

# POLICY BRIEF **NETHERLANDS**



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## *RECOVER IN BRIEF*

Funded by the European Commission DG Employment, Social Affairs and Inclusion and involving 5 European partners, the RECOVER project analyses whether and how the growth in outsourcing and subcontracting is triggering coverage problems for workers in these outsourced services. The project will accordingly compare cases of collective bargaining coverage gaps in outsourced services at sectoral and company level in six countries.

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### **KEY MESSAGES**

- It is difficult to estimate the magnitude of outsourcing due to a lack of data. Nonetheless, the number of outsourced workers can reasonably be said to be substantial.
- The most important predictors of collective bargaining coverage of outsourced workers is first, whether the outsourced services fall clearly within a sector identified by social partners for collective bargaining, and second, whether there exists an extended sectoral agreement in that sector.
- Important challenges to coverage are companies splitting up activities into multiple legal entities (although this may also be an opportunity to initiate sectoral bargaining), the fragmentation of workers along supply or service chains, privatisation (at least in employment services), and the domination of self-employed and small and medium enterprises in the provision of certain services.
- The most important challenge to job security for outsourced workers is the dynamics surrounding recurrent tendering and contracting.
- We propose taking a comprehensive approach towards supply and service chains, with cross-sectoral cooperation between employers and social partners, to address these issues.

## DEFINING OUTSOURCING IN THE COUNTRY

Following the definition of outsourcing for this project, outsourcing in the Netherlands is sought in the organisational decentralisation of processes or functions that are not part of the company's core activities to external suppliers. Offshoring is not considered part of this definition.

There are very few data on the magnitude of outsourcing in the Netherlands. The most relevant data, based on employer surveys, only say something about the share of organisations to have recently engaged in outsourcing, but not the magnitude of outsourcing. Two studies based on different surveys found that 11.9% of surveyed companies had engaged in domestic outsourcing of support services over the period 2001 – 2006 (Möhlmann & de Groot 2013), and 6.7% in the period 2014 – 2016 (Dekker 2016), but differences in definitions makes it impossible to identify a trend.

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In a similar vein, data for the 'value of contracted services directly related to turnover' (i.e. transportation and other services) in the private sector between 2009 and 2016 collected by Statistics Netherlands show no clear trend in the development of these costs, remaining roughly the same except for a dip between 2012 and 2014 (CBS 2018). These numbers however are limited to only a few subsectors<sup>1</sup>. Nonetheless, it is clear that outsourcing is taking place, and considering the cumulative effect of firms outsourcing services at any

point in time (except in situations where there is subsequent insourcing), it is likely that the group of outsourced workers as defined in this study is growing.

What the 2013 study does show is the kinds of services most frequently outsourced: ICT services, administrative and management functions, and distribution and logistics. To a lesser extent, marketing, sales and aftersale services, engineering and technical services, R&D, and 'other' services are outsourced (Möhlmann & de Groot 2013). Persons working in occupations in the top three kinds of outsourced services consistently represented around 35% of the working population in 2003 - 2017 (CBS 2018). This means that outsourced workers can be expected to represent a sizeable chunk of the working population, making it important to study the conditions under which they work. Collective bargaining coverage is particularly interesting because of the dominance of the sectoral level in collective bargaining in the Netherlands and the 'sectoral blurring' that occurs with outsourcing.

## COLLECTIVE BARGAINING COVERAGE

Collective bargaining coverage among the overall Dutch working population remains high, consistently hovering around 80% of employees. Although there are no specific data, there is no reason to believe that this is necessarily different for outsourced workers. Whether outsourced workers are covered by a collective bargaining agreement (CBA) depends on whether the company they work for directly falls under a sectoral CBA, has its own company CBA, or has neither.

For the popularly outsourced services listed above, the most easily identifiable sectors are ICT and logistics, of which logistics has no sectoral CBA (however, see the section on Logistical services) and ICT has one that is not extended over the entire sector, and both further have some companies with company-level CBAs. Furthermore, some subsectors of the services listed above have sectoral CBAs, e.g. cleaning (extended), contract catering

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<sup>1</sup> Extraction of raw materials, industry, energy, water and waste, construction.

(extended), and call centres (not extended). Finally, some services are not directly related to a sector as identified by social partners for collective bargaining and may therefore be provided by companies falling under a variety of sectors. R&D, for example, may be conducted by companies in the private sector not covered by a sectoral CBA or by institutes in universities covered by the university sectoral CBA.

As can be seen, coverage of outsourced workers is rather fragmented and equivocal. There is no explicit regulation of work done by outsourced workers beyond what applies to transfers of undertaking, and social partners therefore tend to respond either in rather ad hoc ways (e.g. in logistics), or in a more structured manner only in those sectors which align with activities which are typically outsourced (e.g. in facility management).

## **FROM SECTORS TO ACTIVITIES: CHANGING FOCUS TO ANALYSE OUTSOURCING**

As seen above, sectors as identified by social partners for the purpose of collective bargaining are not organised along the same lines as services and occupations that are popularly outsourced. Any given type of outsourced service may fall under none or several different sectors, making the traditional focus on sectoral distinctions less useful to study collective bargaining coverage of outsourced workers. For this reason this project has chosen to focus on activities rather than sectors.

For the Netherlands, we have chosen logistical services and employment reintegration services as activities to study more closely. Logistical services were chosen for its significant share in employment (roughly 5%) and the great fragmentation of collective bargaining coverage of workers carrying out these activities. Employment reintegration services concern a much smaller share of the working population, but were chosen to study the impact of public policy on the dynamics of outsourcing and collective bargaining coverage.

### **Activity 1: Supply chain challenges in logistical services**

The logistical services sector as studied in this project excludes transport and focuses on services such as warehousing and distribution. Important users of these services are companies in manufacturing, wholesale and retail. Employment in logistics amounted to nearly 900,000 persons in 2014, or about 5% of employment in the Netherlands. Roughly 20% of these workers worked for transport and logistics companies, which means they were outsourced, whereas roughly 80% provided these services in-house for manufacturing and other companies. There are no signs indicating a trend towards increased outsourcing.

A small share of outsourced workers is covered by company-level agreements. A further small share is covered by the sectoral transport and logistics CBA, which has been legally extended to cover the whole sector. Its name is somewhat misleading, because it only binds companies which have transport as their main activity, and covers logistics workers only when they are employed by such a company which *also* offers logistical services. Moreover, the employers' association indicated that there has been a trend among these companies to split their activities into different legal entities, so that employees in logistics are no longer covered. It is therefore safe to say that the majority of outsourced workers in logistics is not covered by a CBA.

The only incentive for employers in this sector to bargain at sectoral level would be if they were quite sure the sectoral CBA would be legally extended, which means they must organise employers together employing at least 60% employees in this sector. This is unlikely to happen because of the large number of small and medium-sized companies (SMEs).

On the employee side, trade unions face a number of challenges. First, high worker turnover and high share of temporary agency workers make it difficult to organise workers. Organising is further complicated by the periodic expiration of contracts between suppliers and contractors. Furthermore, in a chain of outsourced

services it is difficult to determine at which link bargaining would be most effective. One strategy employed by the main Dutch union federation has been for union officials to cooperate along supply or service chains rather than isolating themselves into sectors; an example of sectoral blurring in union strategy. This helps to identify the most powerful parties to negotiate with, which is usually the end user of the services, as they ultimately set the prices and are generally more sensitive to public pressure. One way to do this was calling out the end user on the Combating Fraudulent Employment Act (WAS), which makes the end user ultimately responsible for payment of wages and social premiums along the service chain.

### **Activity 2: Public policy-led dynamics in employment services**

In the Netherlands, employment services (defined here as labour market (re)integration support for unemployed persons or persons with some distance to the labour market) are provided by the Public Employment Agency (UWV), municipalities, and private companies. The public bodies provide services to benefits recipients. Private companies provide services to employers who purchase them for their employees, to the earlier-mentioned public bodies that purchase them for benefits recipients, and to a limited extent directly to individuals. Employers are important purchasers of employment services because of legislation making them responsible for the re-integration into the labour market of sick or partially work-incapacitated employees.

An estimated 37,000 persons work for private companies in this sector. Since private companies are nearly always contracted by UWV, municipalities and employers, we may speak of outsourcing for virtually all of them. Because of the lack of a sectoral CBA and the large share of self-employed persons and SMEs, only a small share of employees is covered: those of the largest companies with company-level CBAs. The estimated 5,000 persons providing employment services in the UWV and 6,000 in

the municipalities are non-outsourced. For these public sector employees, coverage is 100%.

The UWV was the sole provider of employment services until the 1990s, when employment services were privatised. Private sector companies then mushroomed, as both UWV and municipalities were required to purchase these services for their target groups. Purchasing was limited again by letting go of this requirement and restricting situations in which purchasing services were allowed, related to severe budget cuts for employment services in 2005 and 2011. Such developments severely impact both employment levels and coverage dynamics (high in public, low in private sector). From a coverage perspective it seems most desirable for services to be provided by the public bodies, but this is difficult for trade unions to affect. Moreover, the professional association in this sector is unlikely to support such a policy as it would imply loss of work for its members.

## **FACILITY MANAGEMENT COMPANY**

The multi-services facility management (FM) company is an interesting case to study gaps and clashes in collective bargaining because it operates in a variety of sectors and combines activities for which different sectoral CBAs exist in the Netherlands: cleaning, catering, and security. It is therefore also an excellent example of sectoral blurring.

The largest FM companies offering multi-services have become important employers, together employing nearly 30,000 persons. The majority of their employees are covered by two sectoral CBAs: the cleaning CBA and contract catering CBA. Both have been legally extended to cover the entire sector. The security services CBA could apply to some of their activities as well, but this CBA has not been extended, which means FM companies need not adhere to it.

In order to deal with the multiple applicable CBAs, the company in our case study has organised its activities

subject to different CBAs under different legal entities, so that each legal entity is covered by one CBA (i.e. either cleaning or catering), which is common practice among the large FM companies. Activities that do not fall under any of these CBAs such as reception services and higher management positions are again organised in separate legal entities. Some 'hybrid' activities that could fall under several of the sectoral agreements have come to be written into the job descriptions in the sectoral CBAs during periodic reviews of the job descriptions, a negotiated process between the social partners in each sector. Whether a given 'hybrid' employee falls under one or the other CBA is mostly a matter of history: according to one employer association's representative, a company tends to stick to the sector they were in before diversifying activities.

All of this means that within the same FM company and on a single work site, employees are working under different employment conditions, including stipulations for wages and compensation for travel costs. It also means that though the majority of employees is covered by one CBA or another, there are those who are not covered by any. Although wages do not differ much, there is an important difference in job security. When a company loses a client in a new round of tendering, the CBAs have stipulations about the winner of the new tender taking on the employees working for the client under the previous tender. This means catering and cleaning workers become employees of the new winner almost automatically but others do not, leading to a form of job security typical for outsourced workers employed by organisations competing in tenders.

A potential solution for differentiated working conditions is a single employer CBA. This was rejected by the employer in our case study because of the complications involved in applying for an exemption from the sectoral CBAs. Moreover, the company CBA would have to improve on conditions in both CBAs, making it difficult to remain cost-competitive. The existence of extended sectoral CBAs therefore on the one hand forms a powerful tool for protection of outsourced workers in

these sub-sectors, but at the same time inhibit the inclusion of workers outside the scope of these sectors.

Finally, the exposure to tendering dynamics typical for outsourcing puts considerable pressure on costs. To counter the pressure on labour costs, the social partners in the cleaning sector, together with a number of large public and semi-public clients, initiated the 'Code for Responsible Market Behaviour', a voluntary code of conduct for employers and client companies underscoring that contracts will be awarded based on more than price alone. It is one way in which social partners have attempted to improve working conditions for their workers in outsourced activities by reaching out beyond employers to the end users of their services.

## RECOVER PROPOSES...

First of all, we propose to take a comprehensive service or supply chain approach, which spans both different employer-employee relationships and different sectors. By cooperating cross-sectorally, trade unions can put pressure on the party in the chain with most power to affect changes. Moreover, unions can forge alliances with employers in the chain, together putting pressure on end users or by jointly formulating a code of conduct.

Secondly, the fragmentation of companies into legal entities following sector lines could, on the one hand, be addressed by rethinking the applicability of CBA's to span entire corporate groups, although this is likely to be a long and complicated process. On the other hand, it may be seen as an opportunity: a case of 'unblurring' of sectoral lines, making bargaining with that sector more viable. However, as collective bargaining would only be attractive if a CBA is likely to be extended, it will be important to target the largest companies in that sector in order to reach the 60% threshold.

Finally, addressing job security in tendering and contracting, it is advisable to consider national legislation regulating the transition of workers from one contracted party to the next.

## RESEARCH TEAM

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This policy brief is based on the final phase of the RECOVER project and is available on the RECOVER website,

<http://pagines.uab.cat/recoverproject/en/content/national-policy-briefs>

## PROJECT IDENTITY

### PROJECT NAME

Relaunching Collective Bargaining in Outsourced Services  
– RECOVER

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## WEBSITE & SOCIAL NETWORKS

Webpage: <http://pagines.uab.cat/recoverproject/en>