

Amsterdam, November 2014
Commissioned by the Ministry of Social Affairs and Employment

Cross-Border Supply of Labour

Shifts in nationality and contract flexibility on the Dutch labour market 2001-
2011

Ernest Berkhout
Paul Bisschop
Maikel Volkerink



seo economisch onderzoek

“The science of knowing”

SEO Economic Research carries out independent applied economic research on behalf of the public and private sectors. This research makes a major contribution to the decision-making processes of our clients. SEO Economic Research is affiliated to the University of Amsterdam. This gives us access to the latest scientific methods. Operating on a not-for-profit basis, SEO continually invests in the intellectual capital of its staff by arranging for them to pursue graduate studies, publish scientific works and participate in academic networks and conferences.

SEO Report No. 2014-49

Copyright © 2014 SEO Amsterdam. All rights reserved. Data from this report may be used for non-commercial purposes provided the source is cited clearly and accurately.

Summary

There has been a marked increase in the numbers of labour migrants and flexible contracts in recent years. The influx of migrant labour would seem to be both a major cause and a consequence of the increased flexibilization of the labour market: not only have the new European Union borders made it easier to cut costs (by using migrant labour), many employers say that the economic crisis has made cost-cutting essential. Free traffic in services has resulted in unequal competition between Dutch and foreign companies, with adverse effects on Dutch workers.

More cross-border labour

What shifts in the use of migrant labour have we seen on the Dutch labour market between 2001 and 2011?

More and more foreign workers are coming to work in the Netherlands: since 2001 the proportion has risen from 4.9% to 7.7%. Almost all of the increase has come from the CEE countries,¹ with half of them employed as agency workers. The biggest increase took place in 2007 and 2008, together with a sharp increase in employment among Dutch workers. The number of Dutch workers has also increased, by 350,000 over the ten-year period. During the economic crisis labour migration from Western Europe in particular has declined, that from Eastern Europe far less. The influx from Southern Europe remains limited at present. In agriculture, industry, construction, the wholesale trade and transport, the number of Dutch workers has gone down with a simultaneous increase in the number of foreign workers.

More flexible employment

What shifts in the use of types of contract have we seen on the Dutch labour market between 2001 and 2011?

Growing flexibility is due not only to increased labour migration, there has also been a shift from fixed to flexible contracts among the Dutch working population. There has been a decline in fixed contracts, with a simultaneous increase in flexible contracts, in construction, commerce, transport and facilities management. Among the various types of flexible labour the increase has been most marked in on-call and zero-hours contracts (in commerce, catering, transport and care) and in self-employment (in construction, business services and other services). In the facilities management sector the shift is towards more agency work.

Cost-cutting is the principal motive

What processes lurk behind the shifts that we are seeing? What are the incentives to employers?

Interviews with employers in four focus segments (construction, horticulture, the food industry and road transport) show that cost-cutting is by far the most important motive in opting for migrant labour and flexible contracts. The employee representatives, trade associations and experts from those sectors that we interviewed corroborate this. Opening up the labour market to Eastern European workers has expanded the labour supply with workers who are accustomed to lower pay and greater flexibility. The biggest shifts are consequently taking place where:

- the work is standardized (unskilled jobs)
- the work is labour-intensive (high wage cost ratio)

¹ The countries of Central and Eastern Europe that acceded to the European Union in 2004 and 2007: Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Bulgaria and Romania.

- there is strong international price competition (no product differentiation)
- a command of Dutch is not important

The institutional context favours cross-border working

What part has been played by EU enlargement and the 2009 economic crisis?

Posted workers from foreign companies are often cheaper than staff of Dutch companies. Under the European Posted Workers Directive in many cases only a few key provisions in the Dutch collective agreement apply, not the whole agreement. Employers can therefore gain a cost advantage by using posting arrangements with foreign companies, as they do not usually have to pay pension and social security contributions then. The difference in wage costs can be considerable in sectors that have expensive pension schemes. Not only has EU enlargement made it easier to cut costs, many employers say that the economic crisis and international competition have made cost-cutting absolutely essential.

The cross-border nature of these arrangements, however, unfortunately makes enforcement more difficult, and abuse therefore easier. In practice there are various ‘deceptive practices’ involving cross-border services where it is unclear whether they still correspond to the spirit – or in some cases even the letter – of the law. The deceptive practices most commonly mentioned in the interviews are:

- false self-employment,
- false posting,
- mailbox companies,
- administrative manipulation of time limits.

Checking for deceptive practices is made more difficult by the fact that there are often long cross-border chains of subcontractors, especially in the construction industry, making it unclear what is going on at the bottom end of the supply chain. This makes enforcement particularly complicated, labour-intensive and therefore expensive. Generally speaking, the least regulated types of contract will be more popular. If there *is* regulation but enforcement is inadequate, certain employers will be more likely to seek out the limits of regulation and in some cases cross them.

Macro-level displacement because of unequal competition

To what extent are undesirable shifts taking place to the detriment of certain groups of Dutch workers?

In the focus segments (construction, horticulture, the food industry and road transport) substantial shifts in the use of labour are associated with unequal competition between actors. At macro level one can therefore speak of displacement in those focus segments, albeit the consequences at micro level are limited. The unequal competition is taking place in three ways:

1. between companies contravening legislation and regulations and companies that comply fully with the rules,
2. between the self-employed and workers in regular employment (or their employers),
3. between foreign companies and Dutch companies, and as a result of this between posted labour migrants and workers resident in the Netherlands.

In the first case the competition is not only unequal, it is also unfair – it is simply not allowed. The second and third cases, however, result from domestic and European legislation respectively. To what extent this unequal competition can nevertheless be regarded as undesirable is a matter of debate.

Unequal competition between the self-employed and workers in regular employment (or their employers) is not a problem in principle, as the difference in wage costs reflects the choice of the self-employed to carry their own risks. It *is* undesirable, however, when self-employed people are actually working as employees, for example in an employer-employee relationship. While working in that way, the pseudo self-employed person has an unfair cost advantage, though actually this case falls into category 1 (incomplete compliance).

The third type of unequal competition is a logical consequence of the current European legislation and regulations (the Posted Workers Directive). On top of this, according to enforcement agencies such as the Inspectorate SZW² and the SNCU³, in the case of cross-border posting there are also frequent contraventions that fall into category 1. While the unequal competition is entrenched in European institutions, it does have undesirable consequences for the Dutch labour market, as the difference in wage costs mainly reflects a difference in employment standards. This results in reduced basis for domestic collective agreements, and increasing competitiveness through lowering employment standards.

In principle there is no unequal competition between foreign and Dutch employees at Dutch companies, and therefore no displacement, as the foreign labour migrants are covered by the same collective agreements as the Dutch workers. As long as the collective agreement is complied with correctly and in full (i.e. including paid overtime, fringe benefits, etc.) there cannot be a difference between Dutch and foreign employees at a Dutch company. In practice, of course, there can indeed be differences, but only as a result of non-compliance with the collective agreement or the law.

Consequences of displacement limited at micro level

What happens to the people who are forced to compete with foreign migrants?

Workers in the focus segments, where there has been a lot of competition from migrant labour, have not exited into unemployment or inactivity en masse. Ten years later most of them are still (or once again) in employment, often working in the same or a different sector. Some of them have become self-employed, especially those who used to work in agriculture and construction. Workers in the focus segments who have found new jobs in a different sector (sector switchers) are no worse off in 2011 than those switching from other sectors. While they are more likely to be working under a temporary contract than in 2001, the likelihood is no greater than for those switching from the other sectors.

It is not only former employees who are competing with labour migrants to find jobs in the focus segments, however: so are job seekers and new cohorts. The ‘at-risk groups’ in the focus

² Inspectorate SZW is supervising compliance with the regulations concerning illegal employment, minimum wages and working conditions.

³ SNCU is the organization that promotes compliance with collective agreements for agency workers.

segments who have experienced most competition from labour migrants are the traditional ethnic minorities, young people and the unskilled. Labour participation by these at-risk groups has declined somewhat, as against the increase on average in the Netherlands. Those who do have jobs, however, are not always in worse jobs: while young people and the unskilled tend to work more often in low-paid jobs, the income situation of members of ethnic minorities who have jobs has improved (especially among the second generation).

The existence of displacement at macro level in the absence of major effects at micro level seems paradoxical, given the negative connotations of the word displacement. This micro-macro paradox exists because there are other processes besides displacement at macro level that are relevant to the Dutch labour market. Whether displacement is occurring is therefore a different question from what the effects of displacement are at micro level. The dynamics of the labour market explain why there is hardly any difference on average between the inactivity trend in the focus segments (with a lot of labour migration) and the inactivity trend in the other sectors (with little labour migration). The fact that labour migration in the focus segments does have an effect on certain groups is caused by a distribution effect. The distribution effects can be positive as well as negative. Negative effects predominate in the case of a few at-risk groups that compete most with labour migrants, but the positive effects predominate in the case of groups that do not compete much with labour migrants.