Dismissal 2.0: How to promote work-to-work transitions and sustainable labour relations. Host Country Comments Paper - Netherlands

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eer Review on 'Dismissal law 2.0. How to promote work-to-work transitions and sustainable labour relations'

The Hague (Netherlands), 22-23 October, 2015

Written by E. Verhulp and J.H. Bennaars

August 2015

EUROPEAN COMMISSION

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1 Quick summary

In 2015 Dutch dismissal law has undergone its most radical change since 1953. Since 2000, there have been several political initiatives and recommendations to change the dismissal system, but this has never resulted in actual legal amendments. The government which took office in 2012 has put the reform of dismissal law and the modernization of the Unemployment Act on the agenda. This has led to an agreement between the government and social partners in February 2013. The agreement contains fairly extensive and detailed measures to reform the dismissal system, to make the Unemployment Act more activating and to increase the protection of employees working on fixed-term contracts. The Work and Security Act of 10 June 2014 enacts most of these measures. The aim of the reforms is to make the entire system easier, faster, cheaper and fairer.

As per 1 January 2015 the first new provisions have entered into force, whereas the most substantive changes have entered into force as per 1 July 2015 and a remainder will only apply as of 1 January 2016. The envisaged shorter duration of unemployment benefits payments will be introduced in phases and shall be completed in 2020. Some of the measures included in the social agreement are not implemented yet, but this will probably happen in the coming years. The general idea is that the Unemployment Act should be more activating, resulting in people leaving the benefit system sooner. Also, during employment the employability should be of greater concern for both employers and employees in order to achieve that in case of dismissal people are ready to move on to a next job. The main measures to enhance work-to-work transition are:

<u>Reforms implemented in the Work and Security Act</u>

- in case of involuntary dismissal without culpability the employee is entitled to a transition allowance. Social partners may introduce another system in collective labor agreements
- under strict conditions laid down in regulations based on the Dutch Civil Code, training costs which are covered by the employer or other costs incurred in an effort to avoid unemployment can be deducted from this transition allowance;
- the duration of unemployment benefits shall be reduced from 38 months to 24 months;
- after six months (instead of one year) all work is deemed suitable and thus the unemployed person is obliged to take up such work;
- the system of moving off benefits that is used when unemployed persons start working part-time is amended in the way that working is always beneficial from a financial perspective.

<u>Further reforms to be implemented</u>

- Social Partners should be more involved in the period before the actual dismissal.
- The costs of unemployment benefits should be spread more equally between employers and employees.
- Social partners may arrange for privately organized supplementary unemployment benefits.

2 Background

2.1 Work-to-work transition

The table below indicates how many days an unemployed person on average claims benefits before taking up another job. The table is based on data of the Central Bureau voor Statistiek (Statistics Netherlands) that is being processed by SEO Economic Research.[1]

Sector	Average days unemployed before transition to another job
Construction	223
Commerce and hospitality	272
Business services	273
Banking	279
Public administration	281
Education	289
Agriculture	303
Industry	307
Health care	307
transport and communication	314

2.2 Dismissal law prior to the reform

Dutch dismissal law (which also covers redundancies) prior to the 2015 reforms can be characterized as follows:

a) Unilateral termination of an employment contract by the employer is always subject to a preventative analysis of either a court or a governmental body: UWV (EIA).[2] Only in case of a termination during the probation period or of dismissal for an urgent cause, the employer may give notice immediately and the dismissal shall be reviewed on hindsight by a court, if the employee starts proceedings.

b) An employer that wishes to unilaterally terminate the employment contract can at their own discretion choose whether to give notice (after obtaining prior permission of EIA) or requests the court to rescind the contract. Both proceedings are different and can, due to their different legal background, lead to different outcomes and different severance payments.

   i. Giving notice

   Before giving notice, the said permission of EIA should be obtained.[3] Obtaining the permission is an administrative procedure, enabling employer as well as employee to bring forward their standpoints. The EIA has formulated policies per dismissal ground that gives parties guidance in how the EIA judges the request. The decision of EIA is not open for appeal. If the

[1] This data is used for a tool that can predict in a particular case how long someone will remain unemployed. This tool is developed by ArbeidsmarktResearch BV, affiliated with the University of Amsterdam. The data and scientific justification can be found at: http://kennelijkonterechtorchard.test.qdelft.nl/Media/Default/Toelichting%20SEO/Toelichting%20verwachte%20werkloosheidsduur%20-%202014.pdf

[2] Short for Uitvoeringsinstituut WerknemersVerzekeringen (Employee Insurance Agency).

[3] This rule is not laid down in the Dutch Civil Code but in the Buitengewoon Besluit Arbeidsverhoudingen 1945 (Extraordinary Labour Relations Decree).

permission is refused, any notice already given is considered voidable. If the permission is granted, the employer can give notice, taking into account the statutory or contractual notice period. Giving notice without taking into account the notice period does not affect the termination of the contract, but leads to the obligation to pay damages. Notice is not possible if there is a prohibition of termination, even though permission is granted. The prohibitions of termination are enumerated in the Dutch Civil Code. The most know example is that notice cannot be given during the first two years of illness.4 In case notice is given whilst a prohibition of termination is applicable, the notice is considered voidable.

Once notice is given the employee has the possibility to start proceedings based on apparent unfair dismissal and claim damages or reinstatement of the employment contract. These are regular civil proceedings, including appeal to a higher court and final appeal at the Supreme Court, and can take several years. The damages that can be awarded are not regulated and are decided by the court on the basis of 'reasonableness'. This means that the outcome is difficult to predict. The court has to take into account all relevant circumstances. The damages that are awarded are in general substantially lower than severance payments that are awarded in the rescission procedure as discussed below (see also table 2 below).

ii. Rescission of the contract by the court

Both parties can at any time request the court to rescind the employment contract for compelling reasons. Compelling reasons can be a change of circumstances or an urgent cause. Any reasonable ground can be put forward under these criteria, such as business economic reasons, underperformance or a clash of character. The courts have significant discretion to interpret the compelling reasons. In general both parties submit one written statement (the request and the defense) and there is an oral hearing. Appeal is not possible, except for some exceptions that are so specific that further elaboration is not necessary in this report. If the court decides to rescind the contract based on a change of circumstances severance pay can be awarded. These damages are not regulated by law either, but the courts have established a guideline themselves, the so called Cantonal Court formula: A x B x C. A represents the tenure, B the gross monthly salary and C the correction.

Ad A:

The tenure is weighted, meaning that years of service until the age of 35 count half; years of service between the age of 35 and 45 count for one; years of service between the age of 45 and 55 count for one and a half and years of service after the age of 55 count double.

Ad B:

The monthly salary includes all fixed components of the remuneration such as holiday allowance and end of year bonus. The average variable remuneration is also taken into account.

Ad C:

The correction factor is 1 when both parties are not or equally to blame for the termination of the contract. Is the employee more to blame, the correction factor shall be established between zero and one. Is the employer to blame the factor can be established higher than one usually not exceeding two.

[4] Other examples of prohibitions of termination are the prohibition to terminate in case of membership of a works council, or because of membership of a union, a prohibition to terminate during pregnancy or because of taking care leave.

The duration of the total proceedings is approximately three months and the termination is usually at short notice after the decision, thus without taking into account a notice period. The court is not bound by any prohibition of termination, although the court is obliged to verify whether the request for termination is in any way connected to a prohibition of termination.

The differences between both proceedings can be represented schematically as follows:

Table 1: differences termination proceedings

	Proceedings	Duration	Notice period	Prohibition of termination	Damages
Termination via rescission	Civil, no appeal	Three months (approx.)	No	No	Yes, depending on circumstances
Termination via notice	Administrative, no appeal	8-10 weeks (approx.)	Yes	Yes	No, to be obtained in separate proceedings

Table 2: differences severance payment after notice and rescission

	Rescission proceedings (average number of monthly salaries per year of service that is awarded)	Apparent unfair dismissal[5] proceedings after notice is given (average number of monthly salaries per year of service that is awarded)
2013	1.54[6]	0.67
2012	1.59[7]	0.69
2011	1.72[8]	0.52
2010	1.73[9]	0.66
2009	2.08[10]	0.92

In case of redundancies the processes outlined under b can be used to terminate contracts. Often a social plan is drawn up, however this is not compulsory. This plan can be unilaterally established by the employer or agreed upon with a works council. A social plan can also be concluded with a trade union and can have the status of a collective labour agreement (CLA). A social plan can be drawn up for one specific situation or concluded for several years covering all redundancies that take place in that period.

[5] P. Kruit, 'Statistiek Ontbindingsvergoedingen 2013: het einde van de ontbindingsvergoeding aangekondigd', *ArbeidsRecht* 2014/43.
[6] P. Kruit, 'Statistiek Ontbindingsvergoedingen 2013: het einde van de ontbindingsvergoeding aangekondigd', *ArbeidsRecht* 2014/43.
[7] P. Kruit, 'Statistiek Ontbindingsvergoedingen 2012: het einde van een tijdperk Loonstratistiek, *ArbeidsRecht* 2013/32.
[8] P. Kruit en C.J. Loonstra, 'Statistiek ontbindingsvergoedingen 2011: de representativiteit van de gepubliceerde ontbindingsbeschikkingen aangetoond', *ArbeidsRecht* 2012/22.
[9] P. Kruit en C.J. Loonstra, 'Statistiek ontbindingsvergoedingen 2010: the year after', *ArbeidsRecht* 2011/25.
[10] P. Kruit en C.J. Loonstra, 'Statistiek ontbindingsvergoedingen 2009: vuurwerk in ontslagland!', *ArbeidsRecht* 2010/27.

Social plans typically foresee in a redundancy package for the employee consisting of a severance payment and some form of outplacement, education aiming at work-to-work transition, a prolongation of the notice period or a combination of those measures. The contents of these plans can vary widely.11 In general the severance payment is based on the cantonal court formula as described above. The c-factor usually circles closely around one.

In case of unemployment, the Unemployment Act ('UA') provides for unemployment benefits for a minimum period of 3 months and a maximum of 38 months, depending on the length of job tenure. The benefits amount to up to 75 % of the last earned salary12 during the first three months and 70% thereafter. In order to receive the benefits, the employee is obliged to avoid voluntary unemployment and to avoid staying unemployed by not looking for, keeping or accepting suitable work. The employee should also engage in training or education when that is necessary to find work. Not fulfilling these obligations leads to sanctions which can include a reduction of suspension of benefit payments. The UA is executed by the EIA that is also responsible for supporting the unemployed in finding a new job. During the first six months of unemployment, unemployed persons may focus on finding work that is of a similar level as their old job. After six months, the unemployed are obliged to accept work that requires a lower education and after one year, all jobs are considered suitable. Refusing taking on a suitable job leads to a suspension or reduction in benefit payments. In case an unemployed person takes on work when he is on benefits during the first six months, the hours spent working are deduced from his right to benefits (which are based on the loss of working hours). This can lead to a situation in which working does not pay off financially. If income is generated after the first six months the earned amount is simply deducted from the benefits (and therefore the combination of benefits and income from working does not lead to a lower amount than only the benefits).

[11] J. van der Hulst, *Het sociaal plan*, Deventer: Kluwer 1999, p. 205 et seq.
[12] Maximized to the maximum daily wage, established every year by the government. In 2015 the maximum daily wage is established at € 199.95.

3 Policy measures

3.1 Objectives

As of 1 January and 1 July 2015 Dutch dismissal law has undergone significant changes. Further amendments will enter into force as of 1 January 2016. The basis of this legislative change can be found in the Sociaal Akkoord (Social Agreement) of 2013.[13] This agreement between the government and the social partners[14] aims to provide as many people as possible with a fair chance of work and economic independence. The rationale behind the changes was as follows: the unfavorable economic situation of the Netherlands and Europe at that time, the ongoing changes of the world economy and technology that require companies to continuously adapt themselves and the the proportional rise in the ageing labour population. The main objective is to offer employment security[15] and to avoid unemployment. This can be divided in two more specific objectives: activate the Unemployment Act and create more security for those working on contracts other than open ended employment relationships.

The Sociaal Akkoord (Social Agreement) includes a rather specific list of measures that should be taken to achieve the main objectives. Focussing on work-to-work transition, the objectives are to avoid unemployment through education and mobility during employment, introducing a transition compensation in case the employment contract terminates and making the Unemployment Act more activating. This results in a list of 37 proposed measures, covering the Unemployment Act, dismissal law and provisions governing fixed-term employment relationships.[16]

As a result of the Sociaal Akkoord (Social Agreement) the Wet werk en zekerheid (Work and Security Act, WSA) has been adopted. The main objectives of the WSA are similar to the objectives of the Social Agreement: make Dutch dismissal law less complex, faster, fairer, less expensive for employers and more directed at finding a new job.[17]

3.2 Target groups

The WSA applies to all employees working on the basis of an employment agreement, whether the agreement is for an indefinite period of time or for a fixed-term.

3.3 Timeframe

Some measures that aim to give employees with a fixed-term contract more protection[18] have entered into force as of 1 January 2015. Further amendments of the fixed-term work provisions and the major amendments of the dismissal law entered into force as of 1 July 2015. The amendment of the Unemployment Act changing the definition of suitable work and amending the way income during unemployment is treated has also entered into force as of 1 July 2015. As of 1 January 2016 the duration of unemployment benefits payments is reduced in stages from 38 months to eventually 24 months in 2019.

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[13] Sociaal Akkoord, Parliamentary Papers II 2012/13, 33 566, No. 15.
[14] Equally represented in the Stichting van de Arbeid (Joint Industrial Labour Council).
[15] The shift from job security towards employment security is initialized by the European Commission in 2007: European Commission, 'Towards Common Principles of Flexicurity: More and better jobs through flexibility and security, COM (2007) 359 final and advocated in the Netherlands as of that moment, N. Zekic, *Werkzekerheid in het Arbeidsrecht*, Deventer: Kluwer 2014, p. 2.
[16] Sociaal Akkoord, Parliamentary Papers II 2012/13, 33566, No 15, p. 16-60.
[17] Parliamentary Papers II, 2013/14, 33 818, No 3, p. 5
[18] Amongst other, no probation period if the duration of the contract is less than six months (Art. 7:652 § 2 DCC), in principle no non-compete clause in fixed term contracts (Art. 7:653 § 1 and 2 DCC), obligation for the employer to inform the employee one month before the termination date whether the contract will be renewed or not, sanctioned by a fine if the information is not given (Art. 7:668 DCC).

The WSA itself includes an obligation for the government to evaluate the new rules with respect to the provisions regarding fixed-term contracts within three years, or earlier if necessary.[19] Furthermore, the government has indicated that it will monitor closely the newly introduced closed system of grounds for dismissal (see below).[20]

3.4 Geographic and sectoral scope

The WSA applies to all contracts governed by Dutch law, regardless the sector. Some measures provide for specific exceptions for smaller employers. Were relevant, this shall be elaborated in section 3.6.

3.5 Financial Framework

The legislative amendment leads to one off costs for the public agency EIA that has to amend its working procedures and ICT, provide for training of staff and for education of employers and employees regarding the changes in dismissal law. These costs are budgeted at EUR 24.1 million. There are also structural costs expected for EIA, but these are not yet clear. Furthermore, there are some costs expected for courts because the new system provides for more possibilities of appeal. These costs are budgeted at EUR 1.5 million per year in 2016 increasing to EUR 6.4 million per year in the successive years.[21]

At the same time the amendments of the UA, more in particular the shortening of the duration of benefits, are expected to lead to structural savings of EUR 1.3 billion.[22]

3.6 Legal Framework

As mentioned, the amendments are introduced by the Work and Security Act (WSA). This act amends the stipulations regarding employment law in the Dutch Civil Code (DCC) as well as the Unemployment Act and several other acts. The main changes can be characterized as follows:

<u>Dismissal law</u>

a) Unilateral termination of an employment contract can be based on one of the eight reasonable grounds exhaustively listed in the DCC;

b) The procedure that must be followed is determined by the reason for dismissal and not at the discretion of the employer anymore. Termination on one of the first two reasonable grounds (redundancy - e.g. business economic reasons, reorganization - or long-term disability) can only be achieved through giving notice with a permit of the EIA. Termination on any of the other grounds (which are more personal grounds, such as underperformance or clash of characters) can only be achieved through a rescission by the court.

c) The proceedings through EIA and the court are harmonized as much as possible when it comes to notice periods, prohibition of termination and duration of the proceedings. In both cases, appeal is possible.

d) Social partners at sectoral or company level may create a commission that takes over the role of EIA when it comes to giving a permit for dismissal in case of redundancy.

<u>Transition allowance</u>

Regardless of the way a contract is terminated (notice or rescission or even termination by operation of law if a fixed-term contract expires without renewal), as long as the

[19] Art. XXVa WSA.
[20] Parliamentary Papers I, 2013/14 No 32, p. 19.
[21] Parliamentary Papers II, 2013/14, 33 818, No 3, p. 70 and 71.
[22] Parliamentary Papers II, 2013/14, 33 818, No 3, p. 68.

employer takes the initiative[23] and the employee has a minimum tenure of two years, a transition allowance is due. The transition allowance replaces the damages and severance payment as described in section 2.2. This puts an end to the different damages/severance payment that were due under the old system, depending on the chosen proceeding of termination. Regardless of the reason for termination (redundancy or personal reasons), this transition allowance is due. The allowance is lower than the damages/severance payment based on the cantonal court formula. On the other hand, after giving notice there was no obligation to pay damages/severance payment. Employees had to start proceedings to obtain any damages and the outcome was unpredictable. If damages were paid, e.g. in case of redundancy on the basis of a social plan, these damages would be in general higher than the current transition allowance (see section 2.2). The transition allowance is due at termination and not before.

The calculation of the transition allowance is mandatory defined in the DCC:

- during the first 10 years of service, the transition payment amounts to 1/3 monthly salary per year of employment;
- after 10 years of service, the transition payment amounts to 1/2 monthly salary per year of employment;
- the maximum transition payment is EUR 75.000, or if the annual salary is higher than EUR 75.000 the maximum amount equals the annual salary;
- employees aged 50+ with more than 10 years of service are entitled to one monthly salary per year of employment (transitional arrangement until 2020 that does not apply for small employers (less than 25 employees);
- the transition payment is not (fully) due if an employee acted culpable or in case termination takes place before the employee has reached the age of 18 and has worked on average 12 hours or less;
- the provisions regarding the transition allowance do not apply if a collective labour agreement provides a similar arrangement.

Only in very exceptional circumstances in case of severe culpability on the side of the employer extra damages can be awarded. No indication is given regarding the scale of these damages.

Furthermore, the new system provides for a possibility that in cases where an employer has covered costs of improving the employability of the employee, or to facilitate the transition after dismissal, these can be deducted from the transition allowance due. A decree[24] stipulates the exact conditions for this deduction. The most important is that the costs should be specified and the employee and employer should agree that they can be deducted, before the costs are made.

It should also be mentioned that the WSA introduces a general obligation for the employer to enable the employee to be continuously trained his own position or for another position within the organization if his own position ceases to exist. These costs are considered as a regular investment based on the demands of 'being a good employer' and cannot be deducted from the transition allowance.

The new transition allowance is fully paid by employers and is directly paid to the employees. Although the objective clearly is that employees use the transition allowance for an actual transition to a new job, this is not specified in the law and therefore not enforceable. An employee is fully entitled to use the transition for anything he likes.

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[23] In case the employee takes the initiative to terminate the contract a transition allowance is due when the reason for termination is the culpable acting of the employer (comparable to constructive dismissal). This is rather specific and will not be discussed any further in this report.
[24] Besluit voorwaarden in mindering brengen kosten op transitievergoeding (Stb. 2015, 171) (Decree deduction costs on transition allowance).

New legislation on fixed-term contracts

Under current Dutch law a fixed-term employment contract that is renewed more than three times, or that has a duration of more than 36 months, is considered to be an employment agreement for an indefinite period of time. This applies to a chain of fixed-term employment agreements that have succeeded each other with intervals of not more than three months. In the new system after a period of 24 months or more at intervals of at most 6 months, the last employment contract shall be deemed to have been entered for an indefinite term as from that time.

Unemployment benefits

In order to encourage people to leave the unemployment benefit scheme sooner, the UA has been made more activating through the following three measures:

a) Shortening the duration of the unemployment benefits and slowing down the accrual

   As pointed out before, the maximum duration of 38 months will be reduced to 24 months in steps as from 1 January 2016 until 2019. The actual duration is calculated on the basis of working history. The accrual will be slower in the new system. Before the reform one year of working history leads to one month entitlement to unemployment benefits. In the new system this remains the case during the first 10 years of working history. Every year thereafter leads to half a month of entitlement to benefits.

b) Adjusting the notion of 'suitable work'

   After six months of unemployment (instead of after one year) all work is deemed suitable. This forces the unemployed persons sooner in the process to accept every job that is available. Not accepting leads to a suspension or reduction of benefits.

c) Introduction of the offsetting of income as of the first day of unemployment

   Unemployment benefits are based on the loss of working hours. Before the reform, unemployed that started working (more) again were confronted with a reduction of the hours for which they received benefits. Because the hours are deducted and not the actual earned income, this could lead to a drop in income if the hourly rate earned is lower that the hourly rate of benefit (which depends on the last earned income before unemployment. After the reform, the income that is generated with the new work is deducted from the benefits. This was already the case in situation after one year of unemployment, but is now applied as of day one. This way, taking on paid work can never lead to a total income (benefits and pay) that is lower than the benefits.

It is possible for the social partners to put in place schemes to make up for the reduction in entitlement periods to public unemployment benefits as introduced by the WSA. In collective labour agreements that can be declared binding for an entire sector, social partners may arrange for supplementary benefits. According to the Centraal Planbureau (CBP|Netherlands Bureau for economic and political analyses) currently half of the employees that fall under the scope of a collective labour agreement benefit from such supplementary benefits.[25] Employees in highly organised sectors will thus have better facilities than employees in low or non-organised sectors.

[25] CPB, *Gevolgen Wet werk en zekerheid voor werkgelegenheid*, 27 november 2013, Parliamentary Papers II 2013/14, 33 818, No 3, annex 1.

3.7 Institutional framework

The reforms are carried out mainly by the employers and employees applying the new dismissal law. Furthermore the EIA has a rather large role with respect to the new dismissal law as well as regarding the execution of the new rules of the Unemployment Act.

The social partners together with the government have provided the basis for this reform. The reforms provide for a role of the social partners at two points: the possibility to create a commission that takes over the role of EIA and the possibility to insert an alternative for the transition allowance in collective labour agreements.

3.8 Future adaptations

Not all measures proposed in the Social Agreement have been implemented in the reforms. The Sociaal-Economische Raad (Social Economic Council) has given its advice[26] to the government in February 2015 regarding the following remaining points: (i) a bigger role and responsibility for the Social Partners regarding avoiding unemployment, (ii) a change of the way the unemployment benefits are funded and (iii) how possible private supplements should be arranged for. These reforms need legislation and should enter into force in 2020.

Ad (i)

Social Partners should be more involved in the period before the actual dismissal. This can be done by creating regional advice centers that can guide employees threatened with dismissal/redundancy. Social partners should also get a role in the administration of unemployment benefits. This role should be of an advisory nature.

Ad (ii)

The costs of the unemployment benefits (being the premiums paid) should be spread more equally between employers and employees. In the current system, mainly the employees bear the costs. The Social Economic Council advises the government to introduce tax compensation for the effects of the rearrangement of costs.

Ad (iii)

Regarding the possibility to privately organize supplementary unemployment benefits, the Social Economic Council advises that it should be facilitated that the administration of these private benefits can be done by EIA or other public institutions. These private benefits shall be organized by the social partners.

[26] Sociaal-Economische Raad, Advies 15/02 *Werkloosheid voorkomen, beperken en goed verzekeren. Een toekomstbestendige arbeidsmarktinfrastructuur en Werkloosheidswet*, februari 2015.

4 Results

4.1 Transposition of legislation & impact on the ground

The measures that have entered into force on 1 January 2015 were relatively small measures and have not lead to any significant problems. As for the changes that took place as of 1 July 2015, it is too early to make any comment regarding their impact.

4.2 Impact on the speed of work to work transitions

The measures that aim to speed up the work to work transitions have entered into force on 1 July 2015 and further measures will enter into force on 1 January 2016. There is no data available so far on the impact of the measures.

4.3 Evaluations

As mentioned before, an evaluation of the new rules regarding fixed-term contracts is due in July 2018.

4.4 Perception of the changes

As mentioned, the WSA entails a massive change of Dutch dismissal law. Employers, employees and legal practitioners shall have to adjust themselves to the new system. In the academic literature the structure of the new dismissal law has been criticized (see also section 5 below).[27] The objectives of the WSA are broadly supported and the system needed to be changed, however it remains to be seen if the implementation will indeed make the entire system easier, faster, cheaper and fairer.

[27] See inter alia: R.A.A. Duk en F.B.J. Grapperhaus, 'Drucker, Levenbach en het Wetsvoorstel Werk en Zekerheid', *TRA* 2014/21; F.B.J. Grapperhaus, 'De toren van Babel en het in het Wetsvoorstel Werk en Zekerheid beoogde nieuwe ontslagstelsel', *TRA* 2014/22.

5 Success factors and transferability

There are some concerns whether the measures taken or envisaged will indeed lead to one of the main objectives of the reform: having people transfer out of the unemployment benefit scheme faster.

The transition allowance

- The transition allowance can be used to facilitate the transition to other work, but this is not mandatory. This is one of the main points of criticism in literature.[28]
- The transition allowance is paid at the end of the employment. It can thus not be used during notice period to start training or other initiatives to increase the employability.
- The transition allowance is a relatively low. For example, after 2.5 years of tenure, the transition allowance amounts to up to 5/6 of a monthly salary. It can be foreseen that the employee shall be more focused on keeping his job than on transition towards another job.[29]
- Employees with a fixed-term contract and a tenure of less than 24 months are not eligible for a transition allowance, whilst this group is relatively vulnerable and likely to have received less schooling during the employment.[30]
- Social partners are given a large responsibility to make employment security via job to job transitions a success. They can make alternative arrangements in collective labour agreements. In general collective labour agreements are drawn up by sector. This will not necessarily lead to mobility between various sectors. Moreover, not every employee is covered by a collective labour agreements and the agreements expire after a certain time, which can create issues with sustainability.

Duration of the unemployment benefit scheme

The reduction of the duration of the unemployment benefit scheme to 24 months will of course lead to a shorter use of the scheme. It is unclear however if this will lead to transition to other work. It has been pointed out in literature that the government has provided no evidence of research that supports the idea that a shorter scheme is more activating.[31]

All work is deemed suitable as of 6 months unemployment

An important negative effect of this measure is that if higher educated and skilled workers are obliged to take on all work below their level, this might push out lower skilled workers.[32]

Working always has a financial benefit

This measure has not been criticized as such. It has to be pointed out that this provision already exist for those who have been unemployed for more than 12 months and there does not seem to be any evidence that that provision had an activating effect.

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[28] A. van Zanten-Baris, 'Een 'kleurloze' (transitie)vergoeding bij ontslag?', *TRA* 2014/28.
[29] P. Kruit, 'De ontslagvergoeding: transitie van billijkheid naar forfaitair, of toch weer billijkheid?', *TAP* 2014/8.
[30] H.J.M. Richters, 'Hoe de transitievergoeding productiever zou kunnen worden ingericht bij het vinden van nieuw werk', *TRA* 2015/47.
[31] F.J. Pennings, 'Wetsvoorstel Werk en Zekerheid en de Werkloosheidswet', *TRA* 2014/29.
[32] F.J. Pennings, 'Wetsvoorstel Werk en Zekerheid en de Werkloosheidswet', TRA 2014/29.

Future reforms as described in § 3.8

A lot of pressure is put on the reforms that still have to be transferred into legislation and that mainly provide for a greater involvement of the social partners.[33] Although this involvement shall probably have a positive effect on the mismatch between supply and demand on the labour market, it cannot create jobs. In other words, jobs that are not available cannot be found.[34]

[33] Sociaal-Economische Raad, Advies 15/02 *Werkloosheid voorkomen, beperken en goed verzekeren. Een toekomstbestendige arbeidsmarktinfrastructuur en Werkloosheidswet*, februari 2015.
[34] W.L. Roozendaal, 'Werkloosheid voorkomen, beperken en goed verzekeren?', *TRA* 2015/69.

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