The binding effect of Collective Labour Agreements in the Netherlands

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1. The binding effect of collective labour agreements

1.1 The legal basis for (the right to) collective labour law

1.1.1 The legal basis for the right to collective bargaining

The right to collective bargaining is not governed by Dutch legislation nor is it explicitly mentioned in the Dutch constitution. Article 8 of the Dutch constitution features the right to association, but this does not directly govern collective bargaining. However, in regards to the right to collective bargaining in the Netherlands several international treaties are relevant. For the right to establish a labour union Articles 23 UDHR and 11 ECHR and ILO treaty 87 are relevant. And for the right to collective bargaining article 6 ESC and ILO treaties 98 and 135.

This means that the freedom for collective bargaining is ensured by international treaties. There is however not a statutory obligation for parties to start negotiations. Starting negotiations, the participation of organisations and the outcomes are (almost) entirely left to the power play of employers' and employees' organisations. This means that when the employer doesn't want to bargain with a trade union this union needs its members to put pressure on the employers, e.g. by going on strike or using other forms of collective actions.

There are several labour unions in the Netherlands of which some are active in the same sectors of work. Collective bargaining can take place with several unions at one side of the table and several employers organisations on the other. However, the actual situation depends on the outcome of the mentioned powerplay. So, it can also happen that a labour union is excluded from a bargaining table. This is normally completely legal because of the principle of the freedom to bargain with whichever party the employer/employers' organisation want, including the freedom not to bargain with a particular party.

There is a small exception to this where it can be unlawful to exclude a party from the bargaining table. This exception encompasses two situations. The first is when the excluded party is far more representative of the workers in the particular sector than the parties at the table. The second is when the excluded party represents a group of workers that will fall under the scope of the agreement but are not represented at the bargaining table (e.g. because they have a very different profession or are in a particular wage group other than the members of the bargaining unions).[1] These are, however, rare exceptions in extreme cases. Overall it is very common to have several labour unions and/or employer associations which make a collective labour agreement.

[1] Rechtbank Utrecht 28 april 1999 JAR 1999/115 (Vakbond Machinisten/NSR).

1.1.2 The legal basis for collective agreements

There are two Acts with provisions determining the legal effects of collective labour agreements. The first is the Law on collective labour agreements (from now on: WCAO) and the second is the Act on declaring provisions of collective labour agreements generally binding and non-binding (from now on: WAVV). These laws determine the effect of collective labour agreements in the Netherlands.

1.2 to which collective agreements do the WCAO and WAVV apply?

1.2.1 The criteria

Which agreements qualify as collective labour agreements is decided in the WCAO. The criteria to be qualified as a collective labour agreement are decided in articles 1 and 2 WCAO. The criteria are as follows.

1. It must be an agreement.
2. With one party being either one or more employers or one or more associations of employers with full legal personality.
    a. This means that a collective agreement doesn't have to encompass an entire sector. It can be solely for one company and still be considered a collective agreement.
3. The other party must be an association of employees with full legal personality. Since a works council does not have legal personality it cannot make collective labour agreements within the meaning of the said Acts.
    a. The association must have in their by-laws that it has the competence to conclude collective labour agreements.
    b. And it must be free from influence from the employer or employer association.[2]
4. The agreement has to contain primarily or exclusively employment or labour conditions.

If all of these criteria are met, the agreement concluded qualifies as a collective labour agreement in terms of Dutch laws, which means that the rules of the WCAO are applicable to the agreement.

1.2.2 Two types of collective labour agreements

There are two types of collective labour agreements: sectoral-level collective labour agreement and company-level collective labour agreements. The company-level collective labour agreement is negotiated at the level of an individual company. It may apply to all employees of the company concerned or to a specific company division. Important to note: a company collective labour agreement cannot be declared generally binding.[3]

[2] Kantonrechter Utrecht 3 november 1994 ECLI:NL:KTGUTR:1994:AG1000 (Gaggenau).

[3] Also see chapter 1.3.5.

The sectoral level collective labour agreement applies to an entire industry or sector. It is negotiated between one or more employer organisations and one or more trade unions. Employers who are member of an employer organization that signed such agreement, are bound by it and must apply it to their employees. A significant difference from the company collective labour agreement is that the sectoral agreement can be declared generally binding (see next section) whereas a company agreement cannot.[4]

1.3 To which workers does the collective labour agreement have to be applied?

The importance of being bound to a collective labour agreement by Dutch law is decided in several articles of the WCAO. There are 5 ways in which a collective agreement is to be applied to a worker:

1. When s/he is a member of a labour union that signed the agreement with an organisation of which his or her employer is member.[5]
2. Through article 14 WCAO.[6]
3. When the minister of Social Affairs has declared a collective agreement generally binding.[7]
4. Through an incorporation clause.[8]
5. Through custom.[9]

[4] Also see chapter 1.3.5.
[5] See chapter 1
[6] See chapter 1
[7] See chapter 2
[8] See chapter 3
[9] See chapter 3

1.3.1 The employee/union member works for an employer who is bound by a collective labour agreement

An employer is either bound through article 9 or through the process of buying a business that is bound by article 9.

Article 9 WCAO

There are several requirements listed in article 9 WCAO to be bound by a collective labour agreement.

The (1) employer/employee is a member of an association that signed the agreement (2) during the time that the agreement is in force and (3) operates within the scope of the agreement.

1. The employer/employee is a member of an association that signed the agreement.
    a. This means that a company does not need to be part of the negotiations to be bound. it only must be a member of an employer association that signed the agreement.
    b. If more than one labour unions enter a negotiation but not all those unions sign the agreement. Only the members of the unions that signed are bound by article 9. The members of the unions that did not sign are not bound to the collective agreement.
2. During the time the agreement is in force
    a. The employer does not have to be a member already at the beginning of the period that the agreement is in force. If an employer becomes a member of an association that made the agreement at a later moment, he or she is bound from the time that he/she joined that association.
    b. The date that is relevant to determine whether a party is bound by the agreement is that he or she is a member at the date that the agreement is made, not the date the agreement takes effect. This means that a company that leaves an organisation that took part in the agreement after the agreement is made, but before or after it takes effect, is still bound by the agreement.
3. Operates within the scope of the agreement.
    a. The scope is an article in the collective agreement that describes which types of work or workers are included by the agreement. The scope can be ‘all personnel of company Y’, but also ‘persons working with high tech industrial electrical materials’, or ‘low tech electrical materials’, or ‘consumer products’. The scope is decided by the participating parties.
        i. Complications on the scope of a collective agreement can be divided in four categories.[10]
            1. Does the collective labour agreement apply to a specific industry or company?

[10] Jacobs, *Collectief arbeidsrecht (MSR nr. 28)* 2023/5.4.

    a. In the case that a collective agreement is applicable that is generally binding and another that may be applicable is not, the generally binding one prevails over the other.
    b. In case that two collective labour agreements that are declared generally binding have a scope within a company may fall a judge may have to decide which one is applicable. This is done from the point of view of the employer, in other words, which of the two agreements is more in line with the core business of the employer.
2. The after-effect of an agreement
    a. a collective agreement may still have effect after it has expired. The Supreme Court (Hoge Raad) decided that expiration of the collective labour agreement does not mean that the legal effects have ended, relationship between employer and employee has ended, but these may have a changed form, such as a pension agreement.[11]
3. The territorial scope
    a. Almost all collective agreements are for the Netherlands in its entirety. With some exceptions for a collective agreement for all dockworkers in a specific harbour for example
4. The scope as regards the duration of the agreement
    a. The maximum duration of a collective agreement is five years,[12] but usually it is one or two years. It is however possible to continue the agreement unchanged after these five years.

When a worker falls under several scopes

If two collective agreements could apply to the same worker there has to be decided which of the collective agreements applies to the worker. In case of sectoral agreements most of those agreements have committees that decide on the interpretation of the scope of the collective agreement. If the committees cannot come to a consensus it can be decided by a judge which collective agreement applies. The law has no specific provision on how to solve cases like this, but If an employee performs work in a company that is not the core business of that company the relevant collective agreement is to be decided on the core business of the company, not on the basis of the individual worker.[13]

[11] Hoge Raad 6 september 2013, ECLI:NL:HR:2013:CA0566.
[12] Art. 18 WCAO.
[13] Jacobs, *Collectief arbeidsrecht (MSR nr. 28)* 2023/5.4.1.

The effect of being bound

Article 9(2) states that all parties bound are obligated to uphold the agreed terms in good faith. If one of the parties fails to do this, they can be ordered by a judge to uphold the agreement and/or pay compensation to the other party.

If someone is bound by an agreement according to article 9 WCAO (so when a worker is member of a signatory union while working for an employer who signed the agreement or is member of a signatory organisation), Articles 12 and 13 take effect. According to Article 12 any part of an individual labour agreement is void, if it conflicts with a collective agreement that both parties are bound to. The section of the collective agreement that conflicts with the individual agreement will replace the individual agreement. According to article 13 the collective agreement supplements the individual agreement; if the individual labour contract has not regulated a specific issue that is mentioned in the collective agreement, the latter completes the individual one.

If both employer and employee are bound, the collective agreement has a direct effect on the labour agreement and becomes part of it. This means that they can claim that the other party must comply with the provisions of the collective agreement as if they are part of the labour agreement.

There is also a possibility of a company being bound through the process of buying a business. When a bound company is bought the new owner is also bound by the collective labour agreement. If the bought company was unbound, but the new owner is bound by an applicable collective labour agreement, the bought company falls under that agreement (14a WCAO). The obligation to uphold the agreement falls off when:

- The new owner is bound by a new agreement applicable to the labour being done after the new owner got ownership of the company.
- When the government declares a collective agreement as generally binding to the entire sector
- When the date passed when the original agreement was supposed to end,[14]

The already existing collective agreement of the new owner cannot be forced on the new employees if they had another collective agreement.[15] The EU Directive that is implemented by this provision is more flexible than the Dutch law and does allow for the new owner of a company to force the collective agreement that he was bound by onto the new employees that were part of the newly bought company.[16] But this is not allowed in the Netherlands.

Standard and minimum collective agreements

An important difference relevant to the actual effect of collective labour agreements is the difference between standard collective agreements and minimum collective agreements. In case of a standard collective agreement no deviation from the collective agreement is allowed in an individual situation. In case of a minimum collective agreement an individual

[14] Jacobs, *Collectief arbeidsrecht (MSR nr. 28)* 2023/5.3.4.
[15] Rechtbank Amsterdam 18 september 1996 Jar 1996/228 (KLM catering).
[16] Jacobs, *Collectief arbeidsrecht (MSR nr. 28)* 2023/5.3.4.

contract can deviate from the collective agreement, in favour of the employee. A collective agreement that is entirely standard is very rare in the Netherlands'; most often they are minimum agreements where some may have a specific article that is standard.

1.3.2 An employee is not a union member and working for an employer who is member of a signatory employer's organisation

The Previous paragraph applies to members of a signatory union who are working for an employer who is a member of a signatory association during the time that the agreement is in force. This also means that if a labour union is not part of the negotiation of a collective agreement, a member of that union is not bound through this method and will be treated as a non-union member.

Employers who are bound by a collective agreement (as being a member of a signatory party) have to apply the benefits of the collective agreement to employees that are not part of a labour association. According to article 14 WCAO, employers are obligated to apply the same labour conditions to employees who are not part of a labour association as they would to union-members.

The application of a collective labour agreement in this situation is, however, not to the benefit of the non-union employees, but of the employees that are.[17] This means that the non-union employees cannot themselves invoke provisions of the collective labour agreement. Instead, this is a right of labour unions; they can invoke this right to prevent the non-union employees from being cheaper than the union employees and thus prevent the union members from being pushed out of the job market. They labour unions cannot invoke article 14 for the non-union members. The way that article 14 is enforced is through article 15 and 16 WCAO where signatory parties can claim compensation for damages when another signatory party does not comply with the collective labour agreement. The damages in this case would be damages for the members of the labour union because they would become more expensive than the non union members if a signatory company does not comply with article 14.

This rule has several effects, the main advantage is that the protection by collective labour agreements is generally provided, and this stimulates the raising of labour standards. The disadvantage is that there is a less strong incentive to join a labour union. In 2021 only 17,5 percent of the working population was part of a labour union which is quite low.[18]

[17] Hoge Raad 7 juni 1975 NJ 1957,527 (SUK Britannia).

[18] '*Hoeveel werknemers zijn lid van een vakbond?*' longread.cbs.nl.

1.4 The after-effect

Collective labour agreements have an after-effect. When the agreement ends, parties are no longer bound by it, and they are free to renegotiate the labour conditions. However, the labour conditions that were part of the collective agreement have become part of the individual agreements.[19] Therefore, the collective agreement has an after effect either until a new collective agreement is adopted or when the individual agreement is renegotiated. It is explicitly stated that for parties that were only bound by a collective agreement because it was generally binding there is no after effect. If there is no after effect, the labour conditions are those again that were binding prior to the agreement declared generally binding.[20]

1.5 Void collective agreements

Collective agreements or specific parts of them may be void. For instance, according to article 1 section 3 WCAO any provision regarding hiring or refusing people from a specific race, religion, philosophy of life or members of a specific association is void.

[19] Hoge Raad 18 juni 2016 ECLI:NL:HR:2011:BP0580 (Unieke Kinderopvang).
[20] Hoge Raad 10 januari 2003 ECLI:NL:HR:2003:AE9386 (ziekenhuis/te Riet).

2. The extension of a collective labour agreement

2.1 Introduction

As mentioned previously under 1.3.4, an employer who is a member of a signatory party is obliged to offer the benefits of the collective agreement to employees that are not members of a labour association.[21] However, workers working for an employer who is not a member of a signatory party, whether they are union member or not, are outside the legal effect of a collective labour agreement. A way to grant the same rights to workers, whether they are union members or not, and to workers working for not organised employers, is to declare collective labour agreements generally binding.
In the Netherlands, the authority to declare a collective labour agreement binding for a larger group than the members of the signatory parties rests with the Minister of Social Affairs (from now on: Minister). This follows from article 2 WAVV. In this report, we will refer to it as 'generally binding'.

2.2 Purpose

The purpose of declaring collective labour agreements generally binding is to combat the competition of labour costs. By declaring a collective labour agreement generally binding, the creation and content of agreements on terms and conditions of employment is supported, and the agreement applies to a full sector as defined by the collective labour agreement.[22] As a result the possibility of wage competition is importantly reduced.

2.3 Regulatory oversight: system guidelines

The process of declaring a collective labour agreement generally binding is regulated by the WAVV. The procedure follows from the Assessment framework for declaring collective labour agreements provisions generally binding (from now on: Toetsingskader AVV) and articles 4 through 7 WAVV.

Once a collective labour agreement has been concluded, parties to a collective labour agreement may request the Minister to declare provisions of their collective labour agreement generally binding.[23] This request is usually made jointly by the collective bargaining parties, but it is possible that it is made by only one collective bargaining party. The Minister is not authorised to declare a collective labour agreement generally binding on his or her own accord.[24]

Requests for generally binding are published in the Government Gazette. Interested parties can express their objections within three weeks.[25] The collective bargaining parties are then

[21] Art. 14 WCAO.

[22] Toetsingkader AVV §7.

[23] Art. 4 section 1 WAVV; Besluit aanmelding van collectieve arbeidsovereenkomsten en het aanvragen van algemeenverbindendverklaring, Regeling, *Stcrt*. 2012, 753.

[24] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/6.2.1.

[25] Artt. 4 t/m 7 WAVV.

asked by the Minister to respond to the objections. Regardless of the responses, the Minister is free to make the decision to declare it generally binding.[26] According to article 5 of the WAVV, decisions to declare a collective labour agreement generally binding must be published by the Minister in the Government Gazette.

The Minister has laid down rules regarding the application for a declaration of generally binding and the application for its extension.[27] These requirements are laid down in the Decree on Notification of Collective Agreements and Application for Generally Binding Agreements.[28]

A collective labour agreement that is declared generally binding prevails over an ordinary collective labour agreement. To the extent that the ordinary collective labour agreement contains provisions that are more favourable than those of a collective labour agreement declared general binding that has a minimum character, those provisions of the other collective labour agreement may continue to apply, unless that generally binding collective labour agreement is a standard collective labour agreement. The Minister may avoid tensions between applicable collective labour agreements by exempting workers falling under an ordinary agreement from certain provisions of the generally binding one.[29]

2.4 Conditions for declaring a collective labour agreement generally binding

First, it is important for a collective labour agreement to be eligible for a declaration of being generally binding that it meets the requirements of the WCAO. In addition, the associations that signed it must have one or more members within the scope of the agreement and they must be independent of each other.[30]

Substantive requirements for collective labour agreement provisions to be eligible for being declared generally binding are:

1. The provisions must, by their nature, fit into a collective labour agreement: they must concern matters which by their subject matter and scope lend themselves to regulation by a collective labour agreement
2. Provisions must, by their very nature, be capable of being considered generally binding.
3. The collective labour agreement provisions must be suitable for application to companies other than those already bound by the collective labour agreement.
4. The binding provision must not conflict with the public interest or legitimate interests of third parties.
5. The collective labour agreements to which the request for declaring them generally binding relates must already apply to what the Minister deems to be a significant majority of the persons working in the industry.[31]

[26] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/6.2.1.
[27] Art. 4 section 2 jo. Art. 4a lid 3 WAVV.
[28] Toetsingskader §3.1.
[29] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.3.
[30] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/6.2.3.
[31] Art. 2 lid 1 WAVV.

It is generally accepted that penalty clauses in a collective labour agreement can be declared generally binding.

The representativeness, mentioned under 5, is calculated as follows: the number of persons employed by employers bound by the collective labour agreement, who according to the nature of their job or work - with due observance of article 14 WCAO - fall within the scope of the collective labour agreement, expressed as a percentage of the total number of persons who would fall within the scope of the collective labour agreement. The following principles are used to determine whether the requirement of a significant majority is met:

- A majority of 60% of persons or more qualifies as "significant" in any case;
- A majority between 55% and 60% still qualifies as a significant majority unless support for the collective labour agreement within the scope area is low or there is a highly skewed distribution of the majority within the scope area;
- If the majority is below 55%, a declaration of declaring it generally binding will not take place, unless there are special circumstances in the view of the minister.[32]

In summary, the representativeness is determined by the percentage of employees covered by the agreement, based on the nature of their job, in relation to the number of employees eligible for the agreement. The criteria for a “significant majority” include a threshold of 60% or more, which is always considered significant. A majority between 55% and 60% is also considered significant unless there is low support for the agreement or a highly uneven distribution within the covered area. A majority below 55% is generally not accepted as sufficient for a declaration unless special circumstances are recognized by the Minister.

Finally, it also follows from article 2 WAVV that the Minister must leave certain provisions out of the generally binding:

1. Clauses that exclude judicial decision in disputes.
2. Clauses that impose organisational coercion on employees.
3. Clauses that treat the organised and unorganised differently
4. Clauses that involve the employer in enforcing price arrangements and arrangements concerning terms of supply.[33]

2.5 Who is covered?

When the Minister in a particular industry declares a collective labour agreement generally binding, every employer in that industry must apply that collective labour agreement, regardless of whether he or she is organised. The employer must do so with respect to all employees who fall within the scope of the collective labour agreement, organised or not.[34] Pursuant to article 3 WAVV, the unorganised employee also has his own right of action with respect to the rights following from the collective labour agreement.[35]

[32] Toetsingskader §4.1.
[33] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/6.2.4.
[34] Toetsingskader §3.1, Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.3.
[35] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.3.

2.6 Limitations to the binding effect

2.6.1 Time

The maximum term of a generally binding agreement is two years, subject to a one-time extension for a maximum of one year.[36] A generally binding agreement relating to funds may be valid for a maximum term of five years, subject to one-time extension for a maximum of one year.[37]

The general binding has no retroactive effect.[38] In principle, it also has no subsequent effect.[39]

2.6.2 Exemptions

Pursuant to article 8 section 1 WAVV, the Minister may declare provisions of a collective labour agreement non-binding if the public interest requires this.

It also follows from article 2 section 5 WAVV and §4.3 of the Toetsingskader AVV which types of collective labour agreement provisions are not eligible for declaration of non-binding status. For example, by its nature, a company collective labour agreement does not lend itself to being declared generally binding.[40] Since a company-level collective labour agreement is an agreement between the business owner and the employees within a company, this agreement does not apply to other companies. Therefore, it cannot be declared generally binding.

2.7 Competence to make exemptions

The power to grant exemptions usually lies with the Minister. Under Article 6, section 1 WAVV, the Minister is authorised to revoke the declaration of commitment at any time.

Employers or employees who feel they have been unjustly denied exemption can in some cases go to court to challenge a denial of exemption.

The Minister can grant dispensation: the power to make exceptions to the declaration of general applicability.[41] Briefly, the procedure is as follows:

1. The request for dispensation must be made within the period of the review of the applicable scope provisions.
2. The request may be honoured if there is a commitment to a legally valid collective labour agreement of our own. The request must also be substantiated in writing in accordance with the above. The collective labour agreement must then maintain a comparable level of protection.
3. If the request complies with the above requirements, the Minister will give the parties who requested the dispensation the opportunity to respond in writing to the request for dispensation within a period of three weeks.

[36] Art. 2 lid 2 WAVV jo. art. 4a lid 2 WAVV.
[37] Art. 2 lid 2 WAVV jo. art. 18 WCAO.
[38] Art. 2 lid 3 WAVV.
[39] HR 10-01-2003, ECLI:NL:HR:2003:AE9386 *(St. Rode Kruisziekenhuis/Te Riet).*
[40] T&C Arbeidsrecht, commentaar op art. 2 Wet AVV onder 2.
[41] Toetsingskader §7.

4. The Minister shall in principle grant the dispensation request if the parties who have requested declaration of generally binding have not submitted an objection to the dispensation request, or have not submitted an opinion within the specified period.
5. If an incriminating opinion on the dispensation request has been submitted (in time), the Minister will give the dispensation applicants the opportunity to respond to this opinion in writing within a period of 2 weeks.
6. The Minister shall reject a request for dispensation if dispensation is incompatible with the objectives of the WAVV.[42]

Even though a ministerial decision to declare a collective labour agreement generally binding or not is not open to judicial appeal[43], the rejection of the request for an exception from the scope of application of the AoA is open to administrative appeal, since this can be seen as a decision within the meaning of article 1:3 section 2 Awb.[44]

2.8 Concurrence of collective labour agreements declared generally binding

A collective labour agreement will not be declared generally binding if there is an overlap with one or more other collective labour agreements whose provisions are generally binding. If there is an overlap, it is not possible to declare the collective labour agreement generally binding because an employment relationship cannot be the subject of two decisions to declare it generally binding at the same time, since the same terms and conditions of employment can apply to an employment relationship at the same time. There is a good chance that the provisions will conflict with each other or lead to double obligations. It is the responsibility of the collective bargaining parties to agree on the mutual scope of the provisions.[45]

[42] Toetsingskader §7.
[43] Art. 1:2 BW jo. Art. 3:1 Awb.
[44] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/6.2.2.
[45] Brief Eerste Kamer 2509 LK 90405, p. 3.

3. The binding effect on the basis of the individual contract or employment relationship

3.1. Introduction

As we know from the previous chapters, an employer and an employee can be bound to a collective agreement based on the WCAO or WAVV. This chapter will discuss if there are other ways to be bound to a collective agreement. First, the incorporation clause will be discussed. Next, the possibility of being bound by custom will be explained. Last, it will be discussed who can enforce the collective agreement when bound through an incorporation clause or custom.

3.2. The incorporation clause

There are different ways for an employee and an employer to be bound by a collective agreement. Besides being bound to a collective agreement based on the WCAO or WAVV, they can be bound to the collective agreement because of their individual contract as well.[46]

They can choose to use an incorporation clause. This way, they declare the collective agreement applicable and both the employer and the employee can invoke the provisions of this collective agreement.[47] When they use the incorporation clause, the employee and employer are bound to the whole collective agreement, even to the provisions that can be negative for one of them. So, an employer can apply the provisions of a collective agreement to his employee that restricts the employees rights.[48] Even when the law only allows a negative deviation from the workers rights when this is agreed on by a collective agreement, this negative deviation can be made by the employer as well when he applies the collective agreement based on the incorporation clause.[49]

There are two different types of incorporation clauses. The first is the static incorporation clause, that refers to a specific collective labour agreement with its date included. The other is the dynamic incorporation clause. This refers to a collective agreement but not with a specific date; as a result, if the collective agreement is succeeded, the individual agreement with the incorporation clause automatically refers to the new collective agreement.[50]

The incorporation clause can be used to apply a collective agreement to a, on the basis of the WCAO and the WAVV, unbound employee and employer. However, the incorporation clause can be used when the employer and/or the employee are already bound on the basis of the WCAO or the WAVV as well.[51]

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[46] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/ 5.3.5.
[47] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.5.
[48] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.5.
[49] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/3.7.1; HR 20 december 2002, JAR 2003/19 *(Bollemeijer)* ; Asser/Heerma van Voss 7-V 2020/563.
[50] Jacobs, *Collectief arbeidsrecht (MSR nr. 28)* 2023/5.3.5.
[51] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.2.

In fact, in the Netherlands the incorporation clause is used a lot by a bound employer, to bound his unbound employees to the collective agreement.[52] As discussed in chapter one, when an employer is bound by a collective agreement, they need to apply the collective agreement on all their employees, even when the employee is not bound by the collective agreement.[53] To make sure the employer is bound to the collective agreement as well, a lot of employers use the incorporation clause. This way, not only the employer is bound by the collective agreement, but all his employees, bound on the basis of the WCAO or not, are bound by the collective agreement also.[54] This way, the differences between an employee who is bound on the basis of the WCAO and the unbound employee are taken away. Since employers are not allowed to ask their employees whether they are a member of an union, an incorporation clause is an easy way to make sure that everyone is bound to the collective agreement that the employer has to apply.

3.3. Custom

Besides being bound by an incorporation clause, an employer and an employee can be bound to a collective agreement by custom as well.[55] This is the case when an employee normally applies the collective agreement, even when he is not bound by law and does not need to do so. When the employee normally applies the collective agreement they can be bound by the collective agreement based on article 6:248 BW. This article declares that a contract does not only have the consequences agreed upon by the parties, but also has the consequences that, from the nature of the agreement, arise from custom.[56]

When the employer and the employee are bound to the collective agreement by custom, they can both invoke the provisions of the agreement, even when these provisions are negative for the employee. However, when the provisions are negative for the employee, it will not be easily declared that the employee is bound to the collective agreement based on custom.[57]

3.4. The enforcement of the agreement

When the employer is bound to the collective agreement based on the WCAO or the WAVV, workers organisations can force the employee to apply the agreement, even when the employee themselves is not or does not want to be bound by the collective agreement.[58]

However, when the employer is not bound based on the WCAO or the WAVV, but only based on an incorporation clause or by custom, it is not possible for the workers organisations to enforce the collective agreement. In this case, the employee can enforce the agreements themselves, based on contract law.[59]

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[52] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.2 and 5.3.5.
[53] Article 14 WCAO.
[54] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.2 and 5.3.5.
[55] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.6.
[56] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.6.
[57] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.6.
[58] Jansen & ten Broeke, *ArbeidsRecht* 2022/10.
[59] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/5.3.5 & 5.3.6 ; Jansen & ten Broeke, *ArbeidsRecht* 2022/10.

4. The relation between competition law and collective labour agreements

4.1. Introduction

In the previous chapters the system of collective agreements was discussed and the ways to be bound to the collective agreement. But can these collective agreements contain employment conditions for everyone, self-employed people included? This chapter will describe the way in which it deals with employment conditions laid down in collective agreements for (groups of) self-employed, including bogus self-employed persons.

4.2 Rules on collective agreements for self-employed persons

When looking at the Dutch definition of a collective agreement given in the WCAO, article 1 section 2 WCAO states that a collective agreement may also concern contracts for assignment and agreements for services.[60] So, based on this, it is allowed to lay down employment conditions for self-employed persons in these collective agreements. [61] But, this is an old clause and because in the ECJ judgements it was stated that the exemption from the competition law was restricted to employees. It was concluded that collective agreements for self-employed persons infringe with competition law and are therefore not allowed.[62] This restriction was set out in guidelines of the competition authority that forbid tariff clauses for self-employed persons.[63] The guidelines did mention that this prohibition does not apply to bogus self-employed people, following the *FNV Kiem* judgement, but it did not really clarify this exception.[64] So, because of the EU-competition law, tariff clauses for self-employed people were prohibited.

However, in the past few years there is a growing awareness that some groups of self-employed people can be in a vulnerable position.[65] This led to changes in guidelines that set out criteria and examples to determine when agreements can be made for self-employed people. In 2023 these guidelines were last updated because of the guidelines of the European commission on solo self-employed persons.[66]

[60] Article 1 section 2 WCAO.
[61] Jacobs, Collectief arbeidsrecht (MSR nr. 28) 2023/6.4.
[62] Case C-67/96 Albany ECLI:EU:C:1999:430; Pennings & Bekker 2023, p. 11-12; Jacobs, Collectief arbeidsrecht (MSR nr. 28) 2023/6.4, Jaspers, Pennings & Peters 2024, p. 439.
[63] Guidelines ACM 2023 (Leidraad tariefafspraken zzp'ers 2023), accessible on: https://www.acm.nl/nl/publicaties/leidraad-tariefafspraken-zzpers-0.
[64] Pennings & Bekker 2023, p 13.
[65] Pennings & Bekker 2023, p 13.
[66] Guidelines ACM 2023, p. 8 (punt 13); PbEU 2022/C/374/2.

4.3 Implementing European Commission guidelines for self-employed persons

The European Commission published a statement called “Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons” in September 2022.[67] These guidelines aim to resolve the potential issue of legal uncertainty faced by solo self-employed individuals. A bogus self-employed person cannot be one hundred percent sure that they are covered by the *Albany* exception. They will need a court or administrative authority to decide whether or not he or she qualifies as an employee.[68] However, it should be noted that the guidelines cannot completely eliminate the legal uncertainty. It depends on the national authorities and how they adopt the guidelines. The national authorities can adopt the guidelines, but they don’t have to do so.[69]

In the Netherlands, the Autoriteit Consument & Markt (ACM) sets out the guidelines. As already mentioned, these guidelines were recently updated because of the guidelines of the European commission on solo self-employed persons.[70] The guidelines explain in which situation self-employed persons can collectively negotiate rates and other (labour) conditions without violating competition law.[71]

In the guidelines of the ACM it is stated that bogus-self employed persons are exempted from the competition law. However, some kind of self-employed persons are exempted from the competition law as well, regardless of whether they fulfil the requirements for bogus-self employed persons.[72] The main criteria for such a self-employed person is that the working situation of the self-employed person is comparable to that of an employed person.[73] This is the case for economically dependent solo self-employed persons, solo self-employed persons working ‘side-by-side’ with workers and solo self-employed persons working through digital labour platforms.[74] These criteria are in line with the commissions guidelines.[75] For the interpretation and explanation of these criteria, the ACM uses almost the same terminology as the commission in its guidelines.[76]

However, the guidelines from the ACM contain a more extensive interpretation to the side by side criteria then the commissions guidelines.[77] Following the guidelines from the ACM, the self-employed person can also be in a comparable situation as employees when they do not work for the same work provider, but for different enterprises in the same sector.[78] This option is not mentioned in the commissions guidelines, and therefore is an extensive interpretation.

[67] PbEU 2022/C/374/2.
[68] Pennings & Bekker 2023, p 21.
[69] Jaspers, Pennings & Peters 2024, p. 443.
[70] Guidelines ACM 2023, p. 8; PbEU 2022/C/374/2.
[71] Guidelines ACM 2023, p. 3.
[72] Guidelines ACM 2023, p. 3
[73] Guidelines ACM 2023, p. 3 ; Pennings & Bekker 2023, p. 13.
[74] Guidelines ACM 2023, p. 3.
[75] PbEU 2022/C/374/2, section 3.
[76] PbEU 2022/C/374/2, section 3 ; Guidelines ACM 2023, p. 20-22.
[77] Jaspers, Pennings & Peters 2024, p. 443-444; Pennings & Bekker 2023, p. 13.
[78] Guidelines ACM 2023, p. 26; Pennings & Bekker 2023, p. 13.

In the guidelines it is stated as well, in order to reduce legal uncertainty, that the Authority for Consumers, that has to enforce the guidelines, will not impose fines when agreements appear to infringe competition law, if parties are willing to revise the agreement.[79]

So, The ACM implemented the commissions guidelines in their own guidelines, and there is room for self-employed people to make price arrangements in the Netherlands.

4.4. Agreements for self-employed persons in practice

Now that we have established that there is room to make price arrangements for self-employed people in collective agreements, we will discuss whether and how these opportunities are used in the Netherlands. In 2023, there were nine collective agreements that contained price arrangements for self-employed people.[80] These are four more collective agreements with price arrangements for self-employed persons than in 2021.[81] Those nine collective agreements cover 1% of the workers that fall under a collective agreement.[82]

Most of the collective agreements that contain price arrangements for self-employed people, are collective agreements in the cultural sector.[83] But there are collective agreements that contain price arrangements for self-employed people for architects, energy and utilities companies and the safety domain as well.[84]

The exact provisions in the collective agreements differ. Five collective agreements contain provisions that state (in different ways), that the minimum wage for a self-employed person must be at least 150% of the wage from an employee with comparable tasks.[85] An example for such a provision is the provision in the collective agreement for architects, where the minimum wage is stated as a presumption for self-employment. This provision states:

"*In order to take away doubts on the status of the worker – whether he or she is false self-employed or really a self-employed person – a tariff is applied of 150% of the gross wage plus 8% holiday pay for comparable activities with comparable experience for employees. If less than this rate is paid, the person is presumed to be an employee."*[86]

Another example is the provision in the collective agreement for music ensembles, here the minimum wage is not a presumption: The English translations of these terms would be:

[79] Pennings & Bekker 2023, p. 13.
[80] Rapport Cao-afspraken 2023, p. 83.
[81] Rapport Cao-afspraken 2021, p. 119.
[82] Rapport Cao-afspraken 2023, p. 83.
[83] Rapport Cao-afspraken 2023, p. 135-136; Art education (Kunsteducatie), NAPK Music Ensembles (NAPK Muziekensembles), Dutch Stages/Venues (Nederlandse Podia), Dutch Pop Stages and Festivals (Nederlandse Poppodia en Festivals), Theater and Dance (Toneel en Dans), Broadcasting Personnel (Omroeppersoneel).
[84] Rapport Cao-afspraken 2023, p. 135-136.
[85] Rapport Cao-afspraken 2023, p. 135-136; Theater and Dance (Toneel en Dans), Dutch Pop Stages and Festivals (Nederlandse Poppodia en Festivals), Dutch Stages/Venues (Nederlandse Podia), NAPK Music Ensembles (NAPK Muziekensembles), Architectural firms (Architecten-bureaus).
[86] Rapport Cao-afspraken 2023, p. 135, Architectural firms (Architecten-bureaus); Pennings & Bekker 2023, p. 18.

“If a self-employed person (ZZP'er) is deployed for a position falling under this collective labour agreement (cao) due to incidental tasks and/or tasks of short duration and/or tasks requiring special competencies and where the work situation is (almost) identical to that of an employee, this collective labour agreement forms the basis for remuneration. This means that the (hourly) rate of the self-employed person (ZZP'er) is at least 50% higher than that of an employee in the same position, to compensate for various insurances that the self-employed person (ZZP'er) must arrange for themselves.”[87]

Other collective agreements contain provisions that state self employed people must be paid enough to cover their extra costs, for example the provision from Energy and utility companies WENB Sector Collective Labour Agreement GEO Process and Services:

“Self-employed individuals (ZZP'ers) are deployed at a socially responsible rate. This rate provides the self-employed individual with the opportunity, beyond the regular compensation in the sector, to insure themselves against the risks associated with self-employment such as disability, pension, and liability. If the client does not comply with this, the options are either to hire the individual as an employee or to increase the rate. This is aimed at preventing false self-employment within the sector.”[88]

The collective agreement for the Safety Domain contains a provision that stresses the importance for the minimum wage for a self-employed person as well.[89]

Furthermore, the collective agreements for Art Education and for Broadcasting personnel contain provisions on how to decide what the minimum wage for a self-employed person should be, for example the provision from Art education:

“In the sector, many and increasingly more self-employed individuals (ZZP'ers) are active. Their negotiating position could be much better. The collective labour agreement (cao) refers to a tool for calculating ZZP rates. The Fair Practice calculation tool can be used for this purpose. With its help, you can easily convert a collective agreement salary into a ZZP rate in accordance with the Fair Practice."[90]

[87] Rapport Cao-afspraken 2023, p. 135; NAPK Music Ensembles (NAPK Muziekensembles).
[88] Rapport Cao-afspraken 2023, p. 135; Energy and utility companies WENB Sector Collective Labour Agreement GEO Process and Services (Energie en nutsbedrijven WENB sector cao GEO).
[89] Rapport Cao-afspraken 2023, p. 136, Safety Domain (Veiligheidsdomein).
[90] Rapport Cao-afspraken 2023, p. 135-136; Art education (Kunsteducatie).

5. Empirical data about employers and employees

In the Netherlands, trade unions play an essential role in protecting and promoting the interests of workers. Trade unions are organizations dedicated to advocating for the rights and welfare of employees, operating at various levels within Dutch society. Their aim is to improve working conditions, ensure fair wages, promote safe working environments, and defend social justice.

Currently there are three big unions in the Netherlands. The FNV, CNV and the VCP. They cover a wide variety of sectors, almost all of the active sectors in the Netherlands. The CNV differs from the FNV because it is the Christian union, whereas the FNV is a union without a specific denomination, the VCP differs because its target audience is mostly aims at higher educated professionals.

Membership of a union is paid in principle by the workers themselves. The costs vary depending on the working status (Worker, unemployed, retired, etc). The membership fees differ from about €10 to €20 per month. In some collective labour agreements it is agreed upon that employers pay (part of) the membership fees of their workers.

Main tasks of trade unions are organising collective action and negotiating, inter alia on collective labour agreements. They represent workers in different sectors and professions, negotiating on behalf of them with employers and government agencies regarding employment conditions, such as salary, working hours, vacation days, and social security. These negotiations often result in collective labour agreements, which are binding agreements between employers and trade unions. These negotiations are almost always done by professionals, on the employer's side, as well as the employees side.

In addition to negotiating employment conditions, trade unions also provide support to individual workers in case of conflicts with their employers, such as dismissal, discrimination, or unsafe working conditions. They offer legal advice, mediation, and, if necessary, legal representation.

Furthermore, trade unions are involved in policy development in the fields of labour and social security. They are not only lobbying the government for legislation that protects workers' interests but also actively participate in government bodies such as the SER (Social economic council). They also play a role in promoting solidarity among workers and raising awareness about labour rights and social justice.

For the next chapter it is important to note that there is no public empirical data about coverage of employers by collective labour agreements.

5.1 The extent to which workers are covered.

In 2022, the most recent reference date, 71,8% of employees fell under a collective labour agreement. In 2014, this was almost 74,8%. One can conclude that there is a steady decrease in the number of employees covered by a collective labour agreement.[91]

However an important note to these data is that when all previously discussed binding methods are taken into account almost everyone within the scope of a collective labour agreement is bound (thus: including incorporation clauses).

[91] "Werknemers naar soort cao en SBI naar achtergrondkenmerken, 2010-2022", cbs.nl

A distinction can be made between sector collective labour agreements and company-level collective labour agreements.[92] Another distinction that needs to be made is between regular collective labour agreements and collective labour agreements for specific arrangements, such as a pension scheme or an educational fund. The following numbers only take into account regular collective labour agreements.

As of January 1, 2023, there were a total of 667 regular collective labour agreements. Among these, 178 were industry-level collective labour agreements, and 489 were company collective labour agreements. Although it may seem like there are many more company collective labour agreements, it is important to note that the scope of company collective labour agreements are generally much smaller than industry-level collective labour agreements. This is because company-level collective labour agreements only apply to one specific company. As a result, only 0.6 million employees fall under the 489 company-level collective labour agreement In contrast to the 5,277,200 employees covered by industry-level collective labour agreements, the impact of company-level collective labour agreements is not very significant.

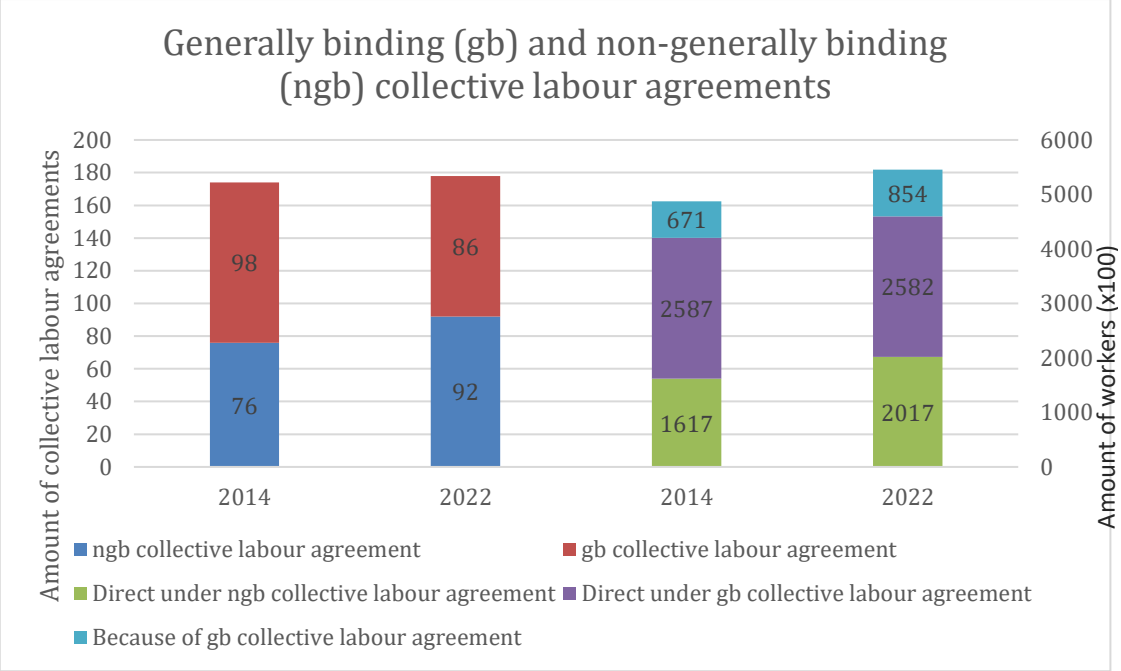
Economic sector	Number of collective labour agreements	Collective labour agreements	Declared generally binding[93]	Total workers under collective labour agreements
Agriculture and Fisheries	9	91.600	35.800	127.500
Industry	44	545.200	123.100	668.300
Construction Industry	11	203.700	89.800	293.500
Trade and Hospitality	35	978.200	322.500	1.300.800
Transport and Communication	9	159.500	67.100	226.500
Business Services	21	365.700	101.500	467.200
Other Services	49	1.995.700	197.700	2.193.400
Total	178	4.339.700	937.500	5.277.200

Overview of employees under collective labour agreement broken down by economic sector for regular industry-level collective labour agreements.[94]

From these figures, it can be inferred that approximately 18% of the total number of employees are covered by an industry-level collective labour agreement through the general binding declaration. The remaining employees are bound through the other binding methods.[95]

Due to the decrease in the number of employees covered by a collective labour agreement, the total number of collective labour agreements that get declared generally binding also decreases. In 2014, there were still 98 collective labour agreements declared AV, but by 2022, this number had dropped to only 86. This could be attributed to the declining organizational density of employers. However, the number of employees bound by a collective labour agreement that has been declared generally bound has increased, from 671,000 to 854,000.

[92] Also see chapter 1.2.2.
[93] AVV meaning that a collective labour agreement has been declared collectively generally binding (also chapter 1.3.5).
[94] Rapport Cao-afspraken 2023.
[95] See chapter 3.



**The two left columns show the ratio between AVV collective labour agreements and non-AVV collective labour agreements.*

**The two right columns show to ratio of how workers are bound through these collective labour agreements.*

5.2 The impact of this system on unionization rates

Unionization rates per branch[96]	
Catering industry	10%
Business services	11%
Agriculture and fisheries	11%
Financial services	13%
Healthcare/welfare	18%
Culture and other services	24%
Mining and industry	24%
Energy and water	29%
Education	30%
Transport	31%
Construction	31%
Government	34%

**This tables show the unionisation rates per branch*

In 2023, approximately 17% of Dutch employees are part of a union, totalling 1.57 million members. Over the past four decades, the level of organisation has more than halved, dropping from 39% in 1976 to the current 17%.

Considering Article 14 of the WCAO, workers may not immediately see tangible benefits from joining a union. Despite unions offering various services, mere membership doesn't alter one's legal position in the Dutch labour market. The cost of joining the largest labour union, FNV, is around 230 euros per year, which may seem expensive without immediate benefits.

Presently, there are no major consequences of this low unionisation rate, as Dutch law does not impose representativeness requirements. However, as the number of members decreases, the influence of the union weakens. The unions' ultimate tool, the right to strike, relies on having enough workers willing to participate. Despite this, recent collective bargaining has seen a 6.3% average income raise, the highest in 40 years, and a fourfold increase in strikes compared to previous years. It appears that the influence of the union remains robust.

5.3 Competition between Unions

In the Netherlands, most collective labour agreements are concluded with one or more of the three major trade unions: FNV, CNV, and VCP. Respectively, these unions have 877,000, 210,000, and 153,000 members.[97] Competition exists among these unions, manifesting itself on various fronts, ranging from membership recruitment to achieving strong negotiating positions when finalising collective labour agreements. These unions aim to represent a diverse range of workers and often distinguish themselves through thematic focuses, strategies, and approaches. A larger membership base enhances a union's negotiating power, further intensifying the competition among unions for members. This is not the only reason they compete, as noted before, members pay a monthly fee, therefore increasing the financial position of the union.

Not only do trade unions compete for members, but they also vie to finalise collective labour agreements. In the Netherlands, there's an additional dynamic known as 'het vakbondstientje'.

[96] Jacobs, *Collectief Arbeidsrecht (MSR nr. 28)* 2023/X.
[97] 'Historie leden vakverenigingen', cbs.nl.

This refers to an employer's contribution to the union for each member they have who falls under the collective labour agreement. ‘Het vakbondstientje’ amounts to a total of around 20 euros per member per year.[98]

A notable observation from the three major labour unions is that the union called ‘The Unie’ consistently falls below the demands of the other unions (especially FNV and CNV). This could stem from the fact that the Union neither goes on strike nor has a strike fund.

Even though there is competition among the unions, it does not mean that collaboration is absent. Periodically, the unions jointly conclude collective labour agreements. As a result, members of both unions are directly bound by the collective labour agreement. It is also possible that after negotiations, only one of the involved unions agrees while the other does not. However, the member of the union that does not agree with the proposal is still bound, for instance, by Article 14 WCAO.

5.4 General remarks about the contents of collective agreements

In the Netherlands collective labour agreements can be quite large. For example the construction collective labour agreement contains 174 pages and the healthcare collective labour agreement contains 116 pages. The table of contents of the infrastructure collective labour agreement is attached in the appendix to provide an outline on the type of subjects agreements are made on. The metalektro collective labour agreement (Metal Technick) has been translated in English as well.

[98] ‘Voor georganiseerd en ongeorganiseerd’, awvn.nl.

6. Characterization of the system of collective labour agreements

In this chapter, we will discuss what characterises the Dutch system. In our view, the system distinguishes itself particularly through the following four components:

- The system of declaring generally binding.[99]
- The possibility that the collective labour agreement gets applied to non-union members.[100]
- The aim is to minimise competition on labour conditions.
- The fact that when an individual agreement conflicts with an agreement in the collective labour agreement, it is replaced in its entirety.[101]
- The binding effect for organised employees.[102]
- Equal treatment for organised and unorganised employees.[103]
- Multiple unions negotiating one agreement, limited to independent unions.

6.1 The system of declaring generally binding

As discussed in chapter two, collective labour agreements can be declared generally binding by the minister. This results in a situation where, even if an employer is not affiliated with the employers' organisation that has negotiated this collective labour agreement, they are still bound by the collective labour agreement. Thus, the unaffiliated employer will still have to adhere to the rules outlined in the collective labour agreement, ensuring that both the employer and the employees have the same rights and obligations as the affiliated parties.

6.2 The possibility that the collective labour agreement gets applied to non-union members

The other possibility for an unbound employee to be bound by a collective labour agreement is through the article 14 procedure. The article 14 procedure means that an employer should apply the collective labour agreement to bound employees as well as unbound employees. He may not differentiate between them. Even if an employer was allowed to differentiate between bound- and unbound employees it would be difficult, it is not possible for an employer to legally know which employees are members of a union and which are not.

This has several different effects. The first is that relatively few Dutch workers are part of a Union. This is because a union membership normally has a membership fee. So, it costs money to be a part of a union but there are no direct benefits because all workers get treated the same anyways.

[99] Also see chapter 2.
[100] Article 14 WCAO, also see chapter 1.3.3.
[101] Article 12 WCAO, also see chapter 1.3.1.
[102] Also see chapter 1.3.1.
[103] Also see chapter 1.3.2.

Another notable effect of article 14 is that workers that are not member of a union also have to accept the negatives of a collective labour agreement. In Dutch law, there are certain rights for workers that can only be changed by collective labour agreement. But because non-union members can be bound by a collective labour agreement, a union also bargains on their behalf, and can also take away certain rights that the non-union workers would have if there wasn't a collective labour agreement.

The main reason for article 14 is to prevent competition on labour conditions, more on that in the next paragraph.

6.3 Avoiding competition on labour conditions

The two characteristics of the Dutch system described above ensure that labour condition competition does, for the most part, not occur. Article 14 ensures that employers cannot discriminate between their employees, in other words they cannot just hire unbound employees to avoid giving them the higher wages and benefits bound employees would get.

The option to declare collective labour agreements generally binding gives the effect that more employers are willing to become part of a labour organisation. There is a chance, even though they are not part of collective labour agreement negotiations, that they will be bound to it because the collective labour agreement gets declared generally binding. And even when employers are not directly bound to the collective labour agreement can be bound through AV-declaration. This way there are no differences in pay and benefits between employers.

6.4 The removal of conflicting clauses

Article 12 WCAO states: "Any provision in an agreement between an employer and an employee that is inconsistent with a collective labour agreement to which they are both bound shall be void; in place of such provision, the provisions of the collective labour agreement shall apply."

This has the consequence that every clause in an individual labour agreement that conflicts with the collective labour agreement will be completely void and replaced with the agreement in the collective labour agreement when the employee and employer are bound by this collective labour agreement. So, the collective labour agreement goes before the right of the parties to contract and can limit this freedom.

6.5 The binding effect for organised employees

Collective labour agreements have a very far reaching effect on the labour agreements for organised employees. According to article 12 WCAO parts of an individual labour agreement that conflict with the collective labour agreement of the organised employee are void and will be replaced by the collective agreement.

6.6 Multiple unions, one collective labour agreement

It is common for multiple unions to engage in simultaneous negotiations with each other. Various employee organisations, such as the FNV and CNV, convene alongside multiple employer organisations, like the AWVN, at the negotiating table. During these discussions, they may reach a consensus collectively or face a scenario where one party disagrees with the proposed conditions and withdraws from the negotiations. However, as long as at least one labour union and one employers' union sign the agreement, a collective labour agreement can be established.

If one of the parties opts not to sign the labour agreements, the employment conditions of their members can still be impacted through several means:

1) Incorporation clause: This mechanism allows for the integration of the terms of the agreement into individual employment contracts, even without direct consent from all parties involved.

2) Declaration of general binding: In certain cases, the agreements can be declared generally binding, extending their influence beyond the signing parties to cover a broader scope of employees within the relevant industry or sector.

3) Article 14 construction: This legal provision empowers the extension of collective labour agreements to non-signatory parties, ensuring that a wider range of workers benefit from the negotiated terms and conditions.

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Appendix 1

1. In-service - out-of-service
1.1 Entry examination
1.2 Job classification
1.3 Employment contract
1.4 During the employment contract: construction site worker
1.5 During the employment contract: white-collar worker
1.6 Termination of employment contract
1.7 Settlement upon termination of employment contract

2. Working hours and schedules
2.1 Working hour arrangements
2.2 Basic scheme and framework scheme
2.3 Framework scheme: additional conditions
2.4 Shift hours infrastructure
2.5 Maintenance work on Saturdays
2.6 Shift work
2.7 Availability duty
2.8 Overtime
2.9 Time-saving model

3. Days off and leave
3.1 Vacation
3.2 Scheduled off
3.3 Additional scheduled off for older employees (transitional arrangement)
3.4 Public holidays
3.5 Leave around a death
3.6 Short-term absence
3.7 Caregiving leave

4. Income
4.1 Introduction
4.2 Guaranteed wage for 21 years and older
4.3 Guaranteed wage for 16 to 20 years
4.4 Guaranteed wage for apprentice employee
4.5 Starting table for construction site workers
4.6 Performance bonus
4.7 Rules for wage payment
4.8 Salary: introduction
4.9 Salary for 21 years and older
4.10 Salary for 16 to 20 years
4.11 Starting table for white-collar workers
4.12 Wage and salary increases
4.13 Holiday allowance
4.14 Individual budget
4.15 Time-saving fund
4.16 Pension

5. Allowances and reimbursements
5.1 Professional driver
5.2 Availability duty
5.3 Special hours
5.4 First aid and Emergency Response
5.5 Tools

Attachments