does, and allowing the analysed provisions to differ between the sectors (cf. OECD, 2004). The results are shown in Figure 1. Naturally, only a limited variation is observed in our sector-specific EPL indicator, since we only investigated five items in collective agreements (i.e. the ones allowed to vary at the sectoral level), compared to 18 included in the OECD indicator. From Figure 1, we conclude that EPL is most strict in education and utilities, and least strict in mining and industry. This is not picked up by the OECD EPL indicator. Another striking conclusion appears from this figure. For all sectors we observe a higher EPL level compared to the national level. However, the above results showed that there was a slight tendency to more flexibility for employers, i.e. *less security* for workers, when looking at the provisions in collective agreements. The reason for this contradiction is the way in which the observed employment protection provisions are included in the OECD EPL indicator. For example, notice periods are measured at 9 months, 4 years and 20 years of tenure. Using Table 1 we can see that this leads to an overrepresentation of the more strict notice periods for short-tenured workers, and an underrepresentation of the less strict notice periods for contracts longer than five years. It has already been noted by others that the coding frame that is used for the OECD EPL indicator is rather arbitrary (cf. Bertola et al., 2000), and in our case leads to biased results.

Conclusion

The analysis of sectoral arrangements on flexibility and security in the Netherlands shows that the social partners indeed use the possibility to deviate from the default rules. First, the room to deviate is used to tilt the national-level balance between flexibility and security slightly in favour of flexibility. This mainly holds in the case of notice periods for long-tenured workers, and trial periods for short-term contracts. For FT-contracts we rather observe an increase in security compared to national law. These findings support the notion that various combinations of flexibility and security are likely, leading to different but possibly equally optimal outcomes. In line with the flexicurity policy outlook, we indeed show that there is no 'one size fits all' strategy, but that each sector has its own flexicurity regime. In the multi-tiered Dutch system, the outcomes reflect sectoral preferences, within the framework of national law.

Second, we observe that the extent of deviation decreases over time and there is a move across sectors towards the default set by national law, whereby sectoral provisions become less strict over time. In contrast to the persisting divergence hypothesis often put forward by VoC scholars these results rather point to a trend of *convergence* across sectors. While initially the negotiating parties agreed on diverging provisions at the sector-level, over time the deviations decrease and sectors move towards the default. The mechanisms behind this could vary, e.g. a dead-lock in negotiations on the topic, or increased satisfaction with the default arrangements. By integrating this time-dimension into our analysis, we have dealt with what is often seen as a central shortcoming of the VoC-literature. Nevertheless, the time frame we have used is rather short and should be extended to determine if there is a clear trend towards convergence, if it is a deviation from a broader trend towards divergence, or rather if convergence and divergence occur in cycles. By incorporating sector-level characteristics such as sensitivity to the business cycle in future research we will be able to determine to what extent the observed convergence over time is a lasting trend or rather a temporary deviation from divergence or cyclical and caused by for example economic fluctuations.

Third, we uncovered variation in the extent to which sectors deviate from national law. Mainly the sectors utilities, education, and services structurally deviate from national law. One can therefore expect that these sectors have the highest mobility, although this should be tested further. Despite the before mentioned convergence across sectors, sectoral differences are persistent in some respects. Moreover, how flexicurity balances fit within the entire set of trade-offs made within a collective agreement is not investigated here, also because one would need data on actual negotiation processes, but should be taken into account in future research on this topic.

Finally, our analysis shows the level of bias in the OECD EPL indicator. In systems that operate on the basis of various levels of coordination, or 'organized (de)centralization' it does not suffice to merely look at national-level provisions: the agreements made between social partners might show quite a different variation in flexibility and security and correspond more closely to the lived experience of employers and workers in the workplace.

For policy makers, our results imply that to foster flexicurity-outcomes that incorporate the issues that are most pressing at a sector-level, a multi-tiered system such as that in the Netherlands with default rules at the national level and options to stimulating competitive advantage at the sectoral level can offer a useful option. In that case policy makers should however maintain an adequate degree of coordination between the central and local bargaining levels to ensure that all relevant labour market indicators are taken into account (Ibsen and Mailand, 2009). Of course social dialogue can also be encouraged at a more central level, at which more macro-economic outcomes can be taken into account in policy strategy. The degree to which flexicurity outcomes are then 'tailored to fit' is however likely to be lower. It can be concluded that flexicurity outcomes are shaped within a specific institutional framework and a precondition for development of flexicurity in collective bargaining is the level of autonomy of social partners, and the level of trust between them (Mailand and Ibsen, 2009). In the Dutch coordinated market economy, high levels of trust exist and social partners have a high degree of autonomy in negotiating policies that best fit their needs. Nevertheless, autonomy and trust can change over time in line with for example economic conditions or shifts in the power balance between social partners. For example, has the current economic crisis affected the trust between the social partners?

Notes

[1] The FNV CLA databank is used under contract of the Amsterdam Institute of Advanced Labour Studies.
[2] Note that severance pay is not part of the collective agreements, this remains a decision of the Dutch lower court.
[3] It should be noted though, that the lower protection levels observed for long-tenured workers are partly offset in Dutch collective agreements because of special provisions for older workers (i.e. longer notice period). Detailed information on this, however, is (currently) not available.

References

Andersen, S.K. and Mailand, M. (2005) 'The Danish Flexicurity Model: The Role of the Collective Bargaining System', FAOS paper compiled for the Danish Ministry of Employment, Copenhagen.

Blanchard, O., Tirole, J. (2004) 'The optimal design of unemployment insurance and employment protection: a first pass', NBER working paper no. 10443, Cambridge.

Bertola, G., Boeri, T., Cazes, S. (2000) 'Employment protection in industrialised countries: the case for new indicators', *International Labour Review*, 139: 57-72.

Booth, A. (1995) *The economics of the trade union*, Cambridge: Cambridge University Press.

Bovenberg, A. L. and Wilthagen, T. (2008) 'On the road to flexicurity: Dutch proposals for a pathway towards better transition security and higher labour market mobility', *European Journal of Social Security*, 10(4): 325-346

EC (2007) *Towards common principles of flexicurity: More and better jobs through flexibility and security*, Brussels: European Commission, Employment and Social Affairs.

Faith, R.L. and Reid, J.D. (1987) 'An agency theory of unionism', *Journal of Economic Behavior and Organisation*, 8: 39-60.

Ferner, A. and Hyman, R. (1998) *Changing industrial relations in Europe*, 2nd edition. Oxford: Blackwell Publishing.

Freeman, R.B. and Medoff, J.L. (1984) *What do unions do*?, New York: Basic books.

Hall, P.A. and Gingerich, D.W. (2004) 'Varieties of Capitalism and Institutional Complementarities in the Macroeconomy: An Empirical Analysis', Max Planck Institute Discussion Paper 04/5, Cologne, Germany.

Hall, P.A. and Soskice, D. (2001), *Varieties of capitalism: The institutional foundations of comparative advantage,* New York: Oxford University Press.

Hancké, B., Rhodes, M. and Thatcher, M. (2007) *Beyond Varieties of Capitalism: Conflict, contradictions and complementarities in the European economy*, Oxford University Press.

Harcourt, M. and Wood, G. (2007). 'The importance of employment protection for skill development in coordinated market economies', *European Journal of Industrial Relations*, 13 (2): 141-159.

Houwing, H., E. Verhulp, and J. Visser (2007). 'The Netherlands', in Caruso, B. and Sciarra, S. (eds.), *Flexibility and Security in Temporary Work: A Comparative and European Debate,* pp. 59-77, Catania: WP C.S.D.L.E. Massimo D'Antona .INT - 56/2007.

Ibsen, C.J. and Mailand, M. (2009) 'Flexicurity and Collective Bargaining. Balancing Acts across Sectors and Countries'. Faos Forskningsnotat 102, Copenhagen.

Katz, H.C. and Darbishire, O. (2002) *Converging divergences: Worldwide changes in employment systems*, Ithaca: Cornell University Press.

Lindbeck, A. and Snower, D. (2002), 'The insider-outsider theory: A survey', IZA Discussion Paper no. 534, Bonn.

Michelotti, M. and Nyland, C. (2008), 'Varieties of capitalism and diversity in labour standards regulation: The case of Italy', *European Journal of Industrial Relations*, 14(2): 177-195.

Mills, M., Blossfeld, H-P., Buchholtz, S., Hofacker, D., Bernardi, F. and Hofmeister, H. (2008), 'Converging divergences? An international comparison of the impact of globalisation on industrial relations and employment careers', *International Sociology*, 23(4): 561-595.

Ministry of Social Affairs and Employment (2007) 'Jaarrapportage ontslagstatistiek', Den Haag: Ministry of Social Affairs and Employment.

OECD (2004), 'Employment protection regulation and labour market performance', in *Employment Outlook 2004*, pp. 61-125, Paris.

Rubery, J. and Grimshaw, D. (2003), *The organization of employment: An international perspective*, Basingstoke: Palgrave Macmillian.

Schreuder, K., and Tijdens, K. (2004) 'Codeboek Ducadam Dataset - een statistisch bestand van de FNV CAO Databank'. AIAS Working paper no.24, Amsterdam.

Traxler, F. (1995) 'Farewell to Labour Market Associations? Organised versus Disorganized Decentralization as a Map for Industrial Relations', in Crouch, C. & Traxler, F. (eds.*): Organized Industrial Relations in Europe: What Future*, pp. 3-19, Aldershot: Avebury Press..

Visser, J. (2005) 'Beneath the Surface of Stability: New and Old Modes of Governance in European Industrial Relations', *European Journal of Industrial Relations*, 11(3): 287-306.

Visser, J. (2006) 'Union membership statistics in 24 countries', *Monthly Labour Review*, January: 38-49.

Wilthagen, T., F. Tros and van Lieshout, H. (2003) 'Towards 'flexicurity': balancing flexibility and security in EU member states', Invited paper for the 113th World Congres of the IIRA, September 2003, Berlin

TRUDIE SCHILS is assistant professor in economics at Maastricht University.
ADDRESS: Maastricht University, Dept. of Economics, PO Box 616, 6200 MD Maastricht, the Netherlands

[e-mail: T.Schils@maastrichtuniversity.nl]

HESTER HOUWING is researcher at ReflecT, Tilburg University.

[e-mail: H.Houwing@uvt.nl]

Table 1 Observed outcomes on employment protection in Dutch collective agreements, relation to national law 2005-2006 (% of workers covered)

	Default rule	In accordance with default rule	Less strict	More strict
Notice period contracts < 5 years	1m	77.1	3.8	19.2
Notice period contracts 5 - 10 years	2m	80.2	13.1	6.7
Notice period contracts 10 - 15 years	3m	76.9	23.0	0.2
Notice period contracts > 15 years	4m	69.5	29.3	1.2
Trial period short-term contracts	1m	53.9	45.7	0.5
Trial period regular contracts	2m	99.9	0	0.1
Maximum duration of series of FT-contracts	3y	90.3	2.0	7.7
Maximum number of FT-contracts	3	92.2	2.1	5.7
Maximum interval period FT-contracts	3m	93.8	0	6.2

Source: Author's calculations using FNV CA Databank (2008)

Table 2 Observed changes in bargaining outcomes on employment protection in Dutch collective agreements between 2000/2001 and 2005-2006 (% of workers covered)

	No change	Less strict	More strict	Toward default	Away from default
Notice period contracts < 5 years	86.4	7.3	6.3	7.5	6.0
Notice period contracts 5 - 10 years	81.4	15.0	3.6	11.9	6.7
Notice period contracts 10 - 15 years	85.8	11.6	2.6	3.5	10.7
Notice period contracts > 15 years	81.5	11.0	7.4	8.4	10.1
Trial period short-term contracts	69.9	19.3	10.8	19.2	10.0
Trial period regular contracts	99.2	0.1	0.7	0.7	0.1
Maximum duration of series of FT-contracts	75.8	10.6	13.6	19.2	4.6
Maximum number of FT-contracts	74.6	17.4	8.1	18.6	6.8
Maximum interval period FT-contracts	89.9	2.1	8.1	8.6	1.5

Source: Author's calculations using FNV CA Databank (2008)

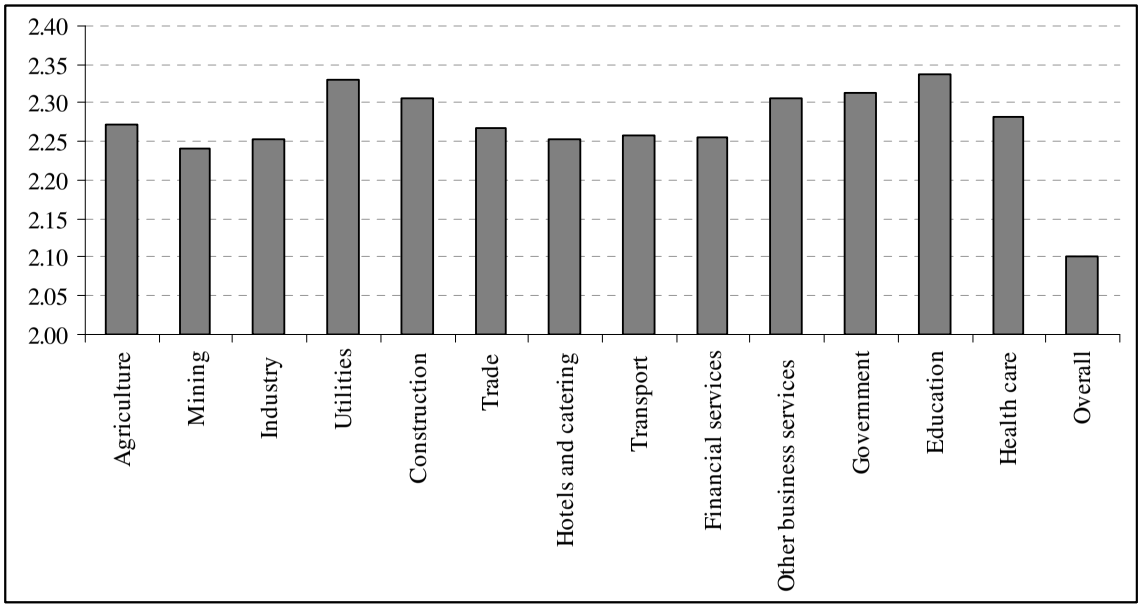
Table 3 Predicted probabilities to have less/more strict employment protection provisions in collective agreements compared to national law[1]

	Notice period at different tenure							
	< 5 years		5-10 years		10-15 years		> 15 years	
	less strict	more strict	less strict	more strict	less strict	more strict	less strict	more strict
Agriculture	**0.005**	0.244	**0.048**	**0.022**	0.270	**0.000**	0.277	**0.009**
Mining	0.047	**0.047**	0.455	**0.004**	0.452	**0.000**	0.455	**0.005**
Industry	**0.038**	**0.050**	**0.148**	**0.026**	**0.149**	0.001	**0.173**	**0.018**
Utilities	**0.000**	**0.870**	**0.136**	**0.006**	**1.000**	**0.000**	**1.000**	**0.000**
Construction	**0.004**	0.290	**0.148**	**0.006**	**0.519**	**0.000**	**0.520**	**0.003**
Trade	**0.030**	**0.055**	**0.294**	**0.005**	0.320	**0.000**	0.325	**0.008**
Hotels/catering	**0.040**	**0.040**	**0.061**	**0.016**	**0.049**	**0.003**	**0.083**	**0.038**
Transport	0.026	**0.080**	**0.049**	0.110	**0.199**	0.001	**0.067**	**0.052**
Financial serv.	**0.016**	**0.120**	0.128	**0.035**	**0.135**	0.001	**0.153**	**0.021**
Business serv.	**0.188**	**0.008**	**0.294**	**0.007**	0.365	**0.000**	0.379	**0.006**
Government	**0.003**	**0.399**	**0.010**	**0.341**	**0.044**	0.004	0.364	**0.007**
Education	**0.002**	**0.513**	**0.004**	**0.203**	**0.072**	0.002	**0.506**	**0.004**
Health care	**0.004**	0.322	**0.066**	0.050	0.258	**0.000**	**0.266**	**0.010**
Overall	0.024	0.265	0.118	0.072	0.288	0.001	0.357	0.015
	Trial period short-term Contracts		The use of FT-contracts					
			Total number		Total duration		Interval period	
	less strict	more strict	less strict	more strict	less strict	more strict	less strict	more strict
Agriculture	**0.178**	0.005	0.025	**0.027**	**0.031**	**0.031**	0.000	**0.814**
Mining	**0.239**	0.008	0.026	**0.026**	**0.024**	**0.039**	0.000	**0.000**
Industry	**0.389**	**0.002**	**0.040**	**0.017**	**0.018**	0.053	0.000	**0.003**
Utilities	**0.033**	**0.033**	0.026	**0.026**	**0.870**	**0.000**	0.000	**0.000**
Construction	**0.348**	**0.002**	**0.006**	**0.100**	**0.009**	**0.102**	0.000	**0.000**
Trade	**0.712**	**0.000**	**0.019**	**0.036**	**0.007**	**0.123**	0.000	**0.130**
Hotels/catering	**0.954**	**0.000**	0.026	**0.026**	**0.031**	**0.031**	0.000	**0.000**
Transport	0.394	**0.003**	**0.030**	**0.023**	**0.029**	**0.033**	0.000	**0.004**
Financial serv.	**0.695**	**0.001**	**0.052**	**0.013**	**0.055**	**0.017**	0.000	**0.000**

Business serv.	**0.314**	**0.003**	**0.002**	**0.242**	**0.003**	**0.254**	0.000	**0.000**
Government	0.396	0.003	**0.017**	0.041	**0.031**	**0.031**	0.000	**0.000**
Education	**0.798**	**0.000**	**0.014**	0.048	**0.020**	0.047	0.000	**0.000**
Health care	**0.205**	0.006	0.026	**0.026**	**0.024**	**0.039**	0.000	**0.155**
Overall	0.449	0.005	0.025	0.043	0.107	0.052	0.000	0.079

[1]Probabilities retrieved after ordered logit regression. Numbers printed in bold denote a significant deviation (1%-level) from the mean predicted probability in the economy.

Figure 1 OECD EPL indicator by sector



Source: Authors' calculations using FNV Databank (2009) and OECD (2004).