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Part-time Employment in the Netherlands: From Atypicality To A Typicality

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1. Introduction

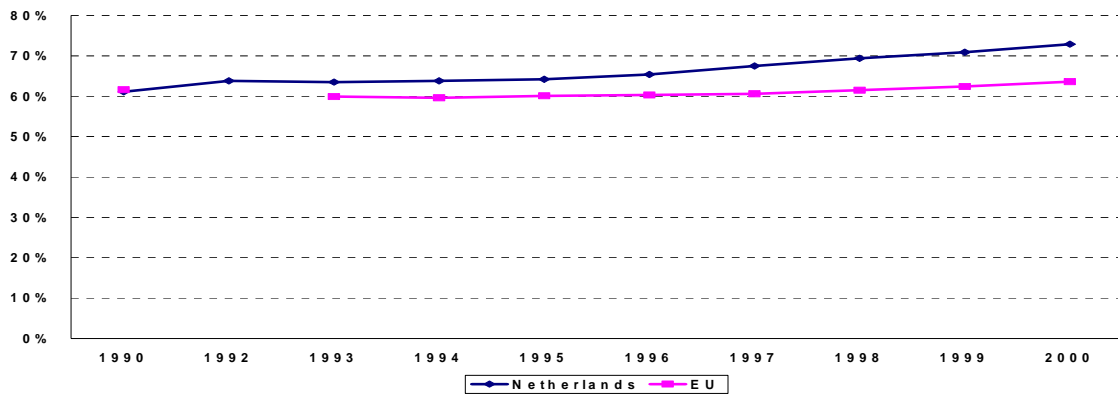
In 2000 the European Council in Lisbon agreed to set targets concerning the employment population ratio's. The EU-target for 2010 is 70 per cent, meaning that 7 out of 10 people in working age (15-64) population should be employed. The current figure for the Netherlands is 74 percent, which ranks the country at third place, following Denmark and Sweden. Figure 1 shows that this was the result of above average employment growth during the 1990s.

Employment growth owed much to the rapid diffusion of part-time jobs. If employment is recalculated in full-time equivalent jobs, the employment record of the Netherlands is more modest. The full-time employment ratio would be just over 60 per cent, compared to 51 per cent for the EU as a whole, far away from the Lisbon target.

[Figure 1 about her]

¹ The authors wish to thank Martijn Helmstrijd for his contribution to previous versions of this paper.

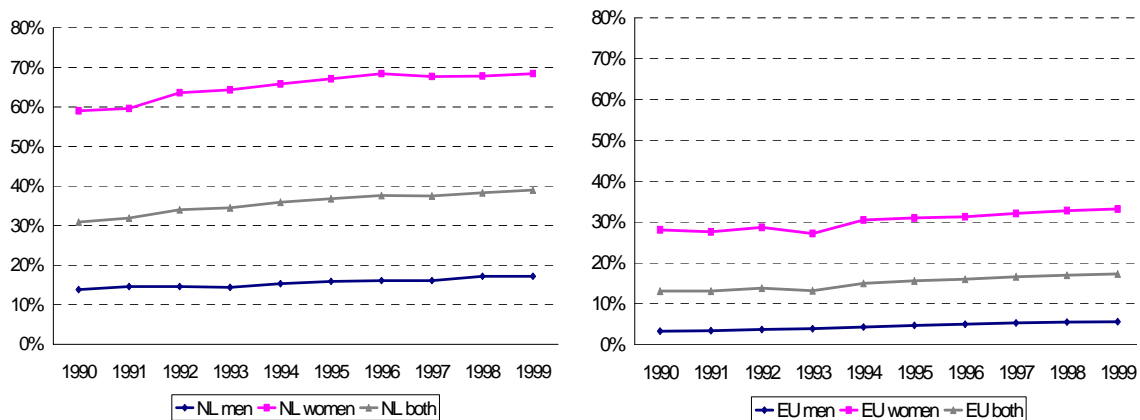
Figure 1: Employment participation rates, in persons



Source: Eurostat Labour Force Surveys.

An important feature of the Dutch labour market is the prevalence of part-time and temporary work. Figure 2 shows the share of part-time employment in total employment. We see a remarkable difference between the Netherlands and the EU-average. In the Netherlands almost 40 per cent of the employed labour-force works part-time, while in the European Union less than 20 per cent works in part-time jobs. As the two figures show, part-time work is especially prevalent among women. An important issue is the reason why people work part-time. According to Eurostat surveys, in 1999 in the Netherlands 72 per cent of the people working in part-time jobs deliberately chose to do so. The European average was 60 per cent. We may conclude from these figures that Dutch part-time employment shares are higher than the EU-average, partly because of individual preferences, perhaps because the Dutch system of labour law, employment relations and care is less accommodating to full-time employment, especially for women, and more facilitating towards part-time employment than most other systems in the EU.

Figure 2 Part-time employment in the Netherlands and the EU-average (as % of total employment in group)



Source: Eurostat.

The Netherlands has been characterised as the first part-time economy of the world (Freeman, 1998; Visser 2002), perhaps becoming a model for other countries with a very gendered labour market and large pockets of unemployment. Others have have speculated about the potential of the part-time model as a new form “full” employment over the life cycle, within the framework of a “transitional labour market” (Rogowski and Wilthagen, 2002; Schmid and Gazier, 2002). The Dutch “miraculous” employment growth in recent times can be attributed too a large extent to the rise of part-time work and the entry of women into the labour force (Visser & Hemerijck, 1997) and the dynamics of transitions in the Dutch labour market to a large extent revolve around part-time work (De Koning et al., forthcoming). We stress, once again, the role of working time preferences. As Bielenski et al. (2002, 61) put it: “If working time preferences in the Netherlands were realised, then the hours worked by those in substantial part-time employment could become the ‘standard’ working time. Only 58 per cent of Dutch men expressed a preference for full-time employment, while the figure among Dutch women is as low as 26 per cent.”

In this paper we seek to to analyse the rise and significance of part-time work in the Netherlands as a result of a set of three separate though interrelated factors:

- 1) as the result of a spontaneous process triggered by the late entrance of (married) women in the labour market (section 2);
- 2) as the result of (at first hesitant but) adequate and successful facilitation of this process by labour market institutions and policies (section 3);
- 3) as the result of accelerated and consistent regulation by the legal system which has erased much of the unequal treatment aspects of part-time work (section 4)

A brief conclusion and outlook is offered in the last section (5).

Importantly, “part-time work” should not be confused with the more general term “flexible work”. In the Netherlands, part-time work is regarded as work that is carried out regularly and voluntarily in employment, during working hours that are shorter than the working hours generally customary in the sector or company concerned (i.e. the normal working hours for full-time workers). Employees with a fixed-term contract, temporary employment agency workers and on-call workers – except when they actually work part-time - are not considered part-time workers.

2. The growth of part-time work as a spontaneous process

As indicated in the introduction, the Netherlands is an outlier in Europe with regard to part-time employment, but it was not until the 1980s that the Netherlands took over the first place occupied by Sweden, Denmark and the UK. During the 1980s the growth of part-time employment accelerated in tandem with the rise in female and service employment. The rapid expansion of part-time work in the Netherlands is sometimes presented as an outcome that was designed and shaped by public policy (CEC 1994: 117; Hakim 1996: 16). However, the rapid diffusion of part-time employment was mostly the outcome of a *spontaneous process* driven by the late entry of married women in the labour force, shaping, rather than shaped by, the policies of governments, unions and firms. The absence of facilities and support for childcare made part-time employment the dominant *coping* solution for mothers. The part-time option was reinforced by the labour market adversity of the 1980s, then discovered and promoted by politicians, and, after some hesitation, adopted by trade unions and feminists. Policy changes have been piecemeal, reactive and dictated by circumstances, but also innovate, with new goals being discovered along the way.

From 1860 till 1960 the level of labour force participation of Dutch men and women was nearly constant (Pott-Buter 1993). With hardly any annual variation, 30 percent of women and 90 percent of men in working age participated in the labour market for paid jobs (Mol *et al.* 1988). As late as 1971 the Netherlands had the lowest female participation rate in Europe—a fact that puzzled many who believed that this was an advanced industrialized society *cum* welfare state, with strong Protestant and workaholic roots. But change was underway and in the next quarter century female labour participation increased stronger than in any other European country. In 1999, the employment rate of women had risen to 59 percent, above the EU average. Under the influence of education, early retirement and disability, employment rates of males fell to 70 percent in 1992 but rose again in the later 1990s (OECD, 2000).

The increase in female participation is due to *married* women. In 1971 only one in ten married women had paid employment outside the house; today, half of all married women have paid employment. In only one generation there had been a sea-shift in the labour participation of mothers. In 1973 one in ten mothers with children in pre-school age worked for wages; in 1998 more than half of these mothers did. The availability of a part-time option appears to be decisive. According to Eurostat, only 6 percent of mothers with children under the age of ten was full-time employed in 1996—by far the lowest percentage in Europe. The average in the European Union is 30 percent. The flipside is that 41 percent of Dutch women with children under the age of ten worked part-time, nearly three times the European average.

Panel data conform the picture that Dutch women tend to switch from full-time to part-time jobs once they have children (Kragt 1997; Wetzels 1999). Unlike the pattern (uniquely?) found in Sweden (Anxo and Storrie 2001), few Dutch women return to full-time jobs when children grow older (Dekker *et al.* 2001). These trends clarify why, despite ‘the irresistible emergence of the working married women’ (Hartog and Theeuwes 1983), the incidence of full-time employed women has hardly changed: around 18 percent, the lowest percentage by far in Europe (OECD 1998).

On the demand side, the tight labour market, before 1973, fuelled union wage demands and improved job opportunities generally. Employers in services discovered the cheap and educated labour reservoir of married women. More women were encouraged to continue in a part-time job. After 1973, when unemployment started its rise, the increase in part-time employment slowed temporarily (Tijdens 1998a)

3. Institutional facilitation of part-time work

3.1 From collective towards individual working-time reduction

Institutional and normative changes have gradually reinforced and facilitated the spontaneous changes described in the previous section . The marriage bar for female civil servants, introduced in the 1930s, was withdrawn in 1957 but applied still in many municipalities ten years later (Pott-Buter 1995). Many private employers had followed and most unions had condoned the practice to end the employment contract of married women; it was not until 1975 that this practice was made unlawful (Asscher-Vonk 1978). Under the regime of centrally guided wage policy, in force between 1945 and 1962, women were paid less than men in the same jobs (Windmuller 1969).

The Netherlands came from a deeply, socially and culturally embedded model of housewifery (Knijn 1994; Pfau-Effinger 1998). In 1965 84 percent of the adult Dutch population expressed reservations concerning working mothers of school-going children. In 1970 disapproval suddenly dropped to 44 percent, decreasing to a mere 18 percent in 1997 (SCP 1998). It is useful to point out that the change in opinion preceded the improvement in services and conditions facilitating the combination of work and childcare. The positive effect of such norm changes on participation decisions of women has been demonstrated (Romme 1990).

The same goes for institutional factors. Relative wages and returns from labour are influenced by institutional factors such as government and union wage policies, taxation, and

employment bans. Legislation, labour-management bargaining and union work-sharing policies do also shape supply and demand. The Dutch labour market is highly regulated and around 80 percent of all Dutch employees are covered by collective agreements.

Regarding part-time employment, Dutch trade unions initially shared the sceptical view of other European unions. In 1981 the main union federation published a position paper in which the inferiority of employment protection, wages and career prospects of part-time jobs and the lack of union membership among part-timers was highlighted. The union did not want to help creating a secondary and non-unionised job market (FNV 1981). At this time, during a deep recession, unions wanted to fight unemployment and redistribute jobs through a *collective* reduction of the 40-hours working week. Dutch employers were adamantly opposed and advertised part-time work as a form of *individual* working time reduction with a proportionate cut in pay (RCO 1980). European trade unions, including the Dutch, saw part-time employment as undermining their strategy (Casey 1983; Visser 1985).

In the mid-1970s, the government, dominated by the Labour party, wanted to bring more women into paid employment as part of its new 'emancipation' policy. The Ministry of Interior promoted part-time jobs as a way to enable female civil servants to continue their career after motherhood. Soon, this policy fell victim of the austerity policies of the centre-right government (1977-1981). Ministers of Social Affairs and Employment invariably promoted part-time jobs as a job-rationing device in fighting youth unemployment which reached dramatic proportions in the late 70s and early 80s. Employers received a subsidy if they split one full-time in two part-time jobs. Workers switching to part-time jobs could qualify for a temporary wage supplement. In 1982 the program was stopped for lack of success. The major Dutch study dealing with the 1976-1983 period, 'doubts whether, on balance, there is a government policy stimulating part-time employment' (Leijnse 1985: 32).

3.2 The Wassenaar Agreement: a turning point

In November 1982 the central organizations of trade unions and employers, cooperating in the Foundation of Labour (*Stichting van de Arbeid*, StAr), a joint institution founded in 1945 for the purpose of co-operation over wages and other labour issues, concluded, unexpectedly, a central agreement. This agreement of Wassenaar has been celebrated as the beginning of a new era in Dutch labour relations (Visser and Hemerijck 1997). The trade unions offered wage restraint and employers' organizations lifted their veto against a general round of working-time reduction. The agreement itself mentioned various options for work sharing, including early retirement and part-time employment. However, between 1983 and 1986 the

unions obtained an average reduction of working hours from 40 to 38 weekly hours. The reduction took mostly the form of extra days off per year and corresponded with a reduction of business hours (de Lange 1988). In 1985, the central union leadership wanted a reduction to 36 weekly working hours in order to absorb the still high level of unemployment. But employers wanted no more and the unions were divided (Visser 1989). Once the economy started to move out of recession their members wanted improved earnings.

As a result, the campaign for a collective reduction of working time died. Until 1993, when the unions launched a second campaign in response to the mini-recession of 1992-1993, working hours hardly changed. Nearly all job redistribution took the form of part-time work and part-time employment became the 'job motor' of the Dutch economy in the 1980s (CPB 1991).

We can interpret this outcome as reflecting the balance of forces between unions and employers. Unions had lost one-sixth of their members and more than 20 percent of the remaining membership was unemployed or on benefits in 1985; mass unemployment had sapped union resources and confidence. Before and after the Wassenaar agreement employers promoted part-time jobs as their preferred solution (RCO 1983). With the arrival of large cohorts of young and female workers, employers easily outplayed the unions. Especially where wages are strongly related to experience and seniority, and new technologies favour new skills and devalue experience, there are large gains in productivity and costs from the exchange of 'young' for 'old'. Fearing a lost generation, scarred by youth unemployment, this choice was backed by the centre-right governments of the 1980s. The labour supply decisions of (married) women were informed by the recession rather than by union policies or feminist preferences. Fewer women took the risk of temporarily withdrawing from the labour market. Consequently, more women tried to retain their job, possibly through reduced hours when confronted with the need to combine work and motherhood. Paradoxically, these supply forces agreed with decreasing labour demand, especially in the public sector: local government, health and education.

The demand for flexibility and part-time jobs rose as an unintended consequence of the campaign for reduced working hours. When the economy recovered, employers tried to 'buy back' leisure time. The unions resisted attempts at monetarisation and rising overtime hours as well as they could, but conceded the annualisation of working hours, offering increased flexibility throughout the month or year (Tijdens 1998b). Working and business operating hours, having contracted in parallel movements until the mid 1980s, began to diverge. After a secular decline in business opening hours in services, a reverse movement set in during the 1990s, leading to longer opening hours, including evenings, weekends and even Sundays. This development is itself stimulated by reduced working hours, part-time employment and the dual earners economy. Increasingly, in the view of employers part-time jobs are needed as

an ‘optimalising’ manpower tool, i.e. as a means to meet extra demand, the opening of a new labour reservoir, to help to match working and business hours and to limit costs related to overtime (SZW 1991).

In the 1990s the male breadwinner lost his once dominant position in the Dutch labour market. With some delay, he was also losing terrain in the unions. The fact that, in contrast to the situation in many European countries, part-time work in the Netherlands is mostly voluntary, helps explain the singular position of the Dutch unions in the European union spectrum. In Eurostat surveys, the Netherlands shows as the country with the lowest share of involuntary part-time work (Rubery *et al.* 1999, table 7.5). According to Eurobarometer data, analysed by Schulze Buschoff (1999), part-time work is evaluated more positively by Dutch women than by their sisters elsewhere in Europe (with the exception of Denmark) as regards contractual status, tenure, perceived career chances, job satisfaction and social security, though on all these aspects part-time jobs attract lower scores than full-time jobs even in the Netherlands. In the 1990s the new union approach gained support from the Centre-Left (1989-94) and Lib-Lab (1994-1998 and 1998-2002) governments, which saw the promotion of part-time jobs as a contribution to their newly discovered objective of an active welfare state based on increased labour market participation (Visser and Hemerijck 1997).

In the Dutch consultation economy, central organizations, especially employers, have an incentive to stay ahead of legislation. That way they hope to wield more influence over the regulations that be and to demonstrate their importance to member organizations and firms. In 1989 the Foundation of labour (StAr) published a ‘joint opinion’ and four years later a major agreement was reached, pre-empting legislation. Noting that part-time employment had expanded rapidly, the social partners agreed that ‘a halt in this development should be prevented’, something that ‘might happen if part-time work remains concentrated in a limited number of sectors and jobs, or if small part-time jobs produces too limited income and career prospects’. The StAr recommended that collective bargainers ‘shall improve standards’ and ‘that firms recognise a qualified right for full-time employees to work reduced hours, unless this cannot reasonably be granted on grounds of conflicting business interests’ (StAr 1993).

From 1990 to 1996 the percentage of firms with a *part-time clause* in the collective agreement increased from 23 to 70 percent (StAr 1997). Yet, the largest union federation, the Federation of Dutch Trade Unions (*Federatie Nederlandse Vakbeweging*, FNV) criticised that too few firms had fully adopted the Foundation’s recommendation. In some sectors *waiting lists* for employees who wanted to work part-time appeared (Tijdens 1998a). An initiative bill to institute a statutory right to work part-time was narrowly rejected by Parliament in 1996, but new proposals resulted in legislation effective from July 2000, as will be described in the next section.

In the past decade part-time jobs have become common, for women. Part-time jobs exist in two of three firms with ten or more employees (StAr 1997). In the 1990s, owing to legal and contractual changes, and public encouragement, part-time work has diffused beyond the traditional occupations related to sales, cleaning, teaching, nursing and catering. In the 1990s the Dutch labour market combined a *high incidence* of part-time work with a comparatively *small divergence* in occupational profiles between full-timers and part-timers (Fagan et al. 2000, table 2).

Including this section, we observe that part-time jobs in the Netherlands are *neither atypical nor flexible*, though the diffusion of part-time jobs is likely to have increased the aggregate flexibility of the Dutch labour market, bringing in more women and leading to changing working patterns. Flexibility may however be limited by the time schedules of schools, nurseries and day services. By far most part-time employees are covered by collective agreements and 81 per cent of all part-time jobs, compared to 91 per cent of all full-time jobs in 1998 were standard jobs of indeterminate length, subject to full dismissal protection. Less protected, flexible part-time jobs, of determinate length, are mostly those of very small hours (0-11 hours weekly), located in catering, cleaning and retailing, and held by young people (male or female), re-entering women without formal education, and students. Slightly more part-time (52 per cent) than full-time (49 per cent) employees work irregular hours or during evenings, nights, or weekends, but nearly all have a written contract telling how many and which hours to work (Visser and Van Rij 1999). As a rule, part-time workers pay *pro rata* social insurance contributions in exchange for *pro rata* entitlements. We will return to this in more detail in the next section.

The 'normalisation' of part-time is supported by the current process of 'negotiated flexibility' in working-time regimes, encouraged by the 'New Course' central agreement of 1993. That agreement combined wage moderation with tax reduction, rising labour market participation (of females and older males) and working time reduction by allowing more differentiation between workers or firms, and more decentralisation of decision-making (Visser 1998). Childcare facilities remain a crucial factor. Demand for childcare has grown steadily but it took until 1987 before unions, under pressure of female members, began to negotiate childcare facilities in collective agreements (Tijdens *et al.* 2000). However, notwithstanding enhanced government and private efforts the demand for childcare still outweighs supply and will continue to do so in the next years.

4. Legal regulation of part-time work

4.1 Statutory legislation

In current Dutch law, the *pro rata temporis*-principle is strictly applied to part-time workers. This holds true not only for the position of the employee under civil law, but also for social security legislation. The Dutch regulation of part-time work at the end of the 1990s was ahead of legal developments in most other European countries. As a consequence, neither European legislation and policy – notably the EU Directive on part-time work² -, nor the rulings by the European Court of Justice have led to major changes in Dutch law. However, note should be taken of the 1994 ILO Convention no. 175 and Recommendation 182 (also adopted in 1994) relating to part-time workers. The ILO's intention in concluding this Convention is to grant full status to part-time work. The Convention contains stipulations concerning matters such as legal protection for part-time workers, equal treatment, social security and leave. The treaty also stipulates that steps must be taken to make part-time work more easily accessible. This could e.g. involve removing hindrances in legislation and regulation or introducing measures in the area of job seeking. Where applicable, steps must also be taken to enable adjustment of working hours (from full-time to part-time and vice versa). No more than nine countries have ratified this Convention to date. Contrary to what one might expect the Netherlands was not among the first countries to ratify the Convention ILO (as a matter of fact, Mauritius, Guyana and Finland were ahead). This was due to uncertainty about the implications for existing Dutch law. Ratification finally took place on 5 February 2001 in the process of drafting the new law on the Adjustment of Working Hours, which will be discussed below.³

Two laws in particular are relevant to part-time workers: the Prohibition of Discrimination by Working Hours Act (*Wet Verbod onderscheid arbeidsduur*, WVOA) and the Adjustment of Working Hours Act (*Wet Aanpassing Arbeidsduur*, WAA).

² Pb. L. 14/9, Directive 97/81/EC. The EU Directive implements the framework agreement on part-time work concluded between the employers' organisations UNICE and CEEP and the European Trade Union Confederation (ETUC) in June 1997. The objectives of this agreement are to promote equal treatment of part-time workers, to improve the quality of part-time jobs and to promote part-time work and the flexible organisation of working hours. Equal treatment is the norm; unequal treatment needs to be justified on objective grounds. The member states and social partners will engage in identifying the existing obstacles to the growth of part-time work, and to remove them where appropriate.

³ See *Parliamentary document* no. 27512.

The Prohibition of Discrimination by Working Hours Act (WVOA)

The Prohibition of Discrimination by Working Hours Act came into effect on 1 November 1996. One of the consequences of its introduction was the addition of Article 7:648 to the Dutch Civil Code. Article 7:648 forbids employers to discriminate between employees on the basis of a difference in working hours in the conditions under which those employees enter, extend or terminate a contract of employment, unless there is objective justification for such discrimination. Clauses that conflict with this ban are void. If the employer terminates the contract in contravention of the ban, or terminates it because the employee has invoked this ban, the termination is subject to annulment. The same ban also applies to government employers, now that a stipulation to the same effect has been incorporated into Article 125g of the Central and Local Government Personnel Act.

The Equal Treatment Committee, which already had the task of dealing with cases of discrimination on the grounds of race, sex, et cetera., is also responsible for supervising compliance with the ban on discrimination on the grounds of working hours. Some judgements of this committee will be discussed below.

Adjustment of Working Hours Act (WAA)

More important is the Adjustment of Working Hours Act, which came into force on the 1st of June 2000. This Act is the result of nearly nine years of political negotiation. It represents a very high-profile piece of legislation as it lends employees the right, be it under certain conditions, to unilaterally alter the terms of an already existing employment contract. This deviation from regular (labour) contract theory has provoked some severe criticism from labour lawyers.

The establishment of a statutory right to part-time work has played a very prominent role in parliamentary debate since June 1993, when the Green Left Party sought to introduce a new legal right to part-time employment through a so-called initiative bill.⁴ This proposal was discussed extensively and it took until 1996 before a Lower House majority was prepared to support a watered-down version of the original proposal. When no Upper House majority could be obtained for this proposal, the Green Left Party introduced a second initiative bill.⁵

⁴ *Parliamentary Documents II* 1992-1993, no. 23 216.

⁵ *Parliamentary Documents II* 1997-1998, 25 902, no. 1-3. This time the proposal was introduced in co-operation with the Labour Party (*Partij van de Arbeid*) and the Social Liberal Party (*D66*), both part of the governing coalition since 1994. This time the bill included an amendment of the Working

That proposal was presented to the Lower House in February 1998, and was quickly followed by a legislative proposal introduced by Christian Democrats (*CDA*), the other main opposition party at the time, in April 1998.⁶ That same year, after the elections, while the government was being formed, it appeared that the new government, based on the same coalition as the outgoing government, wished to advance a legislative proposal on the right for workers to adjust his or her working hours. Finally, on 23 December 1998, this proposal was presented to the Lower House.⁷ Subsequently, the proposal was accepted on 19 February 2000 by the Upper House. The WAA came into force on 1 June 2000.

This law is part of the Work and Care Framework Act (*Wet Arbeid en Zorg*), which became in force on 1 December 2001. It is generally acknowledged that the combination and balancing of work and care obligations is a difficult one. The new WAA contains a right to the adjustment of working hours, a right that has a broader scope than just the right to part-time work. It includes the right both to a reduction *and* to an extension of working hours. In this paper the emphasis will be on the right to the reduction of working hours, since this can be seen as a right to work part-time (Kuip and Verhulp, 2000: 5).

The Explanatory Policy Document to the Working Hours Amendment Act emphasises that, firstly, regulation of the new rights are expected to increase the supply of labour. Secondly, it should lead to improved scope for combining paid work with other responsibilities. This thought was expressed as follows by the Secretary of State: “Therefore, it is about economical independence, the goal of equality of opportunity, to enhance the share of men in care, which is related to it, and about the necessity to strike a balance between work and private life in every life phase.”⁸ This approach is different from the classical approach in Dutch labour law. Traditionally, compensation for social inequality was the main goal of labour law (Betten, 1997), now the possibility to combine work with care has been promoted into one of the leading principles. Of course, there is a relation with compensation for inequality, but the WAA is mainly about amending working hours to the wishes of the employee, taking into account his personal circumstances, which include his or her care and family obligations (Kuip and Verhulp, 2000: 6). Finally, the government contends that the emergence of more

Hours Act, in connection with the desirability of encouraging part-time work and the further differentiation working hours patterns.

⁶ *Parliamentary Documents II* 1997-1998, 26 009, no. 1-3. Legislative proposal implying changes to the Civil Code and a number of other laws in order to lay down rules with respect to the combination of work and care.

⁷ *Parliamentary Documents II* 1998-1999, 26 358.

⁸ *Parliamentary Documents I* 1998/99, 26 358.

differentiated patterns of work “(can) fit in very well with companies’ need for greater flexibility.”⁹

The 1996 Working Hours Act (*Arbeidstijdenwet*), which replaced the 1919 Labour Act, was based on similar arguments. The 1996 Act sets wider margins for normal and maximum working hours, and allows deviation from statutory norms, within given boundaries, if there is a formal agreement with the unions or the works council (existing in firms with fifty or more employees). In its introduction, the Act considers that in a dual earning economy, employees must be able to combine work and care, and therefore find variable and personal solutions in matters of working time.

One may wonder why a legal and basically unilateral right to adjust working hours was established in a country that already displayed the highest part-time work rates in the world. The main explanation lies in the fact that part-time work rates among Dutch men are still significantly lower – despite men’s wishes for reducing working-time – than among Dutch women and that this unbalance was believed to restrict the possibilities for women in combining work and care responsibilities, developing their careers, and creating greater gender equality. Furthermore, legal regulation often operates as a “sag wagon” that provides rights to groups that have not already been granted these rights by collective or other agreements. Strengthening the hand of men in negotiating shorter hours with their line managers was believed to help women in their negotiations at home.

The new Adjustment of Working Hours Act applies to employees who are employed on the basis of a contract of employment as defined in Article 7:610 of the Civil Code, and also to those who are employed in the service of an administrative body by virtue of an appointment under public law (Article 1 of the WAA). The essence of this regulation is that an employee’s request for modification of his or her working hours must be granted by the employer, unless conflicting business or departmental interests apply.¹⁰

The WAA is remarkable for its detailed nature regarding terms and procedures. The employee is to file a request four months before the expected date from which the employee wants to work part-time; he or she must be employed for at least one year; the request can be repeated once every two years; the request must be in writing; the employer must consult the employee and give a written and well-reasoned response et cetera. In addition to the norm on conflicting business or departmental interests the law contains two more general or “open” norms, i.e. one on the fairness regarding the division of hours (Article 2, section 6) and, finally, the one on “good employership” and “good employeeship” stemming from general labour law.

⁹ *Parliamentary Documents II* 1998-1999, 26 358, no. 3, p. 7.

¹⁰ Article 2 of the WAA.

The law is also complicated. With respect to the shortening of working hours less possibilities exist to deviate by collective agreement from the legal rule than in case of the extension of working hours. In case a collective agreement does *not* contain *any* provision on the extension of working hours an individual employer in this sector may agree with the works council or personnel representation to exclude or alter the right to extension of working hours. Therefore trade unions may wish to include a provision in collective agreements stipulating that it is not allowed to deviate from the legal regulation of extension of working hours. In that case the works council is no longer competent in this area.

Finally, Article 2, section 12 stipulates that this article does not apply to firms, establishments or organisations with less than ten employees. This does not mean that there is no right to shorter or longer working hours in these organisations. These organisations must establish their own regulation regarding the adjustment of working hours. According to the Minister this implies that this regulation cannot deviate from the legal regulation pertaining to shorter working hours. However, requests dealing with shorter working hours could be excluded by the company collective agreement (if the company has such a collective agreement as opposed a sectoral collective agreement).¹¹ It is not unlikely that judges will adopt a different interpretation as Article 2, section 12 leaves small-sized businesses entirely free in determining the contents of the company regulation by stating that Article 2 does not apply. As no requirements apply to the *contents* of the regulation a regulation that simply states that there is no regulation does seem legitimate.

Regarding the interpretation of the norm “unless conflicting business or departmental interests apply” the law does not include a restrictive list. For reasons of clarification the Secretary of State has made an selection of relevant case law, included in a letter to the Lower House of Parliament.¹² One of the cases concerned the request of a pilot, working for KLM, to reduce his working week to 50 percent. The Amsterdam Court decided that KLM had rightly refused the pilot’s request, since for the safety of the pilot and the passengers it was necessary for the pilot to fly on a regular basis. According to KLM, a working week of 80 percent of a full-time working week would be the absolute minimum.

Box 1 contains a short overview of the legally regulated terms of employment and social security for part-time work in the Netherlands. From this overview it can be derived that the legal position the part-time worker is similar to that of a full-time employee.

¹¹ *Parliamentary Documents I* 1999-2000, pp.634-635.

¹² *Parliamentary Documents II* 1998-1999, 26 358, nr. 25.

Box 1

*Legally regulated terms of employment and social security for part-time work in the Netherlands*¹³

Salary

Persons who do the same kind of work should receive the same (gross) hourly wage regardless of working time. As from January 1 1993 all employees are entitled to a (proportional) salary based on the legal minimum wage regardless of working time.

Holidays

A part-time worker is entitled to the same number of days off as full-time workers, in proportion to the hours he or she works. For example, if somebody working full-time gets twenty full free days a year, somebody working half-time gets twenty half free days a year. According to the Civil Code the minimum holiday entitlement is four times the average working hours per week, which amounts to twenty days for a full-timer; collective agreements generally grant approximately twenty-five days a year.

Probationary period

The maximum is two months for permanent contracts and possibly shorter for fixed-term contracts, but this is regardless of working time.

Dismissal law

This is exactly the same for all workers regardless of working time.

Special leave

In principle a part-time worker is entitled to special leave in the same cases as full-time workers. Divergence from this principle could be justified if the activities could also be planned in the free time of the part-time worker. If a bank holiday falls in the time that a part-time worker is not working, he/she can not claim a free day at some other time.

Parental leave

On the basis of the Parental Leave Act persons employed by the same employer for a year or more are entitled to unpaid part-time leave. As a consequence of the 2001 Work and Care Framework Act employees working 20 hours or less are no longer excluded from this possibility (employees, part-time workers included, may reduced their weekly working hours up to 50 percent).

Overtime

There is no law on working overtime. Most collective agreements contain clauses regarding overtime and overtime pay. In accordance with European jurisprudence,¹⁴ it is not considered unequal treatment if on the basis of these clauses overtime pay is only granted if full-time working hours are exceeded. Nevertheless, social partners may have good reasons to grant

¹³ Taken from the Ministry of Social Affairs and Employment (SZW 1997: 17-20) and adapted by the authors.

¹⁴ ECJ 15 December 1994, C-399/92, *Jur.* 1994, p. I-5727.

overtime pay as soon as work is being done above the contractually agreed working hours (whether full-time or part-time).

Pensions

Under the General Old Age Pensions Act (*Algemene Ouderdomswet* - AOW) every person is provided with a monthly pension. On top of that, employees can, as a rule, build up additional pension within the company. There are about a thousand private pension schemes. In the first tier of the Dutch pension system entitlements were individualised, unrelated to earnings (covering about 40 percent of average wages) and based on citizenship, which is the system in which part-timers fare best. Hours limits for entry in occupational pension funds guaranteeing earnings-related pensions—the second tier—have been outlawed under the 1990 Pensions and Savings Act. If a wage limit is applied in pension schemes, wages of a part-time employee have to be converted to full-time level. A part-time employee acquires pension rights in proportion to the number of his/her working hours. In 1996, 91 percent of all Dutch workers were covered by occupational pensions, which, when fully matured, guarantee 70 percent of earnings. The ‘white spots’, without coverage, are seasonal workers, young people and women working flexible hours in low pay occupations.

Unemployment (Unemployment Insurance Act)

Part-time employees receive unemployment benefit for the same period of time and under the same conditions as a full-time employee based on 70 percent of their last-earned gross salary.

Sickness (Article 629 Civil Code)

Both part-time and full-time employees (either having a permanent or fixed-term contract) receive at least 70 percent of their gross salary in case of illness (but not less than the minimum wage, calculated proportionally for part-timers) paid by the employer for a period of one year.

Disability (Invalidity Insurance Act)

Part-time employees receive disability benefits for the same duration of time and under the same conditions as a full-time employee based on 70 percent of their last-earned income (if fully incapacitated) and depending on the age at which the said employee starts receiving this benefit.

Contributions for social security

The contributions paid for social-security insurance are usually calculated on the basis of a fixed percentage of pay or income. Working time does not play a role.

Health insurance

Up to a certain salary limit (in 2002: €59,700 a year) all employees are insured under the terms of the Compulsory Health Insurance Act which provides medical and dental care, hospital, nursing and other services. Above this limit employees have to insure themselves privately. There is no difference in the conditions that apply to part-time and full-time employees. Both pay the same percentage of their income plus the same nominal contribution.

Working conditions

Employers are legally obliged to apply the same safety regulations and measures at work for both part-time and full-time workers.

Working hours

The Working Hours Act (*Arbeidstijdenwet*) which came into force on 1 January 1996, includes an article regarding the obligation on the part of the employer to take into account the care duties

of his/her employees. This means that the employer has to take into consideration the wishes regarding working hours and patterns of the individual employees in his/her work-planning within reasonable limits. The importance of this Act has diminished since the WAA came into force in 2000.

Taxes

There are no specific or special measures in the tax system to encourage (or discourage) part-time work. As the tax system is based on progressive taxation for higher incomes, the net income losses in the case of part-time jobs are smaller than the gross reduction of income. The 1990 tax reform already reduced the basic tax allowance for breadwinners and integrated social security charges, thus lowering disincentives for second earners to take up more hours. The 2001 tax reform removed the remaining shared taxation components.

In addition to the conditions listed in Box 1, we should like to stress the role of the statutory minimum wage. A national minimum wages helps to narrow wage differentials between men and women, and between full-time and part-time employees (Blau and Kahn 1996; Roorda and Vogels 1997). The 1/3 rule, under which employees working less than one-third of full-time hours were denied coverage under the national minimum wage (and holiday payments) law, had been challenged by the unions in the 1980s and was finally repealed in 1993, following unanimous advice from the social partners. Similar exclusionary clauses in collective agreements have become unlawful under the WVOA (see above). Traditionally, fringe benefits and premium pay for overtime have been structured around full-time thresholds and in the case of overtime pay this is still mostly the case. In most collective agreements negotiators have agreed to remove or reconsider such thresholds concerning fringe benefits, but it is unclear how far they have succeeded.

4.2 Case law on part-time work

As we stated before, neither European law nor European employment policy has played an important role in establishing the rights of part-time workers. On a national level, some judgments have been passed on the WVOA and the WAA. Besides those, judges have been willing to grant a request to work part-time on the ground that the employer should behave like “a good employer” (Article 7:611 of the Civil Code).

There are almost no legal precedents based on the *The Prohibition of Discrimination by Working Hours Act (WVOA)*. In two cases where discrimination on the grounds of working hours was tested against the WVOA, the subdistrict court concluded that the discrimination that had taken place on the grounds of working hours was unjustified. One case concerned the continued payment of wages during illness, while the other concerned payment for overtime

incurred by part-time workers for the purposes of employee participation in consultation with management. The Central Social Security Tribunal, the highest judicial authority in the area of social security, issued a judgement on the question of contributions to medical expenses in proportion to working hours. The tribunal concluded that this did not contravene the WVOA.

Although the *Adjustment of Working Hours Act (WAA)* was introduced in the year 2000, the few cases that have been brought to court are consistent in their results. In almost all cases, the request for part-time work could not be refused by the employer. Judges seem to be aware of the meaning of the law as expressed by the government in the parliamentary documents. One could argue that the WAA leaves so little room for refusal of a request to work part-time, that consistency is inevitable.

In a few cases, the subdistrict court judge explicitly stated that the fact that granting the request of an employee to work part-time would impose extra costs on the employer (i.e. the costs of employing another person for the available hours) is not a ground for refusal.¹⁵ The argument that the employee – the director’s personal assistant - is “the spider in the web” who can’t be missed any day of the working week was of no avail to the employer. Creating a shared job would undoubtedly be a major switch and would cause inconvenience and financial sacrifices, but would not be impossible According to the parliamentary documents this is exactly the kind of request that should be granted.¹⁶ In several cases, the female employee who had done the request to work part-time had already worked part-time during her maternity leave and/or parental leave. Therefore, the employer had already been obliged to make arrangements to fill in the available hours. In all these cases, the judge found that the employer had no reason to refuse a request from the employee to work part-time after her leave.¹⁷

The WAA does not entail the right to merely change the organization or spread of the working hours without increasing or decreasing the total working hours per week. Therefore, a request to spread the 36-hours working week over four days of nine hours each (instead of five days of a little more than seven hours) did not have to be complied with by the employer.¹⁸ Decreasing the number of hours one works on a weekly basis also has consequences for the spreading of the remaining hours. As far as the spreading of the hours is concerned, it seems that judges are willing to leave the employer quite some discretion.¹⁹

¹⁵ Subdistrict Court of Zwolle, 12 October 2000, *KG* 2000, 235.

¹⁶ Subdistrict Court of Haarlem 12 May 2001, *JAR* 2001/117.

¹⁷ See for example: Subdistrict Court of Groningen 23 March 2001, *JAR* 2001/87.

¹⁸ Subdistrict Court of Amsterdam 2 May 2001, *JAR* 2001/113.

Good employership

Another way of effectuating the right to part-time work is to test an employer's refusal of an employee's request to work part-time against the norm of good employership specified in Article 7:611 of the Civil Code. Testing against this norm as far as part-time work is concerned is carried out when employees request partial dissolution of their contract of employment on the grounds of Article 7:685 of the Civil Code. This testing is also carried out when employees request the conversion of their existing full-time contract of employment into a part-time contract on the grounds of changed circumstances under Article 6:258 of the Civil Code. For example, in a case submitted to the Groenlo Subdistrict Court, a female employee wanted to change her working hours in view of changed family circumstances. Her employer insisted on the agreed working hours. In this context, the subdistrict court took the position that the requirements of good employership imply that if an employee makes a request to change his or her conditions of employment (such as working hours) in connection with changed family circumstances, the employer can be expected to look into this request seriously and to provide justification if the request is refused. However, it would appear from the judgements available that changes in working hours based on the principles of good employership and/or invocation of unforeseen circumstances under Article 6:258 of the Civil Code are not easy to enforce.

The Equal Treatment Committee

The Equal Treatment Committee is not a court of justice and therefore it cannot give any legally binding judgements. However, its opinions are highly valued and often followed. Between 1 November 1996 and 1 November 1998 – the first two years since the introduction of the WOA - the Equal Treatment Committee dealt with twenty five cases in which it was required to arbitrate on discrimination on the grounds of working hours.²⁰ In seventeen cases, the Committee was asked to arbitrate by an employee; in five cases, the request for arbitration came from the employee responsible for arranging the terms of employment; in two cases, it came from a works council; and in just one case, the Committee initiated a study on its own accord.

¹⁹ See for an overview of the case law with respect to the WAA: Van der Putte, 2001, Willemsen, 2001 and Van der Heijden, 2001: 15-17.

²⁰ In the year 2000, only seven cases came before the committee.

The Committee is of the opinion that where the conditions of periodic salary payments are at stake, these payments should be made on a pro rata basis. Where exceptional financial benefits are at stake, the most appropriate treatment will depend on the condition of employment in question. To date, the committee has not accepted purely financial arguments as grounds for objective justification. In principle, therefore, part-time workers should not be treated less favourably than their (comparable) colleagues in full-time employment. This rule also implies that (female) part-time workers no longer have to rely on the indirect legislation provided in the Equal Opportunities Act (Articles 7:646 and 7:647 of the Civil Code). However, this does not mean that the legal precedents that have emerged under this law have lost their relevance to part-time workers. Discrimination on the grounds of working hours that is considered discrimination between men and women will usually also constitute illegal discrimination on the grounds of working hours. However, not all unlawful discrimination on the grounds of working hours also constitutes a breach of the Equal Opportunities Act. Male employees can now also invoke Article 7:648 of the Civil Code (or Article 125g of the Central and Local Government Personnel Act) if their employers maintain an unlawful distinction on the grounds of working hours between them and their colleagues in full-time employment.

5. Conclusions

In the Netherlands it was a *latecomers' advantage* that part-time work was appreciated by most women, notably married women, who made that choice as progress compared to the alternative of withdrawal, since it generated extra earnings and household spending power, some (limited) economic independence and the possibility of providing care to their children (rather than relying full-time on external childcare facilities). In countries like France and Belgium, where a tradition of full-time working married women existed, part-time work, proposed as a means to redistribute jobs in a period of high unemployment, was more likely evaluated as a retrograde step. Remarkably, women's changing preferences matched labour market and business needs, not only in times of economic upturn but also in times of economic downturn in the 1980s and 1990s.

Institutions and policy-makers were at first slow and reluctant to support and facilitate the rise of part-time work but this changed in the early 1980s. Regulations, including collective bargaining agreements, which had been favouring the traditional breadwinner model over a period of fifty to hundred years, started to catch up as well in the same period and went "all the way" in removing labour law and social security barriers to part-time work, thus bringing part-time workers on an equal footing with their full-time colleagues. A major shift occurred

from the traditional breadwinner model towards a so-called dual breadwinner/dual career model (Pfau-Effinger, 1998: 177-178).

Nowadays, part-time work in the Netherlands is regulated, both in statutory law and in collective labour agreements, in such a way that it can more accurately be described as typical than as atypical employment. In fact, the upshot of this paper is that in the Netherlands part-time employment has become more or less normalised. The Netherlands indeed can be referred to as a part-time economy. Part-time work is seen as an adequate instrument for dividing paid and unpaid work fairly between men and women. A part-time economy, however, does not constitute a part-time *paradise*. Institutions, policies and new entitlements and legal regulation have so far not fundamentally altered company cultures and HRM practices. Many men are still hesitant in reducing or adjusting their working hours (Grunell, 2002) and many women are facing limited prospects and find it hard to build up a high profile career. The number of women in the highest job ladders within companies has only slightly increased over the last two years, with the health care sector and the judiciary as prominent exceptions (Opportunity in Bedrijf and SCP, 2002).

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