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### In-work poverty in the Netherlands

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## Tilburg University

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## CHAPTER 6 In-Work Poverty in the Netherlands

Mijke Houwerzijl, Nuna Zekić, Sonja Bekker, & Marion Evers

*This chapter presents a summary of the Dutch National Report, which analyses the regulatory structures affecting the working conditions for the vulnerable and under-represented persons (VUP) and assesses different aspects of regulations that can have a direct and indirect impact on the situation of in-work poverty for such workers. Data on poverty risks in relation to various individual and household variables of the four VUP Groups is presented and discussed, and the analysis includes the legal framework and conclusions drawn from data on the VUP Groups.*

### §6.01 Introduction

#### *Setting the scene*

The Dutch economy has proven to be quite resilient in the past decade, both during the financial crisis of 2009-2013, and during the economic downturn following the COVID-19 pandemic (up to the end of 2021).<sup>1</sup> However, a low unemployment percentage might mask the difficulties that some groups of workers have in finding a decent, well-paid, secure job. The Netherlands is known to have an ‘inclusion problem’: employers are less likely to hire (younger) workers with a lower educational attainment and people who are distanced from the labour market, let alone on standard contracts. According to the European Commission, the degree of flexibility and segmentation at the Dutch labour market lead to vulnerability, for instance if adverse economic shocks occur.<sup>2</sup> Also the Organisation for Economic Co-operation and Development (OECD)<sup>3</sup> has warned for lower job security and job quality for workers. Early 2020, a Dutch committee advising

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<sup>1</sup> Cremers, J., Bekker, S., & Dekker, R. (2017). *The Dutch polder model - Resilience in times of crisis*. In Igor Guardiancich & Oscar Molina (Eds.), *Talking through the crisis* (pp. 189-212) (24 p.). Geneva: ILO.

<sup>2</sup> EC (2020), Country report the Netherlands, SWD(2020) 518 final, Brussels, 26.2.2020.

<sup>3</sup> Baker, M., & Gielens, L., (2018), Making employment more inclusive in the Netherlands, Econ. dept. working papers No. 1527, OECD.

the government argued that the current ‘Dutch design’ of regulation (and practice) of work not only is morally wrong, but also harms economic, social, and societal development.<sup>4</sup> Following up on this, the Dutch Social and Economic Council (*SER*), has in June 2021 advised to limit labour market flexibility in the Netherlands.<sup>5</sup>

Moreover, despite wage growth in the past decade, frequent calls have been made to further increase wages in order to support household purchasing power and internal demand. In about half a million jobs (about 5.9% of all jobs), the workers have an income at or below<sup>6</sup> the minimum wage. However, there are also many jobs that are only slightly above minimum wage, thus still falling within the category of low-paid jobs. For instance, 1 million Dutch jobs (about 12%) fall within the scope of 110% of minimum wage or lower, and 2.2 million jobs (about 26%) fall within the range of 130% of minimum wage or lower. The poverty threshold in the Netherlands is calculated annually by Statistics Netherlands (*CBS*), and it was EUR 1,090 net per month for a single-person household in 2019.<sup>7</sup>

Based on Eurostat data (2019), 5.5%<sup>8</sup> of all in-work persons in the Netherlands were at risk of poverty and 1.1%<sup>9</sup> even lived in severe material deprivation. This is an indicator of structural poverty.<sup>10</sup> Irrespective of the employment status, the poverty risk for the whole population of the Netherlands is 13.2%, which suggests that being an

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<sup>4</sup> H. Borstlap et al. (Jan. 2020). *In wat voor land willen wij werken? Naar een nieuw ontwerp voor de regulering van werk*. Eindrapport van de Commissie Regulering van Werk, Den Haag.

<sup>5</sup> *SER* (2021), Advies 2021-2025, *Zekerheid voor mensen, een wendbare economie en herstel van de samenleving*.

<sup>6</sup> Which can be explained by a considerable amount of younger workers earning minimum youth wages.

<sup>7</sup> *CBS*, 2019:

<https://opendata.cbs.nl/statline/#/CBS/nl/dataset/83932NED/table?%20ts=1565008102724>.

<sup>8</sup> EU average: 9.2%.

<sup>9</sup> EU average: 3.2%.

<sup>10</sup> Data Eurostat. Material deprivation refers to the inability of individuals or households to afford those consumer goods and activities that are normal for a society at the time (to pay bills, keep the home warm, eat meat/fish/protein equivalent every other day, have a car, a washing machine, internet access, etc.).

active part of the workforce still decreases the risk of poverty. Furthermore, within the whole working population those with the highest education have the lowest risk of poverty and those with a low education level run the highest risk of poverty (obviously those with medium level of education are in between).<sup>11</sup>

Household variables show that the poverty risk for single-person households is much higher (9.9%) than for households with two (4%) or more (5%) persons. Notably, if only one person in the household works, there is a poverty risk of 12.3%, while if more than one person in the household is employed, the risk drops significantly to 2.7% (year 2019). Finally, also the number of dependent children slightly affects the poverty risk. Having no dependent children is connected to a 5.4% poverty risk. One dependent child leads to, surprisingly enough, a slightly lower risk of poverty (5.2%), which might be the effect of child-related benefits. If there are two or more dependent children in the household, then the risk of poverty rises to 6%, indicating that there may be some factors related to (child-)benefits that have no positive effect (or even a negative effect) on household income.

Notably, the immediate effects of the COVID-19 crisis on the loss of jobs and income have not been translated into current statistics yet.<sup>12</sup> However, first explorations suggest that the most vulnerable groups on the labour market have been affected the most.

#### *Chapter structure*

Against this backdrop, the chapter presents main findings of the Dutch National Report of the WorkYP project. First, important regulatory structures affecting the working conditions for the four VUP Groups are briefly addressed, including a selection of instruments that can have a direct and indirect effect on the situation of in-work poverty

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<sup>11</sup> Almost half of the individuals in the Dutch working population have a high level of education (46.8%). A further 38% has an intermediate education level, and only 15.2% has a low education attainment.

<sup>12</sup> Bekker, S., Buerkert, J., Quirijns, Q., & Pop, I. (2021). In-work poverty in times of COVID-19. In E. Aarts, H. Fleuren, M. Sitskoorn, & T. Wilthagen (Eds.), *The new common: How the COVID-19 pandemic is transforming society* (pp. 35-40). Springer.

for such workers (section § 6.02).<sup>13</sup> Second, data on poverty risks in relation to various individual and household variables of each of the four VUP Groups are presented, including relevant aspects of the legal framework and conclusions drawn from data on the VUP Groups (sections § 6.03 – 6.06). The chapter ends with a summarizing conclusion (section § 6.07).

## §6.02 Role of the Legal Framework

### [A] The Binary Divide Between Employees and Self-Employed

It should be stressed from the onset that the legal system in the Netherlands has a binary divide: according to Dutch labour law and the general contract law, a worker is either an ‘employee’ or a ‘self-employed person’. Whereas the worker with an employment contract has an entrance ticket to the ‘solid fortress of labour law’, the solo self-employed worker (VUP Group 2 workers) remains outside and generally lacks this protective shelter. The employment contract is also the entrance ticket to another fortress of specific social security schemes for employees. In contrast, the solo-self-employed worker is subject to the general rules of contract law, in which party autonomy and freedom of contract are the core principles. As an effect, the consequences of being defined as a solo self-employed worker can be quite invasive, since labour and social security law regulations do (with some exceptions) not apply.

When all the elements of the definition in the Dutch Civil Code (Article 7:610 and 7:659 DCC) are met, there is an employment contract, regardless of whether the parties wanted to conclude an employment contract. The most important economic element of the employment contract is (periodic) payment of remuneration. ‘Authority’ or ‘subordination’ is also considered key element in determining an employment relationship.

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<sup>13</sup> For an elaborate overview, see Part I of the national report: Houwerzijl, M.S., Zekić, N., Evers, A.A. and Bekker, S. WORKING, YET POOR; NATIONAL REPORT: NETHERLANDS, Tilburg university and Utrecht University, 26-07-2021.

The solo self-employed worker works on the basis of a different type of (commercial) contract. The DCC regulates several types of commercial contracts. The most important ones are the agreement to ‘make a work’ (*overeenkomst tot aanneming van werk*), as regulated in Article 7:750 DCC, which is traditionally mostly used in the construction sector, and the agreement for services (*overeenkomst van opdracht*), as regulated in Article 7:400 DCC. This contract was traditionally associated with ‘the liberal professions’, notably medical doctors, notaries, and lawyers. Nowadays, contractual arrangements of most solo self-employed workers are based on contracts for services.

The distinction between the contract of employment and the contract for services is subordination. However, determining whether there is subordination can be difficult. Another distinctive element is that the self-employed contractor does not necessarily perform his or her work personally. This is only the case when parties specifically agree to that, or when it is clear that the contract was concluded because of the specific qualities of a specific contractor (Article 7:404 DCC). In case of a dispute that is brought before the court, the assessment as to whether there is an employment contract or a contract for services, is made on the basis of an evaluation of all circumstances of the case, which in the Netherlands is called the ‘holistic assessment’.<sup>14</sup> Until recently, ‘all circumstances’ was generally understood as including the intentions of the parties when they concluded the contractual relationship, as well as their societal position and the way in which parties executed the agreement in practice.<sup>15</sup> This led to very differing decisions by lower courts in cases with sometimes large factual similarities. In November 2020, in its Judgment ‘X/Gemeente Amsterdam’, the Supreme Court clarified that the intention of the parties does not play a role in the question of whether the agreement must be regarded as an employment contract.<sup>16</sup> According to this recent judgment, it must first be examined which rights and obligations the parties have agreed

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<sup>14</sup> More elaborate *see*, Samiha Said, *Digital Platform Work in Dutch Labour Law*, working paper prepared for LLRN4, Santiago de Chile May 2019.

<sup>15</sup> Dutch Supreme Court (*Hoge Raad*), 14 Nov. 1997, ECLI:NL:HR:1997:ZC2495 (*Groen/Schoevers*).

<sup>16</sup> Dutch Supreme Court (*Hoge Raad*), 6 Nov. 2020, ECLI:NL:HR:2020:1746, para 3.2.3.

upon. Only when that has been established, the court can assess whether the agreement has the characteristics of an employment contract or not. In short: it is the actual operation of the arrangements made by the parties which will be decisive in determining the true nature of the contractual relationship.

Notably, in the Netherlands, the same standards are applied in assessing whether an employment contract exists across the three legal areas of labour law, social security law, and tax law.<sup>17</sup>

Regarding the Dutch social security system, it is important to know that it 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. Hence, the Netherlands has a hybrid system of social security protection. 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. However, there are in social security legislation some extensions to the employee-concept.<sup>18</sup> The reason behind this is that the legislator deemed it necessary to bring not only persons with an employment contract under the 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. The extensions to an employment relationship are laid down in the personal scope of the employee benefit schemes.<sup>19</sup> Under the condition that they fulfil certain requirements, e.g., home workers, musicians, artists, professional sportsmen, and ‘other persons, who perform personal work for remuneration,’ are covered under the

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<sup>17</sup> Dutch Supreme Court (*Hoge Raad*), 25 March 2011, ECLI:NL:HR:2011:BP3887 (*Gouden Kooi*); S. Said, ‘Werknemer of zelfstandige? Drie keer raden!’, *ArA* 2017/1, p. 55 e.v.

<sup>18</sup> There are also some exceptions to an employment relationship laid down in Articles 6 and 6a of the Sickness Benefits Act. These are not relevant for the subject of this Chapter.

<sup>19</sup> Articles 4 and 5 of the Sickness Benefits Act (*Ziektewet*) and the Decree on Employment Relationships (‘*Rariteitenbesluit*’) based on Article 5 of the Sickness Benefits Act.



employee insurance schemes; they have an employee-like status. So, from the perspective of the WorkYP project, for instance, the Dutch unemployment benefits (UB) used to be rather accessible for certain self-employed who meet the criteria for being classified as employee-likes (which boil down to employee-like economic dependency).

## [B] Main Sources of Labour Law Protection and the Role of Collective Bargaining

Since 1983, the Dutch Constitution includes two provisions concerning employment protection of working people by labour law. Article 19 (1) of the Dutch Constitution<sup>20</sup> stipulates that it shall be the concern of the authorities to promote the provision of sufficient employment. Next to that, Article 19 (2) requires the Dutch Government to enact rules concerning the legal status and social protection of working persons and concerning co-determination. Most important from the perspective of the WorkYP project, is Article 20 of the Dutch Constitution,<sup>21</sup> which in its first paragraph stipulates that it shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth.<sup>22</sup> The minimum adequate living standard that should be guaranteed refers not only to social security benefits but also, for example, to the minimum wage.

Substantive Dutch employment law is not consolidated into a single code, but it is laid down in many different legal sources.<sup>23</sup> Apart from protective labour law rules laid

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<sup>20</sup> Extensively M. Houwerzijl & N. Zekić, Commentary on Art. 19: De grondwet | Artikel 19 - Werkgelegenheid en arbeidskeuze.

<sup>21</sup> Extensively M. Houwerzijl & F. Vlemminx, Commentary on Article 20 (in Dutch): De grondwet | Artikel 20 – Bestaanszekerheid.

<sup>22</sup> Notably, constitutional law has never played a dominant role in litigation since Article 120 of the Dutch Constitution prohibits the judiciary to test laws and treaties against the constitution, as this is considered a prerogative of the legislature. Moreover, there is no constitutional court in the Netherlands. This gap is filled by international (social) rights treaties, which are quite an important source of law, due to the Dutch monistic system.

<sup>23</sup> For an elaborate overview of Dutch labour law in English, we refer to: *Labour law in the Netherlands*, by Antoine Jacobs, 2020, Wolters Kluwer. We also draw on Bouwens, Houwerzijl, Roozendaal, *Schets van het Nederlandse arbeidsrecht*, Wolters Kluwer 2021.

down in the Dutch Civil Code (e.g., dismissal law protection), important public labour law protection is applicable to all employees who are working (even temporarily such as posted workers) on Dutch territory.<sup>24</sup>

For our purposes, the Minimum Wage and Minimum Holiday Allowance Act (*WML: Wet minimumloon en minimumvakantiebijslag*) is the most important legal instrument. The WML sets a minimum wage floor in the Dutch labour market, which helps to establish a minimum subsistence level. The statutory minimum wage is automatically linked to the development of the general level of wages. Every six months Netherlands Statistics (*CBS*) calculates the average level of wage rises in the (collective labour agreements) CLAs of Dutch workers, and the minister subsequently adjusts the minimum wage with the same percentage by Royal Decree.<sup>25</sup> Once in a while economic scholars have pleaded to lower the statutory minimum wage, in order to stimulate employment, but this has never been embraced by the government. However, in the period 1983-1995 (when the Dutch economy suffered from a persistent level of high and long-term unemployment), the automatic linkage to the rise of average wages has been interrupted several times. The long-lasting effect of this former policy is that the current level of the minimum wage, measured in terms of purchasing power, is still reduced if compared to the minimum wage level in the 1970s (corrected for inflation).<sup>26</sup>

On 1 July 2021, the monthly minimum full-time gross wage was EUR 1,701 per month for an adult full-time worker (everyone who is 21 years of age and older). Employees are also entitled to a minimum of 8% holiday allowance (paid once a year).<sup>27</sup> Notably: the normal weekly working time may vary between 36 and 40 hours a week, depending on the sector of the economy. Therefore it is not possible to give a general

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<sup>24</sup> This concerns the Minimum Wage and Minimum Holiday Allowance Act; the Working Hours Act; the Health & Safety (Working Conditions) Act; the Placement of Personnel by Intermediaries Act; and the Equal Treatment Act.

<sup>25</sup> As observed by Jacobs, *Labour law in the Netherlands* 2020, p. 138: The procedure for adopting the minimum wage is very simple and depoliticized, it never stirs political debate.

<sup>26</sup> Jacobs, *Labour law in the Netherlands*, 2020, pp. 257-259, 141.

<sup>27</sup> <https://www.rijksoverheid.nl/onderwerpen/minimumloon/bedragen-minimumloon/bedragen-minimumloon-2021>.

applicable hourly minimum wage, but on average it is about EUR 11 an hour. The Dutch largest trade union FNV, together with some other stakeholders, taking into consideration the increasing amount of working poor in the Netherlands, have started a campaign to increase the minimum wage to a ‘living wage’ level of 14 euro an hour, which would be 60% of the average wage in the Netherlands, as it was originally intended.<sup>28</sup> In 2018, the scope of the Minimum Wage Act was extended to solo self-employed workers, unless they provide their services in the pursuit of a business or in the independent pursuit of a profession (Article 2 (2) (b) WML). The idea is to cover bogus self-employed workers but not genuinely self-employed persons.

From 1 January 2017 onwards, it is, in principle, prohibited for employers to deduct any other costs from the minimum wage than employees’ wages statutory wage tax, national insurance, and employee insurance contributions, along with – if applicable – contributions to occupational pension schemes or similar secondary employment conditions).<sup>29</sup> Generally, this means that it is no longer permitted to withhold expenses relating to real costs (e.g., housing, work clothes, and travel expenses) from the minimum wage (Article 13 WML). The measure was introduced to prevent (sometimes very serious) underpayment and other abuses, occurring mainly with regard to posted workers and migrant workers in low-wage sectors. The aim is to guarantee that the employee is always entitled to at least the statutory minimum wage. It is also laid down in law that only a limited amount of income can be garnished to pay debts or other duties. The seizure-free amount used to be 90% of the statutory minimum wage level in order to allow for an adequate minimum decent standard of living.<sup>30</sup>

Besides private and public labour law, there are Acts on more collective aspects of labour law (on the right to collective bargaining, the extension of a collective labour

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<sup>28</sup> [https://www.voor14.nl/voor\\_14\\_is\\_mogelijk](https://www.voor14.nl/voor_14_is_mogelijk).

<sup>29</sup> Under strict conditions (and in line with Art. 7:631 & 632 DCC) deductions for housing & utility or service costs are allowed up to 25% of the Minimum Wage level after written authorization by the employer and employee. See Art. 2a(1)(a) *Besluit Minimumloon en Vakantietoelage* (Decree Minimum Wages & Holiday Allowance).

<sup>30</sup> As of 1 Jan. 2021, an Act on the simplification of the seizure-free threshold (*Wet vereenvoudiging beslagvrije voet*) has entered into force.

agreement (CLA), collective dismissals and co-determination rights of employees in undertakings). Trade unions, employers' organizations (social partners), as well as individual employers may conclude CLAs, principally or exclusively setting out the terms of employment. Social partners also have an important role in the Dutch consultation model (*Poldermodel*) within the industrial relations system. Apart from their consultation, lobbying and advising roles at national level and their collective bargaining activities at sectoral and company level, social partners play an important role in fostering compliance and enforcement of rules. For instance, if provisions from (often) universally binding CLAs are not observed, then employees and/or social partners may institute an action against the non-compliant employer.

As trade union density is only 19%,<sup>31</sup> many sectoral CLAs cannot reach a 'sufficient' level of coverage through membership alone.<sup>32</sup> Therefore, the majority of employers use clauses in the individual employment contract to bind the employees to sectoral collective agreements (i.e., *incorporatiebeding*). Because of the wide use of such clauses and because most sector-level collective agreements are made generally binding by a government decree, more than 80% of the Dutch employees is covered by a CLA. Hence, the rather low unionization in the Netherlands does not stand in the way of a high collective agreement coverage. Notably, many statutory provisions are three-quarter mandatory, meaning that only CLA parties can deviate from these statutory standards, also to the detriment to the workers. Most CLAs therefore contain, besides better conditions than the statutory minimum standards, also some less favourable working conditions. The number of successive fixed-term contracts (important for VUP Group 3 workers) can, for example, be extended by a CLA.

All CLAs have wage scales for different job titles. The wage scales are usually designed in such a way that the employee receives a wage increase after every year in employment (annually). This means that the longer the employee has been working

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<sup>31</sup> <https://www.cbs.nl/nl-nl/nieuws/2018/25/bijna-een-op-de-vijf-werknemers-lid-van-een-vakbond>. See also Keune (2021) Inequality between capital and labour and among wage-earners: the role of collective bargaining and trade unions. *Transfer*, 27(1), 29-46.

<sup>32</sup> W. Gielen en J. Floris, 'Wie is er nog lid van een vakbond? Inzicht in lidmaatschap, belang en tevredenheid', *CBS Statistische Trends* 2018.

somewhere, the higher the wage. So, wages increase with job tenure. In these job ladders, there is usually a maximum to how high a salary can go for a certain job title. However, most often, the character of CLAs is that they provide the minimum standard. So, at company level (for all employees) and/or even in individual negotiations between employer and employee, deviation in favour of the employee is possible.<sup>33</sup> Other important pay-related conditions established in most CLAs are occupational pension schemes (allowing workers to build up occupational pensions on top of the basic state pension<sup>34</sup>), surcharges for overtime, end-of-year bonuses, et cetera.<sup>35</sup> In sum, CLAs use a much broader definition of pay than is applied in the *WML* with regard to the statutory minimum wage.

## [C] Main Sources of Social Security, Providing Direct Income Support

Social security law provides an important source of direct income support (if need be), consisting not only of an employee benefit system and a residence-based benefit system, but of a right to means-tested social assistance (administered by the municipalities) as well, meant as a last safety net.

Since 1983, the Dutch Constitution includes a provision concerning the right to a minimum level of subsistence and social security. Most important from the perspective of the WorkYP project, is Article 20(1) of the Dutch Constitution<sup>36</sup> which, as already mentioned, stipulates that it shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth. Moreover,

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<sup>33</sup> Also, many sector-level CLAs allow for decentralized collective bargaining arrangements ‘à la carte’ at company level.

<sup>34</sup> Together, the state pension and the supplementary company pension may amount to approximately 70% of the median wage during an employees’ career (this will change from 2026 onwards). Solo self-employed are sometimes allowed to opt-in, but this is rather expensive and therefore not frequently used.

<sup>35</sup> Art. 2a Wet AVV states which components should also be guaranteed to posted workers (and which not).

<sup>36</sup> Extensively: M. Houwerzijl & F. Vlemminx, Commentary on Article 20 (in Dutch): De grondwet | Artikel 20 – Bestaanszekerheid.

Article 20(2) requires the Dutch Government to lay down rules concerning entitlements to social security by Acts of Parliament. In Article 20(3), it is stipulated that every Dutch national resident in the Netherlands who is unable to provide a living for themselves, shall have a right to social assistance from the authorities, which should be regulated by Act of Parliament. Clearly, the assumption that poverty among working people is undesirable from a policy point of view, is underpinned by this Article 20 of the Dutch Constitution. Interestingly, commitment to this fundamental right was (implicitly) addressed in both the current and the previous Dutch government's Coalition Agreement to 'fight poverty and indebtedness' and to 'make work pay'.<sup>37</sup>

The universal benefit schemes encompass survivorship benefits, basic state pension, child benefits, and long-term care. Everyone have access to these residence-based schemes. This is also true for the Dutch general healthcare system, which is based on private health insurance, mandatory for all residents (*Zorgverzekeringwet, Zvw*). Since the system is residence-based, it does not differentiate between different types of workers such as salaried, self-employed, or non-standard employed workers. Employers thus have no obligation to offer health insurance.<sup>38</sup> For residents with lower incomes, the government provides an income-dependent health insurance allowance (*zorgtoeslag*).

Employee benefit schemes cover the social risks of unemployment, sickness, and disability. All employees working in the Netherlands are compulsory insured for the employee benefit schemes. In case of job loss, such as in economic crisis situations, they are entitled to unemployment benefits (UB, provided they meet the eligibility requirements).<sup>39</sup> The level of these benefits amounts, as a rule, to 70%-75% of the last

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<sup>37</sup> Coalition agreement 10 Oct. 2017 (*Regeerakkoord*): p. 22, 27; Coalition agreement 15 Dec. 2021 (*Regeerakkoord*): pp. 23-25.

<sup>38</sup> Until 2006, the *Ziekenfondswet* was in force, an employees' insurance scheme that protected employees and self-employed persons with low incomes only.

<sup>39</sup> Apart from rights to an UB, all Dutch employees are entitled under labour law to a so-called transition allowance (*transitievergoeding*) when their employment contract ends on the initiative of the employer. The amount of the transition allowance is equal to one-third of the monthly wage for each calendar year that the contract of employment has lasted.

earned daily wage,<sup>40</sup> with a maximum.<sup>41</sup> The maximum daily wage in the Netherlands as of 1 July 2021, is EUR 225,57 per day (which amounts to EUR 4906,15 per month).<sup>42</sup> Until 1 January 2016, the maximum duration of UB was 38 months. The maximum duration was gradually reduced to 24 months from 1 July 2019 onwards. This reform mainly affected older unemployed persons with a longer employment history, since their maximum UB duration was considerably reduced. Unemployed persons, who do not meet the requirements for UB at all, can rely on the general social assistance scheme, which is means-tested.

The most important social assistance scheme is laid down in the so-called Participation Act (*Participatiewet or PW*). The PW provides the ultimate social safety net, granting a minimum income to anyone legally residing in the Netherlands who has insufficient means to support oneself, meaning little or no other income (including other benefits) and/or a partner and few personal assets (if any). The amount of social assistance benefits is linked to the statutory minimum wage. Actually, the statutory minimum wage level is very much functioning as a ‘red line’ for all low incomes in the Netherlands because all minimum amounts of employee-related benefits and the social assistance level are linked to the statutory minimum wage. In principle, every two-adults household is entitled to minimum benefits at the level of one net minimum wage (in that respect the minimum wage supposedly is still based on the single breadwinner household, where it originally was based on as well). From a legal and systemic

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<sup>40</sup> An automatic indexation mechanism for all social benefits, including UB and social assistance, does exist (*Wet Koppeling met afwijkingsmogelijkheid (WKA) 1992*). Biannually, the level of all benefits is increased by the average percentage increase in contractual wages. Although the Act on the indexation of social benefit provides for the option to freeze benefit levels in the case of a strong relative increase in the number of beneficiaries, the government did not use this option in recent economic crises.

<sup>41</sup> On top of the compulsory employee-related benefit schemes provided for by law (illness, incapacity for work, unemployment), many sectors have concluded specific sectoral CLAs regarding supplementary benefits. For example, paying compensation in case of illness from the first sick day or topping up the statutory benefit level to 80, 90, or even 100 % of the last wage.

<sup>42</sup> These are gross amounts. <https://www.uwv.nl/werkgevers/bedragen-en-premies/detail/maximumdagloon>.

perspective, the established social minimum is 50% (married people) or 70% (single people) of the net minimum wage. This also means that nobody is obliged, in order to receive such payments, to accept or perform work below the level of the statutory minimum wage.

## [D] Social-Fiscal Allowances, Indirectly Influencing In-Work Poverty

There is a range of instruments to support households with children: (income-dependent) combination tax credits, child care allowance, parental leave options, and (income-dependent) child benefits, for example. Next to the allowances to reduce the financial burden of having children, the Dutch government supports low- and middle-income households and individuals with other basic needs such as rent/housing allowance and healthcare insurance allowance. This system of so-called social-fiscal income-related allowances helps covering living costs by providing an allowance that eases the financial burden.<sup>43</sup> Said social-fiscal allowances do not make a principled difference between working and non-working people. In line with the 2006 new policy insight that finding a job does not always mean an escape from poverty, working and non-working groups are treated equally according to the household's ability to pay for certain services. The annual expenditure for the system of social-fiscal allowances amounts to EUR 13 billion, and the system fulfils a number of crucial functions.

However, the so-called '*kindertoelagenaffaire*' now threatens to discredit the whole system of social-fiscal allowances. This political affair concerns the technicalities of the allowances system: It is based on a rather generous and easy advance-payment design combined with a strict, harsh, and disproportional recovery and anti-fraud policy. In practice, this has led to accumulated repayments occurring most frequently among poorer households and households with people in flexible employment. These households most often have differentiating income levels and also people tend to report

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<sup>43</sup> Which is no luxury in light of – in some regions – soaring high rents and high prices of child day care.



income changes less frequently and less timely than was expected. Thus, the system of advance payments and settlements showed to have unpleasant consequences for poor (working) families who were supposed to benefit the most from it, as it leads to increased income insecurity and contributes to debt problems. The recovery practice of child care allowances eventually led to huge political turmoil and as a consequence, on 15 January 2021, the cabinet decided to collectively offer its resignation, two months before the Lower House elections, in response to a report of the Parliamentary Interrogation Committee on Childcare Benefits.

Despite the critique, it must be acknowledged that the social-fiscal allowances help narrowing the gap between low-income and better-off households. The allowances also lead to a considerable increase in the social minimum for people living on welfare or minimum wage level.<sup>44</sup> Furthermore they facilitate demand management in the market-based systems of healthcare, housing, and childcare. It will therefore be difficult to find a suitable alternative.<sup>45</sup>

## §6.03 VUP Group 1: Low or Unskilled Standard Employment

### [A] Composition of VUP Group 1

As discussed in the introductory chapter of this book, VUP Group 1 consists of workers in low or unskilled jobs who have a full-time and open-ended employment contract. In 2019, 14.4% of the Dutch in-work population belongs to VUP Group 1. There are significantly more men than women in VUP Group 1: 83.3% versus 16.7%. Some 39.5% of the low-wage workers is 50 years of age or older. In addition, 33.1% is aged between 35 and 49, and 27.4% is aged between 18 and 34.<sup>46</sup>

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<sup>44</sup> The lowest income earners, depending on their household situation, receive 13% to 20% of their disposable income through these social-fiscal allowances. See, Rijksoverheid (2019). *Rapport deelonderzoek 1 IBO Toeslagen*.

<sup>45</sup> See Vonk et al., 'Een verkenning van alternatieve inrichtingsvormen voor het huidige stelsel van inkomensafhankelijke toeslagen', *Weekblad Fiscaal Recht* 2021/98.

<sup>46</sup> See table 6.1 below in §6.03[C].

Of the low-wage workers, 29.6% works in *agriculture, industry, or construction*. These are not considered to be poor sectors by Eurostat,<sup>47</sup> however Dutch employees working in these sectors have the highest risk of poverty: 5.9%, which is just above the Dutch average of 5.5%. A further 38.9% works in *trade, transport, accommodation, and food services or info-com*, of which trade (wholesale and retail) and accommodation and food services are considered to be poor sectors. Of the employees belonging to VUP 1 in these sectors, only 3% is at risk of poverty. The other 31.5% of VUP 1 works in ‘other services’, being *financial and insurance activities, real estate activities, administrative and support service activities, education, human health and social work activities, arts, entertainment and recreation, and other service activities*. Of these sectors, the ones considered poor sectors are administrative and support service, arts, entertainment and recreation, and other service activities. Workers from VUP 1 working in these sectors have a poverty risk of 4.6%. In §6.03[C] below, the composition of VUP Group 1 is linked to more detailed data on in-work poverty.

VUP Group 1 workers may have started working early, because they have low-skilled jobs for which a diploma is attained at an earlier age<sup>48</sup> than other educational levels.<sup>49</sup> In that regard it should be noted that the Netherlands has a system of youth minimum wage for workers younger than the age of 21 with significantly lower wages than the normal minimum wage. This brings us to the relevant legal framework.

## [B] Relevant Legal Framework

### [1] Collective Agreements Coverage

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<sup>47</sup> The Netherlands is not quite familiar with the term ‘poor sector’. Moreover, not for all economic sectors sufficient data is available.

<sup>48</sup> Until the age of 16, all persons have to follow compulsory education (secondary school). In principle, if a person aged 16 does not have a diploma from a secondary level vocational education, then education is compulsory until 18 years old.

<sup>49</sup> Although workers in ‘low- or unskilled standard employment’ might also be overqualified. Actually, only 25.1% of VUP group 1 workers have a low education and 15.9% have a high education. The largest part of the low-wage workers (59%) has an intermediate level of education.

Many CLAs fall within the scope of the sectors mentioned above. In these sectors, sector-level CLAs tend to prevail. Many VUP Group 1 workers are therefore covered by sector-level CLA's, such as for the 'industry', e.g., CLA for large metal processing (*Metalelektro*), CLA for general packaging industry (*Algemene verpakkingsindustrie*), CLA for wood processing industry (*Houtverwerkende industrie*). However, there are enterprise-level CLA's as well, especially for big enterprises, such as Philips and Tata Steel. The same applies for other (groups of) low-wage sectors. There is a branch of CLA for the construction industry (*Bouw & Infra*), a CLA for the brick industry (*Bakstenenindustrie*), and a CLA for carpenter industry (*Timmerindustrie*). There are relatively fewer CLAs in the arts, entertainment, and recreation branches. There is, however, a CLA for recreation (*Recreatie*), applying to tourism companies such as vacation parks, but not including hotels and restaurants, since these have a different sector-level agreement. There is also a sector-level CLA for sports for non-profit organizations that facilitate sports in the broadest sense. Moreover, there is a sector-level CLA for theatre and dance (*Toneel en Dans*), a CLA for movie theatres (*Bioscoopbedrijf*), a CLA for museums (*Museum*), and a CLA for orchestras (*Orkesten*). Finally, there are several CLA's for large media-companies and a sector-level CLA for broadcasting companies (*Omroepersoneel*). Hence, also in this group of low-wage sectors there are many CLA's.

## [2] Recent or Pending Labour and Social Security Law Reforms

Labour law reforms may affect the VUP Group 1 employees' working conditions, improving or worsening their precariousness and/or their working conditions. In the last decade, this concerns the reforms that occurred in the aftermath of the financial crisis and of the COVID-19 pandemic.

In 2015, the Act on Work and Security (*Wet Werk en Zekerheid*) changed Dutch labour law, aiming to make flexible or temporary contracts less flexible and the open-ended contracts less permanent. However, the dominant perception is that where dismissals may have become less costly, since severance payment has been lowered, the dismissal procedure has remained rather rigid with increased (litigation) risks for

employers.<sup>50</sup> In 2018, new changes were introduced with the Act on Labour Market in Balance (*Wet Arbeidsmarkt in Balans*). For VUP Group 1 workers, the main feature is the introduction of a so-called cumulating ground for dismissal in order to make it (a bit) easier to dismiss employees. All in all, the new legislation seems to have worsened the position of the VUP Group 1 workers only slightly. Having an open-ended full-time contract in the Netherlands still provides solid labour law protection.

An issue that is still pending is the issue of the monthly statutory minimum wage. Since the same monthly statutory minimum wage applies in all sectors, even though the full-time working hours can differ per sector and even per employer, having no hourly minimum wage means that workers with a 40 hours working week have to work more hours for the same amount of money than workers with, for example, a 36 hours working week. It has been calculated that an employee working in a sector where the normal working time is 40 hours earns 11% less per hour than an employee working in a sector where the normal working time is 36 hours. There are, therefore, pay differences at the minimum wage level that are only caused by the difference in normal working hours per sector and the absence of a minimum hourly wage. There is a bill pending in the Parliament to introduce an hourly minimum wage.

## [C] Descriptive Data and Impact Analysis

### [1] Workforce Composition Related to In-Work Poverty

In order to assess to which extent VUP Group 1 workers are exposed to poverty, table 6.1 provides an overview of the Eurostat data in the most recent year (2019). The number in brackets reflects the share (%) of a variable in this group. For example, 27.4% of low-wage workers with a standard employment contract is 18 to 34 years old. The number on its left is the percentage of people in this category that are at risk of poverty.

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<sup>50</sup> See also Nuna Zekić, 'Reforming labour laws in the Netherlands: An assessment of the redistributive effects', in V. Pulignano, & F. Hendrickx (Eds.), *Employment relations in the 21st century: Challenges for theory and research in a changing world of work* (Bulletin of Comparative Labour Relations; No. 107), Kluwer Law International 2019, pp. 77-89.

For example, 2%\* of the low-wage workers aged 18 to 34 lives below the poverty threshold.

*Table 6.1 VUP 1: Low-wage Workers (Low or Unskilled in Standard Employment), NL, 2019 (%)*

<i>% of in-work population</i>	(14.4)		
<i>In-work at risk of poverty</i>	4.4		
<b>Individual variables</b>		<b>Household variables</b>	
<b>Age group</b>		<b>Household size</b>	
18-34	2* (27.4)	1	<1(18.4)
35-49	8.5 (33.1)	2	0.7 (29.4)
≥50	2.6 (39.5)	>2	8 (52.2)
<b>Gender</b>		<b>No. of in-work persons in the household</b>	
Women	0.2* (16.7)	1	6.2 (33.7)
Men	5.2 (83.3)	>1	3.4 (66.3)
<b>Education</b>		<b>No. of children (&lt;18)</b>	
Low	4.8 (25.1)	0	0.3 (65.5)
Medium	4.6 (59.0)	1	6.7* (14.5)
High	2.2* (15.9)	>1	15.9* (20)

Source: Eurostat data.

Note 1: extremely low poverty percentages that are derived from small sample sizes are reported as <1.

Note 2: *nationality* and *number of months work* cannot be reported on due to extremely small sample size (<50).

Note 3: based on the definition of this group, the variables ‘full-time/part-time’, ‘permanent/temporary contract’ and ‘occupational skill level’ are not reported in the table; 100% of them is employed full-time, in low-skilled occupation, and on a fixed-term contract.

\* Careful interpretation, low sample size ( $N=100-200$ ).

As mentioned earlier, 14.4% of the Dutch in-work population in 2019 was employed in a low-skilled profession, on the basis of standard employment (VUP Group 1), with 4.4% of them being at risk of poverty. This percentage is below the national average of

5.5%. Some aspects stand out from the data on these low-wage workers. First of all, there is a striking difference in at-risk-of-poverty percentage between the age groups. The middle age group of 35 to 49 years has by far the highest risk of poverty, with a percentage of 8.5%, compared to 2% of the younger group and 2.6% of the older group. This higher risk of poverty cannot be explained from the data itself, but might be explained by the simple reasoning that people in this age category (35-49 years) are more likely to have dependent children living with them, and thus having more mouths to feed with the same income, than individuals from the other age categories.

Next to that, from the significantly more men than women in VUP Group 1 (83.3% versus 16.7%), the men have a much higher at-risk-of-poverty percentage of 5.2% against 0.2% of the women. An explanation of this large difference is that Dutch women most often work part-time. If women have a full-time and permanent job at a lower-skill level, they are hardly ever experiencing poverty. This might be due to their household composition.

That household size seems to play a prominent role can also be seen in the figures of the entire working population (employees and self-employed) of the Netherlands (Table 6.2). Among the Dutch working population, single-person households have a greater risk of poverty than people in a two- or multi-person households (see table), as discussed in § 6.01.

*Table 6.2 At Risk of Poverty, All Employed Persons, Including Employees and Self-Employed, NL 2019 (%)*

<i>Household Size</i>	<i>% of Population</i>	<i>At Risk of Poverty</i>
1	16.6	9.9
2	30.4	4
>2	53	5
<i>No. of in-work persons in household</i>		
1	29.4	12.3

>1	70.6	2.7
No. of children (<18)		
0	60.2	5.4
1	15.3	5.2
>1	23.5	6

Source: Eurostat data.

The data of VUP Group 1, however, does not correspond with this. According to this data, single persons with a low-wage job would have close to 0% chance of being below the poverty line (*See* table 6.1). The question is why, because the overall tendency in the Netherlands is that persons in a single household run the highest risk of poverty. In addition, the poverty rate of just 0.7% for two-person households in the VUP Group 1 does not correspond with the overall poverty rate of two-person household in the Netherlands (4%). Finally, the risk of poverty for a household of more than two persons in VUP Group 1 is 8%. This is a relatively high percentage compared to the other two household compositions. The data gives no explanations, but it could be the taxation systems for low-income groups that explain the findings. Next to household size, also the number of in-work people in the household of a low-wage worker influences the risk of poverty. If there is one employed person in the household the poverty risk is 6.2%, but if more than one person is employed, this chance is reduced to 3.4%. Finally, the number of dependent children living at home also affects the poverty risk. The majority of low-wage workers (65.5%) has no dependent children living at home. Of them, only 0.3% has a risk of poverty. Of the workers with one dependent child, this chance is 6.7%. Most striking is the risk of poverty of the low-wage workers with more than one dependent child living at home: 15.9%. This indicates that low-wage workers with (especially multiple) children have a high chance of poverty. This is a striking deviation from the average national statistics: for the three categories, they show poverty risks of 5.4%, 5.2%, and 6%. This might indicate that children-related costs are not covered well enough by the available benefits for workers with a low wage, despite having a full-time job and a (most likely) stable income.

In short, according to these data, low-wage workers belonging to the VUP Group 1 overall have a lower than average risk of poverty. For VUP Group 1 workers who live in a household with more than two persons, or who have two or more dependent children, face the highest risk of poverty. It is striking, however, that low-wage workers in a single-person household virtually have no risk of poverty, contrary to the national trend. The main take away thus seems to be that broadly speaking, having a ‘normal’ open-ended and full-time contract helps against the effects of having a very low income. This conclusion, however, loses its validity as soon as the household size increases, and there are children living at home. This might be due to, e.g., failing child-related policies for low-income groups and merits further research.

## [2] Impact of the Financial and Corona Crisis

The Eurostat data shows that the overall poverty risk of persons in VUP Group 1 was lower before the financial crisis (3.5%) than it was after the financial crisis (5.3%). For all employed persons in the Netherlands, this risk was slightly lower after the crisis (from 4.6% to 4.5%). What is most striking is that the poverty risk of single-persons households of VUP Group 1 however significantly dropped, from 3.1% to less than 1%. Furthermore, the persons belonging to VUP Group 1 living in a more-than-two-person household went from a 4.5% poverty risk to an 8.5% poverty risk. This means that after the crisis, the larger households had a higher risk of falling below the poverty line. Furthermore, households with one in-work person also experienced an increase in risk of poverty, more than households with more than one in-work person. This signals that the financial crisis had a larger effect on the single-earner households. Finally, the risk of poverty rose in a similar amount for households with and without dependent children; however for households with more than one dependent child, it rose slightly more. This indicates that income for households with more than one dependent child decreased and/or expenses rose more than for households with no or just one dependent child.

To mitigate the socio-economic impact of COVID-19, several schemes have been introduced. The Emergency Bridging Measure for Sustained Employment (*Noodmaatregel Overbrugging Werkgelegenheid: NOW 1*) was the first and most



important one (also from a budgetary perspective). Under this scheme, which ran from March until June 2020, employers that received government subsidies were enabled to continue to pay the wages and were not allowed to dismiss workers for financial reasons. *NOW* 2, 3, and 4 were introduced as an extension on *NOW* 1.<sup>51</sup> Employers could apply for compensation of wages for employees with permanent or fixed-term contracts as well as for employees with other flexible contracts. Hence the workers in VUP Group 1 and 3 generally were protected via their employer by the *NOW* schemes.

## §6.04 VUP Group 2: Solo and Bogus Self-Employment

### [A] Composition of VUP Group 2

In 2019, 9% of the Dutch in-work population was solo self-employed. Almost half of the solo self-employed (47.3%) were 50 years or older, whereas the 35 to 49-year-olds made up 37.2% of the solo self-employed. The smallest part (only 15.5%) of the solo self-employed is aged between 18 and 34.<sup>52</sup> A possible explanation for the large proportion of older (especially 50+) solo self-employed is that due to their age, they often have a much smaller chance of finding employment, thus being forced into self-employment. Moreover, at a later age the wish to become an entrepreneur might be stronger, while experience and the financial position of the household (e.g., having a second earner in the family, and no longer having care and financial responsibilities for dependent children) might allow for starting up a business. In §6.04[C], the composition of VUP Group 2 is linked to data on in-work poverty, but first we turn to the relevant legal rules.

### [B] Relevant Legal Framework

#### [1] Fiscal Support for (Solo) Self-Employed

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<sup>51</sup> The *NOW*-scheme did run until Autumn 2021. *See*, <https://www.uwv.nl/werkgevers/overige-onderwerpen/now/index.aspx>.

<sup>52</sup> *See* table 6.3 in §6.03[C] below.

Several fiscal policy instruments lower the threshold to start a company and stimulate in particular solo-entrepreneurship in the Netherlands. The following three instruments are most often used in practice: the self-employed tax deduction, the starter's deduction, and the small and medium-sized enterprise (SME) profit exemption. All these tax deductions reduce taxable income without the need for expenses incurred in generating that income, which is quite unique in comparison to other countries.<sup>53</sup>

The self-employed tax deduction (*ZA: zelfstandigenaftrek*) is meant to reduce the taxable income of self-employed. When working for their company for at least 1,225 hours a year (about 25 hours per week), one could (in 2021) deduct EUR 6,670 from their profits when filing their tax returns. This deduction will be gradually reduced until in 2036, it will be set at EUR 3,240, with the aim to harmonize tax conditions for entrepreneurs and employees.<sup>54</sup> Furthermore, the tax relief for new companies (*startersaftrek*) is an increase of the *ZA* deduction especially intended for new businesses. By temporarily sharing the entrepreneurial risk between government and companies, it is more interesting for employees or unemployed to switch to entrepreneurship. In 2019, 2020, and 2021, the starter's deduction was EUR 2,123. Finally, the SME profit exemption is a reduction of the tax rate of a given percentage that applies to every *IB* (income tax) entrepreneur regardless of the number of hours worked (since 2010) and regardless of whether a profit or loss is made.<sup>55</sup> It allows the entrepreneur to deduct a given percentage of his or her profits made after deduction of other fiscal support measures. From 2020 onwards, the deduction of the SME profit exemption will be gradually diminished.

An evaluative study commissioned by the Ministry of Economic Affairs in 2017 showed that the fiscal policy instruments seem to add little to the general welfare of the

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<sup>53</sup> OESO (2015). 'Taxation of SMEs in OECD and G20 countries', OECD Tax Policy Studies 23, Paris: OECD; Other countries generally have less generic entrepreneurial tax schemes.

<sup>54</sup> 2021 Tax Plan: post-crisis tax system will be better, fairer and more sustainable | News item | Government.nl.

<sup>55</sup> Currently 14% in the specific Box 2.1 of the Dutch tax system.

Netherlands.<sup>56</sup> Based on the CBS microdata for the period 2007-2014, the analysis showed that there is limited growth among the companies, and profits are low.<sup>57</sup> It seems therefore relatively easy to become an entrepreneur, and that many people do so as a solo self-employed, but that growth less often occurs.

## [2] Applicability of the General Contract Law Framework

As mentioned §6.02[A], the DCC regulates several types of commercial contracts. The majority of solo-self-employed persons works on the basis of an agreement to ‘make a work’ (*overeenkomst tot aanneming van werk*), as regulated in Article 7:750 DCC, which is traditionally mostly used in the construction sector, or an agreement for services (*overeenkomst van opdracht*), as regulated in Article 7:400 DCC. There is not much difference between these two types of contracts for determining the legal protection of the self-employed. As a default, labour law neither applies to their contracts, nor to employee benefit insurance schemes. However, there are some exceptions.

### [3] Applicability of Labour Law and Social Security Standards

Since 1 January 2018, self-employed persons are entitled to statutory minimum wage and minimum holiday allowance (*Wet minimumloon en minimumvakantiebijslag*), unless they fiscally qualify as an undertaking (an entrepreneur). The legislator’s aim was to give protection to precarious self-employed workers and to prevent downward wage competition with employees (social dumping), to ensure every worker at the Dutch labour market an income above the poverty line.<sup>58</sup> However, as most self-employed persons in the Netherlands do want to qualify as an undertaking, because this has fiscal benefits, it is still not clear how effective the extended scope of the statutory minimum

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<sup>56</sup> Ter Weel, B., Smits, T., Witteman, J., Vriend, S., & Rosenboom, N., *Evaluatie fiscale ondernemersregelingen*, SEO report for Ministry of Economic Affairs, Jan. 2017: Evaluation fiscal entrepreneurship - SEO Economisch Onderzoek.

<sup>57</sup> The analysis showed that every year 2% to 3% of the self-employed grow into a company with employees and that 0.7% of the sole proprietors annually grow into a company with employees and that 0.7% of the self-employed grow into a company with its own legal personality.

<sup>58</sup> *Kamerstukken II 2012/13*, 33623, nr. 3.

wage has been so far. There are also other employment items, for which the application of labour law had already been extended to self-employed persons. For example, some provisions of the Law on health and safety (*Arbeidsomstandighedenwet*) apply to self-employed persons as well. The Supreme Court has ruled that under certain circumstances employer's liability under Article 7: 658 (4) DCC also exists for principals towards self-employed persons.<sup>59</sup> Furthermore, female entrepreneurs have a right to a form of maternity leave (Article 3:18 and 3:20 *WAZO*).

Regarding social security, as explained in § 6.02[A], some solo self-employed have an employee-like status, because, from a socio-economic point of view, they are equally economically dependent on work for one principal. Under the condition that they fulfil certain requirements, e.g., home workers, musicians, artists, professional sportsmen, and 'other persons, who perform personal work for remuneration,' are covered under the employee insurance schemes. However, accessibility has worsened with the entering into force of the Assessment of Employment Relationships (Deregulation) Act (AERD Act: *Wet deregulerend beoordeling arbeidsrelaties*) in 2016. This Act was an attempt to mitigate the negative aspects of increasing solo self-employment, such as bogus self-employment, by abolishing the legal certainty for self-employed persons regarding exemption from employee insurance. At the same time, the AERD Act created a de facto opt-out for employee-benefits insurance by those with an employee-like status, which sits uneasily with the ratio for extensions to the employee-concept.<sup>60</sup>

A specific social assistance scheme for self-employed is administered as of 1985 that allows for a loan for working capital and/or temporary income support, initially up to 18 months. The scheme has been modified several times and can be invoked by both starting and established self-employed (under certain conditions).<sup>61</sup> In 1998, the

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<sup>59</sup> HR 23 March 2012, LJN: BV 0616.

<sup>60</sup> In the coalition agreement of the former but then new Government of 2017, it was agreed to replace this contested Act. However, the government has not succeeded in finding a good alternative that would reconcile (better than the Deregulation Act) the interests of solo self-employed with good tariffs and those with precarious conditions.

<sup>61</sup> Currently applicable: *Besluit bijstandverlening zelfstandigen 2004*, Decree of 14 Oct. 2003, Government Gazette (*Stb.*) 2003, 390, most recently adapted version published in *Stcrt.* 2020, 66672.

following elements were added: a trial period for unemployed starters to examine their potential markets and develop a business plan; an allowance for guidance and advice; an increase in the amount of credit; an extension of the period to award supplementary income support (until 36 months); the possibility of taking account of income from other sources (another job, partner's income) when deciding on the viability of a plan; and special provisions for persons who are handicapped or with care obligations.<sup>62</sup> During the COVID 19-pandemic, a special temporary social assistance scheme for self-employed was introduced, called *TOZO*.<sup>63</sup> The scheme allowed for income support and/or a loan for working capital. The *TOZO* has been extended several times. With the first *TOZO*-scheme, no partner income test applied, however this has been changed when the *TOZO* was prolonged; if the income of the self-employed and/or of his or her partner in the months for which the claim was made is higher than the social minimum,<sup>64</sup> a *TOZO* benefit was no longer assigned.

#### [4] Application of Collective Agreements

To curb the problems with vulnerable (false) self-employed, the FNV, the largest Dutch trade union, took the initiative to advocate the conclusion of CLAs with minimum rates for solo self-employed, in order to offer them a minimum level of protection, but also to protect employees from downward pressure on wages and working conditions. When a few CLAs indeed entitled self-employed persons to invoke the tariffs or other labour conditions set out in the CLA against their clients, this led to the well-known judgment

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<sup>62</sup> Currently the following groups of freelancers/self-employed persons are eligible to *Bbz*, to be decided upon by the municipality's social services: those starting a company, who receive welfare, UB, or incapacity benefit; established entrepreneurs who are experiencing temporary financial problems; entrepreneurs born before 1960 with a non-viable company (in Dutch); entrepreneurs who wish to end their company.

<sup>63</sup> Decree of 17 April 2020 containing temporary rules with respect to social assistance for self-employed that are financially harmed by the consequences of the crisis; Temporary benefits for self-employed professionals (*Tijdelijke overbruggingsregeling zelfstandig ondernemers*), Government Gazette (*Stb.*) 2020, 118.

<sup>64</sup> For a household couple, this is 100% of the minimum wage level; for a single person this is approximately 75% of the minimum wage.

of the CJEU in 2014 in the FNV-Kiem case,<sup>65</sup> and in 2019 and 2020 to policy changes by the Netherlands Competition Authority (in Dutch abbreviated to *ACM*), which create more room (albeit in a cautious manner) for including (false) self-employed in the scope of collective bargaining. According the *ACM* guidelines, in principle, self-employed persons are not covered by CLAs, because they are considered undertakings. This is why competition law applies to the self-employed. However, there are situations where the competition rules do not apply or where *ACM* will not impose any fines. There are four situations in which self-employed workers are allowed to make arrangements with each other about rates and other conditions. They are allowed to do so, if:

- (1) the self-employed workers work side-by-side with employees; or
- (2) their turnovers and market shares are small; or
- (3) the benefits outweigh the drawbacks; or
- (4) the arrangements concern a rate that is not higher than necessary for safeguarding the subsistence level.<sup>66</sup> *ACM* will not impose fines on arrangements between and with self-employed workers that aim to guarantee a subsistence level for said self-employed workers. The agreed upon minimum rates may not be higher, and their scope may not be larger than necessary for being able to support oneself.

Since these guidelines were introduced, CLAs occasionally contain (newly negotiated) provisions on self-employed persons. An example of a CLA with provisions on the fees for the self-employed is the collective agreement for the Architects. According to this CLA, self-employed architects must earn at least 150% of the wage that an employee receives for the same work. The same is agreed in the CLA for Public Broadcasting. The CLA for Theatre and Dance contains a provision with 140%.

## [C] Descriptive Data and Impact Analysis

### [1] Workforce Composition Related to In-Work Poverty

In order to assess to which extent VUP Group 2 workers are exposed to poverty, the table 6.3 provides an overview of the Eurostat data in 2019.

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<sup>65</sup> CJEU 4 Dec. 2014, C-413/13 (*FNV KIEM*), ECLI:EU:C:2014:241.

<sup>66</sup> Which is approximately at the level of the statutory minimum wage. *See*, The Netherlands Authority for Consumers and Markets, ‘Guidelines: Price arrangements between self-employed workers’, 2019.

Table 6.3 VUP 2: Solo Self-Employed (SSE), NL, 2019 (in %)

% of in-work population		(9)	
In-work at risk of poverty		14,3	
Individual variables		Household variables	
Age group		Household size	
18-34	8,3* (15,5)	1	27,2* (18,3)
35-49	9,6 (37,2)	2	12,3 (32,5)
≥50	20,1 (47,3)	>2	10,9 (49,2)
Gender		Number of in-work persons in the household	
Women	12,1 (44,4)	1	26,9 (31,5)
Men	16,1 (55,6)	>1	8,6 (68,5)
Education	Number of children (<18)		
Low	8,3* (15,7)	0	15,4 (61,7)
Medium	14 (37,4)	1	10,7* (13,7)
High	15 (43,4)	>1	13,8 (24,7)
Working time			
Full-time	3 (49,3)		
Part-time	25,1 (50,7)		
Occupation (skill level)			
High	13,3 (56,7)		

Low	13,3 (43,3)
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Source: Eurostat data.

Note: *nationality* and *number of months of work* cannot be reported on due to extremely small sample size (<50).

\*Careful interpretation, low sample size (N=100-200)

As mentioned, in 2019, 9% of the Dutch in-work population belonged to VUP Group 2. A rather large amount of them, namely 14.9% of the solo self-employed was at risk of poverty. This percentage is well above the national average of 5.5%. What stands out from the data in table 3 is that 8.3% of the youngest group (only 15.5% of solo self-employed) and 9.6% of the middle group (who make up 37.2% of the solo self-employed) have an income below the poverty line. This is much higher than the national average. However, the 50+ age group (47.3% of the solo self-employed), has an extremely high risk of poverty: 20.1% (which is 1 in 5). This might point at a (too strong) push towards self-employment rather than a free choice to become an entrepreneur. In light of the extreme risk of in-work poverty, such motivation might not always be considered the best predictor of setting up a successful business.

Furthermore, interesting results also appear when education is related to poverty. Overall, the risk of poverty is lower when the level of education is higher, as shown by the data on all employed persons in the Netherlands. For solo self-employed however, the data shows the opposite: a higher education is linked to a higher risk of poverty. Perhaps the explanation for this lies in the fact that low-skilled self-employed often have jobs in construction or agriculture,<sup>67</sup> where work is more constantly available and in higher volume than in the (creative cultural) services sectors.<sup>68</sup> Therefore, they might be more ascertained of having (full-time) work, and thus an adequate income, on a continuous base.

Another huge difference is visible between the poverty risks of part-time and full-time solo self-employed. The number of part-timers (50.7%) and full-timers (49.3%) among

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<sup>67</sup> <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/82808NED/table?dl=4160>.

<sup>68</sup> Been & Keune, 2020: That is just part of being able to do my cool job: Understanding low earnings but high job satisfaction in the creative industries in the Netherlands.



the self-employed is almost equally distributed, but for full-timers the risk of poverty is only 3% while it is 25.1% for the part-timers. This is quite logical: working less than full-time could lead to insufficient income no matter the profession and/or contract type. But another question is why half of the solo self-employed work part-time, while a quarter of them is at risk of poverty.

Next, the household variables show interesting data. To start with, half of the solo self-employed (49.2%) live in a household of more than two people. Interesting to see is that ‘only’ 10.9% has a risk of poverty, while solo self-employed in a smaller household (two persons) have a higher poverty risk of 12.3%. The greatest poverty risk is however found for the single-person households: 27.2%. Also, solo self-employed persons living in more-persons household with one in-work individual have a very high risk of poverty with 26.9% (about 1 in 4). Self-employed persons in a household with two (or more) in-work individuals have a substantially lower risk of poverty: 8.6%, which is about 1 in 12. This means that as a solo self-employed person one should be in a household with a double (or at least 1.5) income to be able to make ends meet. Being a self-employed single person or single-earner household, one has a significant chance of falling below the poverty line. Finally, the majority of the self-employed (61.7%) have no dependent children, however they run a higher risk of poverty (15.4%) than the self-employed with children living at home (10.7% and 13.8%,<sup>69</sup> which is still too high). This does seem counter-intuitive because one might expect that having children means having more mouths to feed and thus having a higher likelihood of being poor, but this can also be explained by the fact that the group without children at home are probably foremost the older self-employed, who are more likely to (work part-time and) be poor. In addition, the single-person households, who also have a high poverty risk, also automatically fall within the category of ‘no kids at home’. These factors (age and single-person household) thus may explain the high risk of poverty among solo self-employed who have no children at home.

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<sup>69</sup> Solo self-employed who have one child living at home have a poverty risk of 10.7%, and solo self-employed that live in a household with two or more children have a poverty risk of 13.8%.

Altogether, according to these data, the solo self-employed with the highest risk of falling below the poverty line, are those who live in a single-person household or who are the only in-work person in the household, the self-employed who are 50 years and older, and self-employed who are working part-time.

Heterogeneous composition of VUP Group 2 complicates finding causes of poverty.

It is important to note that the solo self-employed are a very heterogeneous group, including both successful entrepreneurs and (bogus) self-employed with little other options. Participants to a national WYP workshop suggested therefore to examine more closely the motives to start up a business (genuine versus forced entrepreneurship). Likewise, reasons for a very low income among SSE could range from having few assignments or being in a race-to-the-bottom on tariffs, versus choosing a sabbatical year with little assignments. Also, the start-up years of a business could coincide with lower revenues. Therefore, long-term low income might be a helpful indicator. According to Statistics Netherlands (CBS) 'long-term low income' (more than four consecutive years) only applies to 2.1% of self-employed.<sup>70</sup>

Moreover, although no specific data can be found on poverty of 'forced solo self-employed' versus 'solo self-employed by choice', it is plausible indeed that poverty among the forced solo self-employed is higher than among the solo self-employed who have made a conscious decision to become an entrepreneur. The *Zelfstandigen Enquête Arbeid*<sup>71</sup> (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.

In June 2021, regarding the vulnerable position of many solo self-employed, the *SER* advised, e.g., to introduce a rebuttable presumption of an employment relationship for those whose rates are below the maximum daily wage (approximately EUR 30-EUR 35

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<sup>70</sup> <https://www.cbs.nl/nl-nl/nieuws/2018/03/bijna-1-op-de-10-zzp-ers-loopt-risico-op-armoede>.

<sup>71</sup> CBS, 2019: [https://www.cbs.nl/-/media/\\_pdf/2019/27/zea-2019-rapport.pdf](https://www.cbs.nl/-/media/_pdf/2019/27/zea-2019-rapport.pdf).

per hour).<sup>72</sup> In these situations, it should be the client who must prove that there is no employment relationship. Above that rate, the reverse should apply.<sup>73</sup> Stakeholders disagree on whether such a measure would solve the problem of a low income. Several factors play a role explaining low incomes of SSEs, including not having enough assignments (meaning that if the tariff is high, but assignments are few, the overall income is still low), and the low barriers to become SSE in the Netherlands, which could act as a driver of in-work poverty (e.g., in order to avoid unemployment and reliance on benefits, one could become SSE without assignments).<sup>74</sup> Thus, the hourly income is not necessarily always the cause of poverty among solo self-employed; rather, not being able to work enough hours may lead to poverty.<sup>75</sup> This is also what Statistics Netherlands indicates: the fewer hours a self-employed person works, the greater the risk of poverty,<sup>76</sup> which is in line with table 6.3 above, showing a large at-risk poverty difference between full-time and part-time solo self-employed.

## [2] Impact of the Financial and Corona Crisis

Generally, the poverty risk of VUP Group 2 workers was higher before the financial crisis (16%) than it was after the crisis (12.2%). This decrease is in line with the trend for all employed persons in the Netherlands. The explanation for the higher than average decrease for solo self-employed compared to all employed persons cannot be derived from data; however, a possible factor might be that solo self-employed with very low earnings gave up their enterprise and applied for benefits or accepted a job at an employer during the crisis. Furthermore, it is striking that the poverty risk of persons living in a household of more than two persons had a decrease in poverty risk from

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<sup>72</sup> Applied as a maximum limit to the insured wage in the employee benefit schemes.

<sup>73</sup> See 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, pp. 11 – 12.

<sup>74</sup> ZiPconomy, 2018: <https://www.zipconomy.nl/2018/01/zzp-en-armoede-oorzaak-of-gevolg/>.

<sup>75</sup> Platform ZZP dienstverleners: <https://i-zo.nl/wp-content/uploads/2018/12/document-wat-weten-we-van-de-ZZP-er.pdf>.

<sup>76</sup> CBS: <https://www.cbs.nl/nl-nl/nieuws/2018/03/bijna-1-op-de-10-zzp-ers-loopt-risico-op-armoede>.

18.1% to 10.4% after the financial crisis, while for the other household sizes the poverty risk hardly changed. This drop could either indicate that after the financial crisis, solo self-employed with larger households could make ends meet more easily than before the crisis, or it could point at a selection effect of the lowest earning solo self-employed withdrawing from entrepreneurship and finding other sources of income. It is likely that the crisis shook out many of the not successful solo self-employed, as a result of which their more successful colleagues (with a smaller risk of poverty) remained. Finally, somehow households of VUP Group 2 workers with dependent children had more income or less expenditure than households without dependent children, or they for other reasons had a smaller risk of falling below the poverty line. This could also be explained by the mentioned ‘shake-out’ effect of the crisis: Solo self-employed who are responsible not only for themselves but also for children cannot afford taking as much financial risk as solo self-employed who have no others depending on their income. So, solo self-employed with children may leave entrepreneurship sooner and look for a job with more income security.

The coronavirus impact on solo self-employed may be evidenced by the use of *TOZO*: By April 30 2020, about 343,000 applications were submitted,<sup>77</sup> demonstrating the huge need for income support. Solo self-employed also reported that they received fewer assignments.<sup>78</sup> Consistent with this finding, similar groups reported a strong decrease of their income: 69% of the low-income self-employed workers, and 49% of the high-income self-employed workers.<sup>79</sup> Interestingly, the *TOZO* seems to make a chance to become a structural arrangement. In light of the large vulnerability of many solo self-employed, as was highlighted by the corona crisis, the *SER* advised in June 2021 to make it a permanent arrangement for self-employed. According to the *SER*, the scheme

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<sup>77</sup> FNV, 2020: <https://fnvzfp.nl/nieuws/2020/04/beroep-op-tijdelijke-overbruggingsregeling-zelfstandig-ondernemers-tozo-groeit>.

<sup>78</sup> Bekker, S., Buerkert, J., Quirijns, Q., & Pop, I. (2021). In-work poverty in times of COVID-19. In E. Aarts, H. Fleuren, M. Sitskoorn, & T. Wilthagen (Eds.), *The new common: How the COVID-19 pandemic is transforming society* (pp. 35-40). Springer. [https://doi.org/10.1007%2F978-3-030-65355-2\\_5](https://doi.org/10.1007%2F978-3-030-65355-2_5).

<sup>79</sup> *Ibid.*

should be transformed from social assistance into a contributory scheme. Self-employed should pay contributions to this scheme themselves.

## §6.05 VUP GROUP 3: Fixed-Term, Temporary Agency, Involuntary Part-Time Work

### [A] Composition of VUP Group 3

VUP Group 3 concerns flexible workers, consisting of fixed-term workers, agency workers, and involuntary part-timers. Taken together, in 2019, 22.5% of the working population worked as a flex worker. Flex work thus is very common in the Netherlands. In 2019, 8.8% of flex workers worked less than 12 months of the year. This group most likely consists of agency- and seasonal workers. Most of the flex workers are young (35.4%) or middle-aged (38.7%), just over a quarter (25.9%) is 50 years or older. Furthermore, women form a large majority within the group of flex workers with 77.2%, men are a minority at 22.8%.<sup>80</sup>

In §6.05[B], [C], and [D], the relevant legal frameworks for these three subgroups are described separately, as they work under partially different labour and social security conditions. Finally, in §6.05[E], a general impact analysis based on data for the whole group of flex workers is provided.

### [B] Fixed-term Employees

#### [1] Relevant Legal Framework

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; the fourth fixed-term contract is converted in to an open-ended contract by law (Article 7:668a DCC). The same occurs when successive fixed-term contracts exceed the period of three years. Employment contracts are considered successive when the intervals between the contracts do not last longer than six months.

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<sup>80</sup> See table 6.4 in section §6.05[E] below.

The maximum overall duration for successive fixed-term contracts is thus three years, intervals up to six months included.<sup>81</sup> 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 comes 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 of the contract. The employment history does matter for the amount of this transition allowance, which is calculated as one-third of the monthly wage for every working year.

Fixed-term employees are in principle entitled to the same employee insurance benefits as standard employees. Fixed-term employees with short contracts might be at a disadvantage regarding UB since everybody needs to satisfy the so-called weeks of employment requirement: one has to have worked at least 26 of the last 36 weeks prior to unemployment.<sup>82</sup> The worker is then entitled to three months of UB. After that there is the ‘years of employment requirement’: To meet this requirement, the employee should prove that in the five years immediately prior to the year in which the unemployment started, he or she has performed paid work during at least four years of at least 208 hours in each of those years.<sup>83</sup> This criterion is relatively easy to meet.<sup>84</sup> If the employee meets the employment history requirement, then the minimum payment duration of three months is extended by one month. Together, basic entitlement and the

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<sup>81</sup> It is possible to conclude a one-off fixed-term contract of more than three years.

<sup>82</sup> For some workers there are exceptions, such as artists or musicians or employees who are not in regular employment.

<sup>83</sup> The year in which unemployment occurs is not counted, since this is (partially) part of the eligibility criterion.

<sup>84</sup> The paid work of 208 hours a year can be met by weekly working 5 hours or with a full-time (40 hours a week) job for 6 weeks and everything in between. Students with side jobs will often acquire employment history already during their studies.

extension lead to a duration of the UB in months similar to the employment history in years. So, a person who has worked for eight years is entitled to a benefit for eight months.

## [2] Data and Impact Analysis

During the first emergency-scheme after the outbreak of COVID-19 pandemic, the NOW 1, that ran from March until June 2020, organizations could claim financial support for both employees with permanent contracts and also employees for whom the employer was not obliged to continue paying wages. In this way, employees with flexible employment contracts were protected against immediate loss of income. Nevertheless, there are indications that despite the financial support by the Dutch government, still many fixed-term contracts were not renewed.

In 2020, 18.1% of all employees were temporary workers. This includes fixed-term employees and temporary agency workers (the latter only being 16.3% of temporary 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.

The evaluation of the Law on Work and Security (*Wet werk en zekerheid*) showed that the length of stay of employees in the so-called flexible shell had increased on average since its introduction in 2015.<sup>85</sup> Especially the low-educated employees were found in 2020 to be working longer in flexible jobs, while the period in flexible jobs of the higher-educated workers had not changed.

## [C] Temporary Agency Workers

### [1] Relevant Legal Framework

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<sup>85</sup> A. Heyma et al., ‘Evaluatie Wet werk en zekerheid (Wwz)’, June 2020, p. 5.

The definition of the Dutch agency work employment contract is stipulated in Article 7:690 DCC. The law provides for many exceptions regarding agency workers.<sup>86</sup> For example, Article 7:649 DCC where discrimination on the basis of 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 (prolonged by the collective agreement to 78 working weeks). This means that the employment contract ends automatically when the user company declares that they do not need the worker any longer, or when, for example, the agency worker becomes ill.<sup>87</sup> Depending on the employment history, the agency worker is entitled to sickness benefits via the *UWV* (Employee Insurance Agency) from the third day of illness. Temporary agency workers with short contracts might be at a (slight) disadvantage regarding UB since everybody needs to satisfy the ‘week employment and year employment requirements’ (*see* §6.05[B][1] for an explanation). In this case, the duration of the benefit depends on the unemployment history. The benefit will be payable for as many months as the number of years the person was employed with a maximum of 24 months.

Collective agreements for temporary agency workers are very important for the legal position of these workers, because in the absence of a CLA, the stricter statutory regime would apply. For example, according to the CLA for temporary agency worker, a temporary worker can be employed on the basis of fixed-term contract for the duration of five and a half years before an open-ended contract must be concluded. In practice, most agency workers are covered by a CLA, because the ABU-CLA (ABU is the

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<sup>86</sup> The applicable law with its many exceptions for the temporary agency workers, is also referred to as a ‘lightened’ or ‘relieved’ employment law regime in the doctrine, meaning to indicate that the legal regime contains a lighter ‘burden’ on employers in this sector than usual. *See, e.g., J.P.H. Zwemmer, Pluraliteit van werkgeverschap* (Plurality of employership), Deventer: Kluwer 2012.

<sup>87</sup> This is stipulated in the collective agreement for agency workers. It is debatable whether such provision is legal. Relatively recently, the Hague appeal court declared that such a practice is banned by the prohibition to terminate an employment contract due to illness, Appeal Court The Hague 17 March 2020, ECLI:NL:GHDHA:2020:460.



biggest TWA employer association) is made generally binding.<sup>88</sup> Based on the CLAs, the temporary agency sector has 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. Such a waiting period for pensions does not exist for most other employees in the Netherlands.

There are no limits on how much or how long a user undertaking can make use of temporary agency work. Initially, temporary agency work was supposed to be used for replacement of sick workers and in times of peak demand. Over the years, however, temporary agency work has become to be used for structural demand of work as well. In addition, 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. As of 2020 new provisions specifically for payrolling were added to the DCC in order to improve the working position of payroll-workers. Whether the new rules (introduced by the Act on Labour Market in Balance) are effective in protecting the workers remains to be seen in the years to come.

## [2] Data and Impact Analysis

In the data of Statistics Netherlands (*CBS*), data on agency workers is incorporated with fixed-term employees in data on ‘temporary employment’. However, individuals with a fixed-term contract make up the majority of temporary employees. Agency workers are just 16.3% of temporary employees. Nevertheless, the annual number of temporary agency workers in the Netherlands has grown between 2006 and 2018 from 800

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<sup>88</sup> It should be noted that (part of) the TWA-sector is notorious for abuses and non-compliance, in particular regarding labour migrants. *See, e.g.,* most recently two advisory reports that have been endorsed by the government from the ‘Booster Team Protection Labour Migrants’ on the working and housing conditions of labour migrants during COVID-19 in The Netherlands. *See, Aanjaagteam Bescherming arbeidsmigranten, Geen tweederangsburgers. Aanbevelingen om misstanden bij arbeidsmigranten in Nederland tegen te gaan*, The Hague, 30 Oct. 2020. *See also, Inspectorate SZW, ‘State of Decent Work 2019’*, Ministry of Social Affairs and Employment 2019.

thousand to almost 1.2 million (including payrolling and migrant temporary agency workers).<sup>89</sup> Also, the amount of work the agency workers perform has increased considerably from 200 thousand to 400 thousand full-time working years.

Immediately after the financial crisis in 2008-2009, the volume of agency work first decreased. This also happened after the second economic dip in 2012-2013. Thereafter, however, the growth resumed again, and it has offset the decline in the crisis. In 2018, the number of agency workers was 18% higher than in 2008. When we look at the number of working hours in agency work, the increase is even 50%. Research shows clearly that during economic upturn, agency work increases, while during recession, it stays the same or it decreases slightly.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup>

To mitigate the socio-economic impact of COVID-19, under the Emergency Bridging Measure for Sustained Employment (*Noodmaatregel Overbrugging Werkgelegenheid: NOW 1*), which ran from March until June 2020, employers that received government subsidies were enabled to continue to pay the wages and were not allowed to dismiss workers for financial reasons. *NOW 2*, *3*, and *4* were introduced as an extension on *NOW 1*. Temporary agency firms could apply for compensation of wages for temporary agency workers as well, however the scheme was more complicated to apply since it also depended on whether the user company still wanted to make use of the assigned temporary agency workers.

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<sup>89</sup> 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.

<sup>90</sup> *Idem.*, p. 30.

<sup>91</sup> *Idem.*, p. 49.

<sup>92</sup> W. Smits & J. de Vries, 'Employability van flexibele en vaste werknemers in Nederland', *Tijdschrift voor Arbeidsvraagstukken*, 2019 (35) 2, pp. 159-175.

## [D] Involuntary Part-Timers

### [1] The Notion and Measurement of Involuntary Part-Time Work

There is no definition of a part-time employment contract in Dutch law. Normally, part-time work is understood to mean work performed on the basis of an employment contract during a working time that is shorter than usual within the employer's company.<sup>93</sup> 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.

It is not easy to determine how many of part-time jobs in the Netherlands are of involuntary nature. Part-time employment is very common in the Netherlands. It is culturally accepted to work part-time; on some occasions, it could even be described as the norm.<sup>94</sup> It is mostly women who work part-time, but part-time work is increasing among men as well. 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. However, such data is not available.

Eurostat gives an overview of the main reason for Dutch individuals to be part-time employed.<sup>95</sup> 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.,

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<sup>93</sup> N. Gundt, 'Deeltijd-arbeidsovereenkomst', in J.P. Kroon & P. de Casparis (eds.), *Flexibele arbeidsrelaties*, Deventer: Wolters Kluwer.

<sup>94</sup> 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.

<sup>95</sup> Eurostat, 2020:

[https://ec.europa.eu/eurostat/databrowser/view/lfsa\\_epgar/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/lfsa_epgar/default/table?lang=en).

moving from a small to a large part-time job) may be answered differently than questions on wanting to have a full-time job.<sup>96</sup> 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.

‘Other family or personal reasons’ (3.2%), ‘own illness or disability’ (4%), and ‘no full-time job found’ (6%) are less often the main reason for having part-time employment. The last two reasons might also be an indicator of which part of part-time employment may be considered involuntary. CBS also gives an indication of the number of involuntary part-timers in data describing the untapped labour potential.<sup>97</sup> They indicate that in 2020, almost 372,000 persons were ‘underutilized part-time workers’, being people who work part-time and who want to work more and are available for this at short notice. If certain conditions are met, nearly 8 out of 10 Dutch women with a part-time job would want to start working more hours per week. For one-third insufficient household income would be a reason to work more hours.

## [2] Relevant Legal Framework

Part-time work is very common in the Netherlands, and it 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.

As explained earlier, the Dutch law does not provide for a minimum wage per hour, but only provides for a minimum wage per month. This can be disadvantageous for part-

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<sup>96</sup> Portegijs, W. et al. (2018), *Emancipatiemonitor 2018*, Sociaal en Cultureel Planbureau, <https://digital.scp.nl/emancipatiemonitor2018/wie-zorgt-er-voor-de-kinderen/>.

<sup>97</sup> CBS, 2020: [https://www.cbs.nl/-/media/\\_excel/2021/21/onbenut-arbeidspotentieel-naar-regio-2020.xlsx](https://www.cbs.nl/-/media/_excel/2021/21/onbenut-arbeidspotentieel-naar-regio-2020.xlsx).

time workers who work on a minimum wage level, and especially those who work irregularly. Part-time workers need to calculate the minimum wage per hour. Hourly minimum wage is dependent on ‘normal full-time working hours’ (*normale arbeidsduur*), which ranges from 40 hours per week to 36 hours per week. So, the minimum wage per hour can vary from sector to sector, and even from company to company. Because of this, it is not always easy for people to find out what their rights are. It also makes enforcement of minimum wage law complicated. There is a bill pending in the Parliament to introduce an hourly minimum wage.

### [3] Part-Time Work and Multi-jobbing

Individuals who work fewer hours in their primary job than they would like, are more likely to have a second (or even a third) job.<sup>98</sup> This is also referred to as multiple jobholding. In the Netherlands, a relatively high percentage of multiple jobholders still has multiple jobs one year later (> 60%). Particularly in the period 2010-2017, there is also a relatively high outflow into unemployment or inactivity.<sup>99</sup> Multiple jobholders in the Netherlands have lower hourly earnings compared to single jobholders.<sup>100</sup> Findings seem to indicate a downward wage mobility particularly related to workers with medium educational attainment levels. In 2018, 7.4% of all employees had more than one paid job.<sup>101</sup> Two-thirds of them have a second job as an employee, one-third has a second job as 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 has multiple jobs to get by financially, while 29% has multiple jobs for earning something extra. A second reason for multi-jobbing is that the variety in tasks and social contacts increases job satisfaction (25%) or contributes to the acquisition of

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<sup>98</sup> W. Conen, ‘Multiple jobholding in Europe. Structure and dynamics’, AIAS-HSI Working Paper Series, WP 10, April 2020, p. 33.

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*, p. 34.

<sup>101</sup> CBS (Stef Bouwhuis, Goedele Geuskens): <https://longreads.cbs.nl/dynamiek-op-de-nederlandse-arbeidsmarkt-2019/combineren-van-banen/>.

different types of knowledge and skills (16%). Third, some multi-jobbers have multiple jobs because it protects them from unemployment (*hedging*). This is the reason for 10% of them.

Research shows that multi-jobbing has a positive effect on labour participation. Compared to single-jobbers, multi-jobbers actually had more months of paid work during a follow up period of five years. However, they appeared to be less economically independent than people with only one employment relationship. Multi-jobbing can thus be a good strategy for staying connected to the labour market (job security), but not for income security.

On the other hand, the Dutch UB are relatively adapted to modern employment relationships, such as for employees with a non-standard contract, including those with marginal part-time jobs or on-call work (VUP Groups 3 and 4) and multiple jobholders. For instance, if an employee has not lost all employment, the number of working hours that the employee still has in a given calendar week is compared with his or her average number of working hours in the last 26 calendar weeks (Article 16(2) WW). That this average is used as a basis for calculation is particularly important in the case of employment contracts that fluctuate in terms of hours (e.g., on call jobs). As mentioned, in principle, the loss of working hours must amount to at least five hours. However, to give UB entitlements also to part-time workers with an average of less than ten working hours per calendar week, unemployment also arises when a person has lost less than five working hours, but at least half of his or her average working hours per calendar week. When assessing whether there is a relevant loss of paid working hours in such situations, the non-insured work performed by the employee in the last 26 calendar weeks must also be included in the assessment.<sup>102</sup>

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<sup>102</sup> This can be illustrated as follows: if the person concerned only had a 4-hour job as an employee and lost it, the rule applies that he has lost more than half of his working hours, and he is therefore unemployed. However, if someone is an independent accountant for 36 hours per week and in addition works for 4 hours in a side job as an employee, and he loses this side job, he has no entitlement to WW. Although an employee loses more than half of his working hours, it is taken into account that he still works 36 hours as an accountant, so in fact he is in the same position as an employee who loses 4 hours.

#### [4] Impact of the Corona Crisis

To mitigate the socio-economic impact of COVID-19, under the *NOW*, employers that received government subsidies were enabled to continue to pay the wages and were not allowed to dismiss workers for financial reasons. Employers could apply for compensation of wages for employees with permanent or fixed-term contracts, so both part-time workers with an open-ended contract and those with a fixed-term contract should have been protected against income loss and unemployment if their employer applied for *NOW*. Notwithstanding, 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).<sup>103</sup>

#### [E] Descriptive Data and Impact Analysis

##### [1] Workforce Composition Related to In-Work Poverty

In order to assess to which extent VUP Group 3 workers (all together) are exposed to poverty, the table 6.4 provides an overview of the Eurostat data in the most recent year (2019).

*Table 6.4: VUP 3: Flex Workers (Fixed-Term, Agency Workers and Involuntary Part-Timers), NL, 2019 (in %)*

<b>% of in-work population</b>	<b>(22,5)</b>		
<b>In-work at risk of poverty</b>	6,9		
<b>Individual variables</b>		<b>Household variables</b>	
<b>Age group</b>		<b>Household size</b>	
<b>18-34</b>	8,8 (35,4)	1	17 (13,1)
<b>35-49</b>	6,1 (38,7)	2	6,8 (23,5)
<b>≥50</b>	5,4 (25,9)	>2	4,8 (63,4)

<sup>103</sup> CBS (2021), Meer werkenden met kleine deeltijdbaan, Press release, 17-6-2021.

<b>Gender</b>		<b>No. of in-work persons in the household</b>	
<b>Women</b>	5,3 (77,2)	1	18 (26,3)
<b>Men</b>	12,3 (22,8)	>1	2,9 (73,7)
<b>Education</b>		<b>No. of children (&lt;18)</b>	
<b>Low</b>	11,1* (11,8)	0	8,3 (48,6)
<b>Medium</b>	6,5 (43,8)	1	5,6 (19,6)
<b>High</b>	4,9 (44,4)	>1	5,5 (31,8)
<b>Working time</b>			
<b>Full-time</b>	5,7 (22,7)		
<b>Part-time</b>	7,2 (77,3)		
<b>Occupation (skill level)</b>			
<b>High</b>	3,2 (49,0)		
<b>Low</b>	9,7 (51,0)		
<b>Contract</b>			
<b>Permanent</b>	4,1 (53,6)		
<b>Temporary</b>	9,8 (46,4)		
<b>No. of months work (during reference period)</b>			
<b>12</b>	6,2 (91,2)		
<b>Less than 12</b>	13,3* (8,8)		

Source: Eurostat data.

\* Careful interpretation, low sample size (N=100-200)

Of the Dutch flex workers (fixed-term workers, agency workers, and involuntary part-timers together), 6.9% is at risk of poverty, which is above the national average of 5.5%. The data shows that the risk of poverty is higher for younger than for older flex workers. Furthermore, women form a large majority within the group of flex workers with 77.2%, men are a minority at 22.8%. The difference in poverty risk is striking: for the women in VUP Group 3, this is 5.3%, which is actually below the national average of all in-work persons (5.5%), while for the men this is as much as 12.3%. What also stands out is that



the low-educated individuals in VUP Group 3 have quite a high risk of poverty compared to the average- and high educated individuals: 11.1% compared to 6.5% and 4.9%. This aligns with the national trend.

Flex workers that work full-time have a much higher risk of poverty than Dutch full-timers in general: of all in-work individuals in the Netherlands, full-timers have a 2.9% risk of poverty, while this is 5.7% for full-time flex workers. This is a striking difference. It shows that as a flex worker, full-time employment gives considerably fewer financial resources than working full-time on a permanent employment contract. The part-timers of VUP Group 3 on the other hand have a poverty risk that is almost equal to that of all in-work individuals who work part-time (even slightly less): 7.2% compared to 8.7%.

The poverty risk of the group that works all 12 months is with 6.2% slightly higher than the national average of 5.5%; the poverty risk of the flex workers who work less than 12 months however is 13.3%.<sup>104</sup> This latter group in 2019 amounted to 8.8% of flex workers. It can logically be expected that this much higher risk of poverty can be explained by a lower total income, given that they work less during the year. This too supports the idea that working too few hours is more likely to influence the existence of a low income, than the hourly earnings. It is important to note that many of the flex workers working less than 12 months most likely consist of agency- and/or seasonal workers. The group of seasonal workers often remains hidden in Dutch data (e.g., because they are counted as part of the group of temporary agency workers and/or hired in other ways). There is virtually no data on the number of seasonal (migrant) workers as a separate labour market group. The reason for this is that migrant seasonal workers who work a maximum of four out of six months in the Netherlands are not obliged to register in the *BRP* (*Basisregistratie Personen*; Civil Registry Database), and those who

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<sup>104</sup> This difference is not far off from the national data on all in-work persons (5.1% for individuals that worked 12 months, 12.1% for individuals that worked less than 12 months).

stay longer often do not (know they should) register.<sup>105</sup> Statistics Netherlands (CBS) bases their statistics on immigrants only on those who are registered, so a considerable amount of seasonal workers are not visible in data. The only indication of the amount of seasonal workers by Statistics Netherlands can be derived from one of their articles stating that in 2019 the agricultural sector accounted for 29,800 full-time jobs for people who are not regularly employed.<sup>106</sup> However, it is not clear whether these are Dutch seasonal workers, foreign workers, or both. Regarding poverty, table 6.4 shows however that not being employed for 12 consecutive month means a higher at-risk of poverty rate, which could hint at the financial position of seasonal workers as well.

The household variables show some interesting data as well. Flex workers living in a single-person household have a poverty risk of no less than 17%. This indicates that VUP Group 3 workers on their own often do not earn enough to make ends meet. Flex workers in a household of two persons have a much lower poverty risk of 6.8%. An additional income and being able to share certain costs thus lowers the risk of being poor. The majority (63.4%) of flex workers lives in a household of more than two persons, with a 4.8% poverty risk. That so many flex workers live in a bigger household can be explained by the fact that many are living-at-home students or pupils, who work via a (student) employment agency or have a temporary/part-time contract at a shop or supermarket. They most of the time fall within the ‘more-than-two-persons’ households, and because of their parents’ income as supplementing income they do not fall below the poverty line (and even score better than the 5.3% national average for more-than-two-persons-households). Furthermore, when the flex worker is the only breadwinner in the household (for example, he or she is single or has a non-working partner and/or child), the risk of poverty is as much as 18%. This is much higher than the poverty risk of all the in-work individuals in the Netherlands who are the only in-work person in the household (8.9%). However, as soon as there is a compensating second (or more)

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<sup>105</sup>Rijksoverheid,2021:

<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2021/01/22/bijlage-1-rapport-arbeidsmigranten/bijlage-1-rapport-arbeidsmigranten.pdf>.

<sup>106</sup> CBS, 2020: <https://www.cbs.nl/nl-nl/nieuws/2020/15/bijna-30-duizend-contractbanen-in-de-landbouw>.

income, this risk is tremendously lower at 2.9% (and close to the national average for all persons with the same household situation which is 2.7%). Lastly, it is striking that the trend for VUP Group 3 in 2019 seems to be that the risk of poverty is decreasing when the number of dependent children is increasing. This does not match the national trend among all in-work individuals (no dependent children: 5.4% poverty risk, 5.2% for one child, and 6% for more two or more children). Also, the VUP Group 3 trend of 2019 is not in line with the trends in 2013 and 2007. There is no clear explanation for these divergences based on this data.

Altogether, the flex workers with the highest risk of poverty, according to these data, are the flex workers who are male, who work less than 12 months a year, who live in a single-person household, and/or who are the only working person in the household.

## [2] Impact of the Financial and Corona Crisis

The Netherlands has a high degree of flexibility on its labour market. Especially the flexible workers belonging to VUP Group 3 run a higher risk at becoming unemployed or inactive than standard workers. During both the financial crisis and the corona crisis, people in the most insecure jobs more often lost their jobs, and they had insufficient protection from the employee-benefits scheme.<sup>107</sup>

Regarding the financial crisis, what we can see in the data is that generally, the poverty risk of flex workers belonging to VUP Group 3 was lower before (4.7%) than after the financial crisis (6%). This increase contrasts with the trend for all employed persons in the Netherlands, where the poverty risk dropped with 0.1 percent point, thus remaining relatively stable. Interestingly, the poverty risk of persons living in a two-person household increased with 1.8 percent point after the financial crisis, and that of individuals in a household of three or more persons, on the contrary, decreased with 0.2 percent point. This might indicate that after the financial crisis, flex workers living in

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<sup>107</sup> Beek, van der, J.W.M., and Zwemmer, J.P.H., 'NOW: Flexwerknemers (en flexwerkgevers) tussen wal en schip en de TOFA-regeling', *Tijdschrift voor Arbeidsrecht in Context*, Nov. 2020, nr. 3, 1-5. Also S. Bekker and J. Leschke, 'Social security innovation for inclusive worker support during the corona crisis?' Blog post *Journal European Social Policy*, 29-07, 2020.

larger households could make ends meet more easily than before the crisis. Moreover, for flex workers living in a household with only one in-work person, the poverty risk increased with 4.2 percent point, from 14.6% before to 18.8% after the financial crisis, while the poverty rate of households with more than one income only just increased with 0.1 percent point. This indicates that the crisis seems to have worsened the financial position of flex workers in single-earner households. Finally, it stands out that only for the households without dependent children the risk of poverty significantly rose (3.5 percent point); for the households with dependent children (one or more) however, the poverty risk decreased, with 0.6 percent point. This suggests that after the crisis, somehow flex workers without dependent children in the household had much more trouble making ends meet, and that flex workers with children had a better financial position than before.

During the first emergency-scheme after the outbreak of COVID-19 pandemic, the *NOW 1*, that ran from March until June 2020, organizations could claim financial support for both employees with permanent contracts and also employees for whom the employer was not obliged to continue paying wages. In this way, employees with flexible employment contracts could be protected against immediate loss of income as well. *NOW 2*, 3, and 4 were introduced as an extension on *NOW 1*. Employers could therefore apply under the *NOW* schemes for compensation of wages of all VUP Group 3 workers until Autumn 2021. There are indications that despite the financial support by the Dutch government, still many fixed-term contracts were not renewed and for temporary agency workers, applying the scheme was more complicated as the employing temporary agency was also dependent on the willingness of the user company to keep making use of the assigned agency workers.

## §6.06 VUP Group 4: Casual and Platform Workers

### [A] Composition of VUP Group 4

As described in the introductory chapter of this Book, VUP Group 4 covers casual work and new forms of (casual) employment: intermittent work, on-call work, and platform

work. Not all the types of casual work are in a contractually recognizable way present on the Dutch labour market and/or known under a specific name in practice. Whereas on-call work is regulated already for a long time in the Dutch Civil Code, intermittent work is not regulated in a specific contractual form in the Netherlands. Eurofound describes intermittent work as a form of employment often related to an individual project, specific task, or seasonally occurring job.<sup>108</sup> Based on this notion, there seems to be overlap both with on-call work and with what is referred to as ‘contracting’ in the Netherlands, implying a triangular relationship, such as with temporary agency work.

## [B] Relevant Legal Framework

### [1] On-Call Work

An employee has an on-call employment contract when the 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 when his or her contract does not stipulate a fixed number of working hours and his or her wage can vary every month. An employee also has an on-call employment contract when he or she does not have a right to a wage per time unit (e.g., per month) when he or she has not performed labour, hence, when the right to wages has been excluded. 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.

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

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<sup>108</sup> It is defined in Eurofound’s 2015 research, *New Forms of Employment*, as being characterized by a fixed-term period, which either involves fulfilling a task or completing a specific number of days’ work.

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).

While on-call workers do not have different eligibility conditions for UB compared to other employees, they do face higher obstacles in fulfilling them.<sup>109</sup> The eligibility conditions for UB are (i) a loss of a relevant number of paid working hours (at average, 5 hours) and (ii) a week requirement (having worked in 26-out-of 36 weeks before the first day of unemployment (Articles 16 and 17 *Werkloosheidswet* (Unemployment benefit act)). The week requirement is particularly hard to meet for employees working irregularly and with weeks without calls, even though there are specific rules to adjust the calculation for employment contracts that fluctuate in hours (*see* §6.05[D][3]).<sup>110</sup>

## [2] Intermittent Work

As described earlier, intermittent work is not regulated as a specific contractual form of work in the Netherlands. ‘Intermittent work’ may be agreed upon in employment contracts with flexible hours that fall outside the scope of on-call work as defined in the DCC. This means that the rules regarding on-call work do not apply. Such contracts contain a fixed minimum number of working hours on an annual basis and evenly spread wages, but the working hours are flexible, so the employee has great uncertainty throughout the year about the times to be worked. However, because there is income security, the legislator decided to exclude such contracts from the scope of legal protection of on-call work. Occasionally, a certain group of workers is excluded in a

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<sup>109</sup> See also, S. Burri, S. Heeger-Hertter and S. Rossetti, *On-call work in the Netherlands: trends, impact, and policy solutions*, ILO Conditions of Work and Employment Series No. 103, p. 28.

<sup>110</sup> *Idem.*, p. 31.

collective agreement from certain employee benefits, for example, ‘vacation workers’ (*vakantiekrachten*) or ‘helpers’ (*hulpkrachten*) who work during the weekend.

### [3] Workers on-demand via app

Many of the people doing offline work on-demand via app have the (tax) status of being solo self-employed. There are many solo self-employed in the Netherlands (*see* §6.04 on VUP Group 2 workers), and 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.<sup>111</sup>

Courts in the Netherlands have already ruled on several occasions about the legal qualification of workers on-demand via app. Case law on platform work is still very much in flux. Until now, most important verdicts seem to be the rulings on Deliveroo-riders. The Amsterdam Court of Appeal ruled in the beginning of 2021 that Deliveroo’s meal delivery riders and drivers work on the basis of an employment contract, rather than being self-employed.<sup>112</sup> 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. Deliveroo has also announced that it will appeal to the Court of Cassation against the ruling.

Furthermore, in September 2021, the Amsterdam Court of Appeal ruled on the employment status of Helping workers.<sup>113</sup> It found that Helping workers are in fact temporary agency workers. In first instance, the lower Court had ruled that circumstances point to a contractual (employment) relationship between the worker and

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<sup>111</sup> W. Pieterse, ‘Peer Country Comments Paper – The Netherlands’, Directorate-General for Employment, Social Affairs and Inclusion Peer Review on ‘Platform Work’, EC Sep. 2020.

<sup>112</sup> Amsterdam Court of Appeal 16 Feb. 2021, ECLI:NL:GHAMS:2021:392.

<sup>113</sup> Amsterdam Court of Appeal 21 Sep. 2021, ECLI:NL:GHAMS:2021:2741.

the household; however, the Appeals Court found more and heavier circumstances pointing to a contract between Helpling and the worker. Because the worker is structurally deployed at the households and Helpling has 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.

#### [4] Crowdworkers

Compared to platform work performed on location (work on-demand via app), very little is known about crowdworkers (so, digitally performed platform work) in the Netherlands. Crowdwork is usually divided into two types of work: (i) micro-tasks, such as completing surveys, participating in experiments, or rating online content, and (ii) larger and more substantive tasks where the worker usually needs some kind of qualification, such as translation work or programming for IT companies. The payment for the micro-tasks is generally especially low. Just like with work on-demand via app, the legal qualification needs to be determined per case. There is no Dutch case law yet on crowdwork, which is not surprising given the unfamiliarity and invisibility of this kind of work. Dutch trade unions have focused so far on platform workers (on-demand via app) performing offline work only.

### [C] Descriptive Data and Impact Analysis

#### [1] Data from National Sources

Because Eurostat does not contain data on VUP Group 4 workers (casual workers and platform workers), the data were collected using national sources. Table 6.5 below provides an overview of the data on VUP Group 4 from the most recent years, and thus most representative: 2019 for casual workers and 2020 for platform workers. The data has been collected from different sources; a dataset on VUP Group 4 in its entirety was not found unfortunately. The SEO (2020) stated in a study specifically focused on the gig economy (*klussenconomie*) that 80,577 persons are working as platform worker in the Netherlands. The data on on-call and zero-hour workers was derived from a dataset



on the Dutch labour force from Statline (CBS). Combining the information on both groups, it turns out that VUP Group 4 makes up about 7% of the Dutch working population and thus concerns a relatively small group. This is even more true because there might be an overlap with the other VUP Groups, as the platform workers for instance fall within the category of solo self-employed (since they are put to work most often as solo self-employed up to now) or combine different types of employment relationships (*see* the explanation of the multiple job holder phenomenon in §6.05 [D][3]). This applies especially to platform workers: 66% of them indicates that platform work is not their main activity (SEO, 2020). The majority of VUP Group 4 will often not depend on the earnings via the platform or the on-call contract but may use this to cover the gaps in household budget.

Table 6.5 shows the data on VUP Group 4 as set out above. Based on the national data collected, it appears that on-call and zero-hour workers make up 6.1% of the working population. Of them, 10.2% is at risk of in-work poverty. The platform workers appear to be a very small group: less than 1% of the working population is a platform worker. They have a poverty risk of an estimated 5.25%, which is similar to the 5.5% average of the whole working population. Unfortunately, there is no national data on poverty relating to household composition for VUP Group 4.

*Table 6.5 VUP Group 4: On-Call, Zero-Hours and Platform Workers, NL, Estimates*

	<i>No. of persons</i>	<i>% in-work poor individuals</i>	<i>Percentage of working population</i>
<i>Total working population</i>	<i>8,953,000</i>	<i>5.5%</i>	<i>100%</i>

On-call / zero-hours workers	545,000	55.590 (10.2%)	6.1%
Platform workers	80,577	5.25%	0.9%
Total (estimate)	625,557	15.45%	7%

Sources: SEO 2020; CBS 2019.

## [D] Poverty Among VUP Group 4 Workers<sup>114</sup>

### [1] Platform Workers

SEO (2020)<sup>115</sup> divides platform work into two groups: those providing physical (offline) services (workers on-demand via app) and those providing online tasks (crowdworkers). The report includes figures about the average gross income per month for different types of platform work. This shows that the group of crowdworkers that performs ‘other online tasks’ has the highest earnings. Their average salary is EUR 1000 per month. The group of crowdworkers with the lowest earnings are those who collect, verify, or transcribe data. They earn an average of EUR 417 per month. Regarding workers on-demand via app, the average reported gross monthly income was EUR 651.<sup>116</sup>

The total average gross monthly income of all platform workers is about EUR 677. The monthly income from platform work thus is below the poverty line of EUR 1,090 net per month (Dutch definition of poverty threshold in 2019). In practice, as mentioned before, platform work is almost never the only source of income (SEO, 2020). A percentage of 66% of the platform workers is estimated to combine platform work with other paid work, and this 66% collects only a small part (< 25%) of the income from paid work through platforms. It therefore is likely that the platform work is used to

<sup>114</sup> Because there are no known percentages of poverty of either platform workers or on-call and zero-hour workers, this had to be derived from other sources and/or calculated on the basis of collected data.

<sup>115</sup> SEO, 2020: <https://25cjk227xfsu3mkyfg1m9xb7-wpengine.netdna-ssl.com/wp-content/uploads/2020/10/2020-04-Meting-kluseconomie.pdf>.

<sup>116</sup> Based on delivery services, household services, passenger transport, professional services, and other physical services.

supplement the main income from other jobs. However, there are also four ‘types’ of platform workers who have no other income (from work or social security benefits). These are the housewives/housemen (1.5%), volunteers (1.5%), informal carers (0.75%) (*mantelzorgers*), and ‘others’ (1.5%). If they are a single-person household and would have no additional second income, then they could be the ones representing the platform workers living below the poverty line.

## [2] On-Call/Zero-Hours Workers

For on-call and zero-hour workers, data on income was also hard to find. However, data from Statistics Netherlands (*CBS*) shows that the average gross income of an on-call/zero-hours worker is EUR 11,100 on an annual basis, which is a monthly income of EUR 925.<sup>117</sup> If this were their only source of income, it would mean that many on-call/zero-hours workers fall below the poverty line of EUR 1,090 net per month (Dutch definition of poverty threshold for a single person). The average standardized monthly income of on-call/zero-hours workers however is no less than EUR 2,717. This means that the group on-call/zero-hours workers, corrected for differences in household size and composition, has an income of well above the poverty line. Many of them will thus have an additional income from their household, and another explanation might be the share of scholars and students with on-call/zero-hours contracts: they often still live at home, which means that they fall under the household of their parents, and/or they receive a study loan or grant as well, and therefore do not belong to the group of people at-risk of in-work-poverty. According to the report by *CBS* (2019), less than 20% of the on-call and zero-hours workers can support themselves financially, but this often concerns young people with a job next to their studies/education. The *SCP* reported in 2018 that most working poor work either as self-employed, part-time worker, or as on-call worker (so a mixture of VUP Group 2, 3, and 4 workers).<sup>118</sup> According to this report, 10.2% of on-call workers are below the poverty line.<sup>119</sup>

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<sup>117</sup> CBS, 2019: <https://opendata.cbs.nl/#/CBS/nl/dataset/83686NED/table?dl=4CA62>.

<sup>118</sup> *SCP, Als werk weinig opbrengt*, 2018, p. 26.

<sup>119</sup> Based on research data of 2014.

## §6.07 Conclusions

Based on the foregoing analysis, general conclusions on in-work poverty are drawn regarding the Dutch labour market (§6.07[A]) and the Dutch legal framework (§6.07[B]), next to more specific conclusions concerning the four VUP Groups (§6.07[C]). The chapter ends on a positive note with a brief outlook on some promising recent developments (§6.07[D]).

### [A] General Conclusions on the Dutch Labour Market

As stated in the introductory section to this Chapter, the Netherlands has quite a strong and resilient economy and labour market. Compared to other EU countries, unemployment rates did not increase dramatically during both the financial- and the COVID-19 crisis. Moreover, in-work-poverty rates for workers are much lower than for the entire Dutch population, meaning that having a job is still an important factor to move out of poverty. Eurostat data shows that there is a rather low level of severe material deprivation in the Netherlands (1.3% in 2013, 1.1% in 2019, and even 0.9% in 2020). This means that despite the fact that 5.5% of the working population faces some degree of poverty, only around 1% of the working population lives in such severe poverty that they cannot afford the very basic needs. The European average severe material deprivation rate is 3.2% (EU28, 2019, estimate), indicating that employees in the Netherlands have a relatively good financial position.

At the same time, some groups of workers at the Dutch labour market deserve attention as are more likely to experience in-work-poverty than others, particularly those with flexible jobs. They are also more vulnerable for economic setbacks. A related problem is that consecutive generations that are flowing from school to work have been increasingly confronted with temporary jobs as a first employment relationship. Moreover, they stayed in this position for longer. As a result, the financial situation of the younger generations may be less favourable and less stable, leaving them more exposed to the risk of in-work poverty. Also for workers with a distance to the labour market, the flexibilization of the labour market affects the sustainability of created jobs,

particularly in jobs which require a low skill level. Compared to 2003, the amount of low-skilled workers with a flexible contract or in self-employment was twice as high in 2019. It contributes to the existence of groups of workers who get caught in a constant cycle of being in-work and out-of-work.

## [B] Role of the Dutch Legal Framework in Relation to Workers' Risk of Poverty

The Dutch monthly statutory minimum wage serves as social minimum because all minimum amounts of employee-related benefits and the social assistance level are linked to the statutory minimum wage. This also means that nobody is obliged, in order to receive such payments, to accept or perform work below the level of the statutory minimum wage.

Social partners and collective bargaining are highly relevant in setting wages and thus have quite an impact on workers' standard of living. The Netherlands has multi-employer bargaining with high coverage: despite relatively low union density (which currently is around 19%), collective bargaining coverage is stable at around 80% of workers, largely through sectoral agreements and mechanisms to extend these. This high coverage assures that the vast majority of workers has a decent protection in terms of both decent wages and (supplementary) protection in case of unemployment, sickness, and other situations of suspension of work. High collective bargaining coverage might thus be a factor in explaining the relatively low overall Dutch at-risk-of-poverty and severe material deprivation rates.

However, even if hourly wages are reasonably adequate when having a full-time job, the high incidence of part-time work in the Netherlands begs the question whether monthly incomes are sufficient, and whether people have enough opportunities to access jobs with enough working hours per week. Think of workers with irregular working hours per week due to zero-hour or on-call contracts, who thus have an irregular income.

Another group of workers who are more likely to experience in-work poverty are the solo self-employed. The Dutch system of tax credits creates (too) strong incentives to become self-employed, so the number of solo self-employed has been growing strongly

in the past decades. Even though there are many genuine entrepreneurs who successfully operate within their market, others struggle to make ends meet, particularly if they are reliant on one client or operate in markets with fierce competition on price. Action is required to protect these vulnerable groups of workers, for example, as advised by the *SER* in June 2021, by reducing the tax incentives for solo self-employed and introducing a rebuttable presumption of an employment relationship for those whose rates are below a certain level. In these situations, it should be the client who must prove that there is no employment relationship.

Looking at social security, this does not always fits the needs of workers, particularly those who have low wages and/or irregular income. For instance, the UB scheme is not accessible for self-employed, while their access to social assistance (welfare) might be constrained because this is means-tested. UB does provide a relatively easy access for employees with the most common types of non-standard contracts; however, since the height of UB is proportional to the number of hours of previous employment, it does not always provide substantial income security for them. In addition, the duration of UB was strongly reduced in recent years, which, together with some other changes to the legal framework, might worsen the income security, particularly of older workers.

A strong feature of the social security system is that the universal schemes provide all residents with e.g., healthcare insurance, and a pension at social minimum level. Also, a system of social-fiscal allowances exists in the Netherlands, which makes no distinction between working and non-working people either and which is based on broad income limits, resulting in about 7.5 million allowances being given to more than 5 million households (almost 60% of Dutch households). This system of additional income support on top of the social minimum, actually contributes to a more balanced income distribution, ensuring that the gap between poorer and richer households does not widen further. Paradoxically, at the same time, the design of payments in advance and related retrievals, increases income insecurity and debt problems in particular for people who are most in need of said allowances. The system of social-fiscal allowances is now broadly discredited because of its disproportionate application. Noteworthy, an expert meeting with people experiencing in-work poverty in the Netherlands demonstrated that

processes of accessing and getting social security does not match well with volatile incomes from flexible jobs, creating difficult periods of getting not enough or getting too much income support, the latter resulting in needing to pay back part of income support.<sup>120</sup>

## [C] Conclusions on In-Work Poverty among the Selected Groups of Workers

Based on data from Eurostat, it can be concluded that across the whole working population, as well across the selected VUP Groups, in-work poverty is especially an issue for persons in a single-person household or a household with only one in-work person, in particular when there are dependent children in the household. Looking specifically at the VUP groups, it can be concluded that the solo self-employed and flex workers (so the VUP Groups 2 & 3) are most often at risk of in-work poverty, partly due to them not being able to work for sufficient hours. The table 6.6 gives a summarizing overview of the poverty risks for the Dutch working population as a whole, as well as for the separate VUP Groups.

*Table 6.6 In-Work at Risk of Poverty, All Employed Persons (Including Employees and Self-Employed) and Separate VUP Groups, NL, 2019*

	<b>% of in-work population</b>	<b>In-work at risk of poverty</b>
<b>In-work population</b>	100%	5.5%
<b>VUP 1</b>	14.4%	4.4%
<b>VUP 2</b>	9%	14.3%
<b>VUP 3</b>	22.5%	6.9%
<b>VUP 4</b>	7%*	Unknown

Source: Eurostat data, SEO, 2020; CBS, 2019.

\* Estimates, compiled from sources SEO, 2020; CBS, 2019.

<sup>120</sup> Stakeholder meeting observations, organized for WorkYP, Netherlands, April 2021.

Regarding standard workers in low-wage and low-skilled occupations (VUP Group 1), it was observed that the Dutch design of calculating with monthly statutory minimum wages and not with an hourly minimum wage creates inequality in (minimum) wages that are not explainable. Moreover, individuals at risk of in-work poverty within VUP Group 1 are identified as being a) persons who live in a household of more than two persons, and b) persons who have more than one dependent child at home. An important take away from the data on VUP Group 1 is that, broadly speaking, having a ‘normal’ permanent and full-time contract helps against the negative financial effects of having a very low income. However, this finding is not fully valid for households with more than one dependent child living at home.

The analysis of the solo/bogus self-employed (VUP Group 2) shows that these workers face certain challenges and risks at in-work-poverty, partly due to the number of hours they can work. Moreover, solo self-employed are as a default not covered by labour law and collective agreements and, as a consequence, have less access to protection in terms of wage regulation, social security insurances, and pension schemes (although they are insured for health care and for a basic pension at social minimum level). The group of solo self-employed is, however, heterogeneous, so individual circumstances can differ widely. Moreover, whereas solo self-employed have high poverty risks, these workers have a quite low severe material deprivation rate. This indicates that for this group of workers, the in-work poverty measurement might not always be suitable for assessing their actual standard of living. This is supported by national data showing that despite the 14.3% poverty rate, only 2.1% of self-employed face long-term poverty. To conclude with, self-employed in a single-person household have a significantly high risk of in-work poverty, and also the older (50+) self-employed and those who are working part-time are significantly more at risk of poverty.

VUP Group 3 comprises the flex workers, including fixed-term, temporary agency, and involuntary part-time workers. Remarkably, the data show that male flex workers have a much higher risk of poverty (12.3%, versus 5.3% for women). Also flex workers working less than 12 months a year have a high risk of poverty (13.3%). Specific



categories of households that are at risk of in-work poverty within VUP Group 3 are flex workers who are in a single-person household and flex workers who are the only working individuals in the household. This indicates, similar to the self-employed, that a flex worker without a compensating second income of a partner can often not make ends meet properly.

Finally, VUP Group 4 consists of various casual workers, including platform workers. For this group, it is difficult to assess the extent of the problem of in-work poverty since no information on these workers is available in Eurostat. We used national data sources to gain insight into the number of on-call and platform workers in the Netherlands and their financial situation. What can be concluded is that VUP Group 4 concerns a relatively small group (about 7% of the in-work population). There is also a considerable overlap with other VUP Groups, for instance, because people combine different employment statuses, or because platform workers are most often labelled as solo self-employed. Workers of VUP Group 4 face a very low monthly income (below the poverty threshold), but for both the on-call workers and the platform workers it is highly likely that they have these jobs to supplement their main income. Even though the number of persons that are fully dependent on platform work for their living is likely to be small, those who would be dependent on this form of work are quite vulnerable due to their unclear legal status in relation to labour law protection and social security schemes.

## [D] Outlook

To end on a positive note, after we finished our National Report in July 2021, the attention for the issue of in-work poverty in the Netherlands has further increased. For instance, in October 2021, the largest Dutch trade union FNV launched an action plan against poverty at the local level, in light of the fact that more than a million people in the Netherlands live in poverty, including 300,000 children. FNV calls on municipalities to include the points in its Action Plan in a municipal agreement.<sup>121</sup> Among other things,

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<sup>121</sup> <https://www.fnv.nl/nieuwsbericht/sectornieuws/uitkeringsgerechtigden/2021/10/fnv-presenteert-plan-voor-lokale-armoedebestrijding>.

the FNV proposes that people living on less than 150% of the Social Minimum should be exempted from paying municipal taxes. This should not only apply to benefit recipients but also include the working poor. They should also be able to make use of municipal facilities such as special assistance for unforeseen, necessary medical expenses. In many municipalities, the threshold now stands at 110% to 130% of the Social Minimum Entitlement.

Furthermore, on 10 January 2022 a new government has taken office, which endorses the Advice of June 2021 from the *SER*, referred to at several places in this chapter. In this advice, the main stakeholders of the Dutch ‘polder model’ provided building blocks for solving the issue of a too-flexible labour market and the lack of social protection for vulnerable (bogus) solo self-employed workers. Moreover, in September 2021, the *SER* published an explorative report on how to create work without poverty.<sup>122</sup> This study focuses on ensuring that people can generate sufficient income from their jobs, have enough working hours, and have a stable income. Concretely, it advises to increase the minimum wage (and compensate employers for higher expenditure on wages in order to prevent the loss of jobs). Moreover, the advice is to improve governmental services to workers and benefit recipients, combining digital services with reliable and personal support, and reducing the complexity of rules. The national government, municipalities, employers, and trade unions should jointly work towards an improved system. These recommendations are already put high on the Agenda of the Minister of Social Affairs and a new dedicated Minister for Poverty Reduction Policies.

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<sup>122</sup> *SER*, 2021, *Werken zonder armoede*, *The Hague: SER*.